

Child Notice Afghanistan

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Child Notice Afghanistan 2018

Authors:

Horia Mosadiq, Majorie Kaandorp (2018 edition)
Naeem Poyesh, Hussain Hassrat, Abdul Ahad Mohammadi, Jane E. Thorson, Zakiah Mirzaei,
Fatema Ahmadi (2015 edition)

With support from:

Majorie Kaandorp, UNICEF The Netherlands

Design:

Schone Vormen

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For further information, please contact:

Majorie Kaandorp
Children's Rights Advocacy Officer
UNICEF The Netherlands
Email: mkaandorp@unicef.nl



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LIST OF ACRONYMS

AGE	Anti-Governmental Elements
AIHRC	Afghanistan Independent Human Rights Commission
ALSC	Afghanistan Living Conditions Survey
ANA	Afghan National Army
ANDS	Afghanistan National Development Strategy
ANSF	Afghan National Security Forces
AREU	Afghanistan Research and Evaluation Unit
CIc	Children in Crisis
COI	Country of Origin Information
CPAN	Child Protection Action Network
CSO	Central Statistics Organisation
CRC	Convention on the Rights of the Child
EASO	European Asylum Support Office
GBV	Gender based violence
GIRoA	Government of the Islamic Republic of Afghanistan
IED	Improvised Explosive Device
IDP	Internally Displaced Person
ILO	International Labour Organization
IOM	International Organization for Migration
JRC	Juvenile Rehabilitation Centre
JSSP	Juvenile Sector Support Program
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MoD	Ministry of Defence
MoE	Ministry of Education
MoF	Ministry of Finance
MoI	Ministry of Interior
MoLSAMD	Ministry of Labour, Social Affairs, Martyrs & Disabled, now Ministry of Labour and Social Affairs (MoLSA)
MoPH	Ministry of Public Health
MoRR	Ministry of Refugees and Repatriations
MoJ	Ministry of Justice
MoI	Ministry of Interior
MoWA	Ministry of Women's Affairs
MDG	Millennium Development Goal
NDS	National Directorate of Security
NGO	Non-governmental Organization
NRVA	National Risk and Vulnerability Assessment
SGBV	Sexual and Gender Based Violence
TdH	Terre des Hommes
TIP	Trafficking in Persons
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNODC	United Nations Office on Drugs and Crime

DISCLAIMER

The information in the Child Notice is structured according to the provisions of the UN Convention on the Rights of the Child (CRC - 1989). The research has been done according to the *Guidelines for the development of a Child Notice* (December 2014). The Child Notice has been researched and presented taking into account the quality standards and principles formulated in the ACCORD Manual Researching Country of Origin Information (2013 edition)¹ and the EASO COI Report Methodology².

The main text of the Child Notice contains the most up to date publicly available information as at November 2018. Any other events taken place after this date, are not included in the Child Notice.

The information in this Child Notice is limited to that which could be identified from publicly available source documents and persons. If a certain event, person or organization is not mentioned in the report, this does not mean that the event has not taken place or that the person or organization does not exist.

Different types of sources have been used (NGOs, IO's, government, media, academics). Information was also obtained from interviews with different stakeholders in the countries of origin who have given information based on their expertise and experience. All sources have been checked and cross-checked and are mentioned in the report

UNICEF The Netherlands has sought to provide relevant, accurate, up to date, balanced and impartial information on the position of children in countries of origin. The necessity to keep the Child Notice a concise report that is useable for the target group, means that choices have been made in the amount of information that is given. Though the intention is there, UNICEF does acknowledge that it is not possible to be exhaustive in the information that is presented.

The Child Notice provides useful information for immigration/asylum officials, border staff, law enforcement staff, social workers, case managers, guardians, service providers (educators, health staff), interpreters, lawyers, judges in assessing the situation and position of children in asylum and migration procedures.

UNICEF does acknowledge the fact that the information in this Child Notice is time-bound. Regular updates are important but have not been feasible in the duration of the project "Better information for durable solutions and protection"

¹ The training manual is developed by the Austrian Red Cross/ACCORD and can be downloaded here: <https://www.coi-training.net/site/assets/files/1021/researching-country-of-origin-information-2013-edition-accord-coi-training-manual.pdf>.

² European Asylum Support Office *EASO Country of Origin Information Report Methodology* July 2012.

INTRODUCTION

Child migration occurs everywhere in the world and for different reasons. Migration might be forced through natural disasters or war. It might be the result of exploitation, in the case of victims of trafficking. It might be induced because children and/or their parents fear for their lives in their countries of origin because of persecution. Also, children might migrate because they are looking for a better future life. Migrant children may be accompanied by their parents or guardians, by other adults (separated children) or alone (unaccompanied children), and children may migrate in regular or irregular ways. Whatever the reason for children to migrate and whatever the way children migrate, the best interest of the child should be a primary consideration during all stages of the migration process. Article 3 of the UN Convention on the Rights of the Child states that:

‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’

Decisions on status, care and residency and on return should be informed by a documented best interest of the child assessment and determination.

Whatever the way and reasons for children to migrate and to arrive in Europe, a durable solution should be sought, taking the best interest of the child into account. Careful and thorough procedures to determine the best interest of the child and a durable solution are necessary. Information on the situation of the involved child, be it separated, unaccompanied or travelling with his or her family, is paramount. This involves both specific information on the situation of the particular child involved, as well as information about the local situation of children in countries of origin.

The European Commission calls in its Action Plan on Unaccompanied Minors (2010-2014)³ to collect data and develop country of origin information and analysis relevant for assessing the protection needs of unaccompanied minors, with a view to better supporting quality decisions.

Authorities in most countries of destination use Country of Origin Information reports (COI). These reports are used to assess the situation in the country of origin and help to determine whether a person has the right to international protection through a refugee status or a subsidiary protection status. COI reports also give valuable information for decisions in which the possibilities for a safe return have to be weighed. Objective country of origin information increases the opportunity of safe return and decreases the chances of re-trafficking. It should inform risk-assessments and reintegration programs.

Some Country of Origin Information reports do contain information on, for instance, the position of unaccompanied minors, the existence of female genital mutilation or the recruitment or involvement of children in armed conflicts. However, the information provided often lacks detail, focuses solely on the position of children outside the family and does not provide, in general, enough information to assess child-specific forms of persecution, the best interest of a child or safe conditions for return.

The Child Notice foresees in the need for more information on child-specific circumstances in the country of origin. The Child Notice gives elaborate information on the local living conditions of children, including information on the existing or non-existing child protection services in the country

³ European Commission *Action Plan on Unaccompanied Minors (2010-2014)* COM (2010) 2313/3.



involved. It also gives information on the access to education and health care, on the occurrence of gender- and children-related violence such as FGM, forced marriages, honour killings, exploitation and human trafficking.

This information is paramount in a best interest of the child assessment which is the basis for decisions on the granting or non-granting of international protection and in considering conditions for a safe return.

READER'S GUIDE

How to read the Child Notice?

This Child Notice report is a Country of Origin Information Report providing information on the living conditions of children in Afghanistan. The Child Notice contains valuable background information for policy-makers as well as case workers, lawyers and other professionals in Europe who work with children coming from and/or going to Afghanistan, primarily in the fields of asylum and migration. The 2018 Child Notice Afghanistan is an update from the 2015 Child Notice Afghanistan which was developed and published as part of the project 'Better information for durable solutions and protection' financially supported by the European Return Fund of the European Commission.

The Child Notice Afghanistan has been updated between December 2017- November 2018.

The Child Notice starts with a *summary* which gives an overview of the most important findings of the research on circumstances in which children live, trends, actual events, the difficulties children face in the country, the political context and political responsibility towards children.

The *child right's information* in the Child Notice is structured according to the provisions of the UN Convention on the Rights of the Child (CRC - 1989). As the UN Convention is a comprehensive document, with rights being interlinked, so is this report. This means that each section of the report should be read in the context of the other sections. For instance, a failing education system and a weak child protection system encourages child labour and child exploitation. Where appropriate, references have been made between the different sections.

In general, the Child Notice has the following structure:

1. Demographic information/statistical data on children
2. Basic legal information
3. General principles
 - a. Non-discrimination
 - b. Best interests of the child
 - c. Right to life and development
4. Civil rights and freedom
5. Basic rights (health/water/food/education)
6. Family environment and alternative care
7. Special protection measures
 - a. Children in conflict with the law
 - b. Orphans, unaccompanied and separated children
 - c. Victims of child trafficking
 - d. Children in armed conflict
 - e. FGM/C
 - f. Forced and underage/child marriage
 - g. Domestic violence
 - h. Child labour and other forms of exploitation
 - i. Street children
 - j. Refugee children and internally displaced persons
8. Returning separated or unaccompanied children and families

How to use the Child Notice?

The information in the Child Notice can be used:

1. To obtain background information on the situation of children in the country of origin.
2. To identify potential (child and gender-specific) forms and manifestations of persecution.
3. To identify other factors relevant to decisions as to whether remaining in the host country or return is in the best interests of the child, including local responses to returnees.
4. As input for a Best Interest of the Child Determination; to make sure decisions concerning children have been given due consideration to the best interest of the child.

Child-specific asylum and migration policy

With many children applying for an international protection status, the need for child-specific asylum- and migration legislation and policies, guided by the principles and provisions of the UN Convention on the Rights of the Child, is clear.

At the heart of the protection of children who apply for asylum is article 22 of the UN Convention which states:

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

These rights are intertwined with the right to special protection for children who live outside the family (article 20), the right to health care (article 24) and the right to education (article 28).

The basis for the child protection of each minor asylum seeker are formed by the following articles:

Article 2: non-discrimination

Article 3: the best interest of the child

Article 6: the development of the child needs to be promoted

Article 12: the rights of children to be heard

Child-specific grounds for persecution

Each child has the right to make an independent refugee claim, regardless of whether he or she is accompanied or unaccompanied. Even being part of a family and at a young age, a child might be considered the principal asylum applicant. A child can derive a refugee status from the recognition of his or her parents as a refugee. At the same time, parent(s) can derive status from their child's refugee status.

In order to assess children's claims to asylum and make decisions, one needs to have an up-to-date analysis and knowledge of the child-specific circumstances in the country of origin, including of existing child protection services. Children themselves might not be the perfect source of information. This information can be derived from the Child Notice.

Just as adults, child applicants for a refugee status must establish that he or she has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion conform the 1951 Refugee Convention.

As the UN Committee on the Rights of the Child⁴ and the UNHCR⁵ have pointed out age and factors such as rights specific to children, a child's stage of development, knowledge and/or memory of conditions in the country of origin, and vulnerability, also need to be considered to ensure an appropriate and child-friendly application of the eligibility criteria for refugee status. The 2011/95 EU Qualification Directive states in article 9.2 that 'Acts of persecution can take the form of... (f) acts of a gender-specific or child-specific nature'⁶.

UNHCR's Executive Committee has recognized that children may be subjected to specific forms of persecution that are influenced by their age, lack of maturity or their vulnerability. The sole fact that the claimant is a child might be principal in the harm inflicted or feared. The UNHCR Guidelines on international protection⁷ highlight child-specific forms of persecution as under-age recruitment, child trafficking and female genital mutilation, as well as family and domestic violence, forced or underage marriage, bonded or hazardous child labour, forced labour, forced prostitution and child pornography, and violations of economic, social and cultural rights.

Best Interests Determination

In all decisions taken in procedures concerning children the best interests of the child should be a primary consideration.

In a migration procedure a durable solution should be sought for the child involved. A durable solution will be long-term and sustainable and ensures that the child is able to develop into adulthood in an environment which will meet his or her needs as well as fulfil her/his rights as defined by the

⁴ UN Committee on the Rights of the Child *General Comment No.6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin* CRC/GC/2005/6 (September 2005).

⁵ UNHCR *Guidelines on international protection; Child Asylum Claims under Article 1 (A)2 and 1 (F) of the 1951 Convention and/or 1967 Protocol relating to Status of Refugees* HCR/GIP/09/08 (22 December 2009).

⁶ Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted (recast).

⁷ UNHCR *Guidelines on international protection; Child Asylum Claims under Article 1 (A)2 and 1 (F) of the 1951 Convention and/or 1967 Protocol relating to Status of Refugees* HCR/GIP/09/08 (22 December 2009).

UN Convention and will not put the child at risk of persecution or harm. The durable solution will be informed by the Best Interest Determination (BID).

According to General Comment No 14, the specific, factual circumstance of the child is the point of departure for assessing the best interests of the child. Elements, which among other aspects relevant to the specific child, may be taken into account when assessing and determining a child's best interests include:

A. Child's identity

Age, gender, sexual orientation national origin, religion and beliefs, cultural identity, personality, current needs and evolving capacities (including level of education).

B. Child's view

The child's view on his/her identity and on the options available. Include also the view of (foster) parents or (current) caregiver's views.

C. Preservation of the family environment, maintaining relationships

Significant relationships (location), quality and duration of child's close relationships, effect of separation from significant relationships, capacity of parents or other care-givers, possibilities of family reunification, preference of care within family environment in order to ensure the full and harmonious development of a child's personality.

D. Care, protection and safety of the child

Safety from harm, well being in broad sense (basic material, physical, educational and emotional needs, needs for affection and safety, recognizing that socio-economic circumstances may be quite diverse in in country of origin, possibility of future risk and harm and other consequences of the decision for the child's safety).

E. Situation of vulnerability

Individual physical or emotional needs, specific protection needs including for victims of trafficking and trauma, role of continuity of feelings of security and stability.

F. Child's right to health

Actions required to provide for his/her health condition, including mental health.

G. Access to education

Educational needs and opportunities for development.

These elements need to be balanced in an assessment of best interests. The content of each element will necessarily vary from child to child and from case to case, depending on such things as the concrete circumstances. Child-specific information on the country of origin, as provided in the Child Notice, will give valuable input for an assessment of above-mentioned elements but cannot provide information on a particular situation of a particular child.

A Best Interests of the Child Determination (BID) results in a recommendation for the child's future based on his or her best interests. A BID procedure is a holistic assessment of all possible long-term solutions that could meet the best interests of the child and address his or her individual rights and needs, particularly any need for international protection and adequate care arrangements. This assessment is holistic in considering many factors and goes beyond an assessment of international protection needs based on existing legal instruments. A BID should be a formal process with strict procedural safeguards.

Child protection systems

The Child Notice includes information about the provision of child protection services by state and non-state actors. Thorough knowledge of the existing child protection system in a country of origin



or the lack of it, is vital while making a decision on international protection, possible return and assessing return conditions or designing reintegration programs in the country of origin.

A child protection system (CP system) consist of 'certain formal and informal structures, functions and capacities that have been assembled to prevent and respond to violence, abuse, neglect and exploitation of children'⁸. The importance of a CP system is to create a protective environment where laws and policies, services, behaviours and practices minimize children's vulnerability and strengthens children's own resilience⁹. There is however not one template for a child protection system that could be copied to every country around the world.

A child protection system should consist of a few basic elements:

- Child protection laws and policies should be compliant with the UNCRC and other international and regional standards.
- Governments have an oversights function and the ultimate responsibility over the child protection system, which involves coordination and engagement of multiple CP actors, including civil society.
- There is a centralized data collection system on both prevalence and knowledge of child protection issues and good practices.
- There are preventive and responsive services that are focused on supporting the families in protecting and caring for their child. Prevention should, besides the child at risk, focus on all the risks that play a role.
- Children will be involved and will have the opportunity to express their views in responses and interventions deployed to protect them and in the development of child protection policies.

A protective environment encourages the development of a child, improves their health, education and well-being. Besides, it improves their capacities to be parents and productive members of their societies. The main importance of a child protection system is that it provides protection against the risks and vulnerabilities underlying many forms of harm and abuse: 'Sexual abuse and exploitation, trafficking, hazardous labor, violence, living and/or working on the streets; the impact of armed conflict, including children's use of armed forces and groups; harmful practices such as female genital mutilation/cutting (FGM/C) and child marriage; lack of access to justice; and unnecessary institutionalization among others'¹⁰.

⁸ UNICEF, UNHCR, Save the Children, World Vision *A Better Way to Protect All Children* (2012) Conference report p. 1.

⁹ UNICEF *UNICEF Child Protection System* UN-Documents E/ICEF/2008/5 (2008).

¹⁰ UNICEF *UNICEF Child Protection System* UN-Documents E/ICEF/2008/5 (2008).

The EU Action Plan for Unaccompanied Minors¹¹ states the importance of a functional child protection system as follows:

‘Finally, the EU will continue promoting the development of child protection systems, which link the services needed across all social sectors to prevent and respond to risks of violence, abuse, exploitation and neglect of children, to support children who are not in the care of their families and to provide protection to children in institutions. The EU will also continue supporting birth registration systems which, through ensuring that all children have a legal identity and thus access to their legal rights, play an important role in child protection.’

Return

The durable solutions that are often considered are geographically shaped:

1. Voluntary or forced return to the country of origin.
2. Local integration in the country of destination, or
3. Resettlement to a third country in situations where it is impossible for a person to go back home or remain in the country of destination.

In order for return to take place in a safe manner, there are many considerations, including child protection needs, to be taken into account.

UNICEF published in 2014 a discussion document¹² on children’s rights in return policy and practice in Europe. This document enumerates the following considerations for government practice in the return process for children:

1. Assess the security situation carefully, on a country and local basis and specifically for children.
2. Carry out a Best Interest Determination (BID) to identify a durable solution for every separated child.
3. Develop and use child rights-based procedures for tracing and contacting families.
4. Respect the best interest of children in returning to families.
5. Work on possibilities for long-term development and durable solutions.
6. Conduct public consultations now on policy provisions needed to accompany emerging practices.
7. Do not return children to institutional reception unless the recommended safeguards are in place.

Although the discussion document has been written with separated and unaccompanied children in mind, some of these considerations are also valid while considering return of children and their families.

In order to assess the security situation and to consider and develop specific reintegration programs, child-specific country of origin information which can be found in the Child Notice is paramount.

¹¹ European Commission *Action Plan on Unaccompanied Minors (2010-2014)* COM (2010) 2313/3.

¹² UNICEF *Children’s rights in return policy and practice in Europe; a discussion paper on the return of unaccompanied and separated children in institutional reception or family* (2014) Voorburg.

SUMMARY

Afghanistan is an ethnically diverse country, with over 12 languages and 13 ethnicities represented nationwide. The protection of honour within family and community is essential and influences the roles and social norms in Afghanistan. Family structures follow a traditional patriarchal structure, men are the breadwinners and primary decision makers and women are caretakers and wives. Children are raised within these gender specific roles as well.

The Central Statistics Organization has estimated that the total population of Afghanistan in the year 2016-2017 was around 29.2 millions of which 51 percent are males and 49 percent females¹³. The distribution of population between urban, rural areas shows that out of the settled population 20.8 millions are living in rural areas and 6.9 millions in urban areas. In addition 1.5 millions are living as nomads¹⁴.

The most striking feature of the Afghan population is its very young age structure. 47.7 per cent are under the age of 15 years, where elderly of 65 and over are around 2.7 per cent. The proportion under 15 is among the highest in the world and significantly higher than that of the neighbouring countries. This young population contributes to a very high dependency ratio for every 100 persons in the working age 15-64, there are 101 persons in the less productive ages, under 15 and over 64¹⁵.

According to the UNICEF Afghanistan Annual report 2017, 1 in 18 Afghan children fail to reach their first birthday, 46 per cent of children aged between 12-23 months have not received any vaccination, 2 in 5 children cannot reach their full physical and mental development, 1 in every 4 children is underweight and 1.3 million children under the age of five require treatment for acute malnutrition¹⁶. Afghanistan is making small improvements in the 2016 Human Development indicators, but is still ranked 169th out of 187 countries overall¹⁷.

Afghanistan ratified the International Convention of the Rights of the Child in 1994 and has signed other international protocols on human rights protection. The 2004 national constitution protects the right to life and development for children. Along with national legislation focused on the protection of children, there are policies and strategies in place to address the issues of children at risk. However, Afghanistan remains in political, military and economic transition since the National Unity Government began in the fall of 2014. The ongoing-armed conflict and transitioning government create a context of instability in implementing the national and international policies focused on child protection.

Children in Afghanistan face significant risks to health. The 2016 under-five mortality rate is 70 out of 1000 children, higher than any of the six neighbouring countries¹⁸.

Juvenile justice in Afghanistan emphasizes rehabilitation. The juvenile law recognizes the international standards on child protection and mandates separate facilities for children, punishment dependent on

¹³ Central Statistics Organization of Islamic Republic of Afghanistan Afghanistan Statistical Yearbook 2016-2017 available at <http://cso.gov.af/Content/files/%D8%B3%D8%A7%D9%84%D9%86%D8%A7%D9%85%D9%87%2%D8%A7%D8%AD%D8%B5%D8%A7%D8%A6%DB%8C%D9%88%DB%8C%20%D8%B3%D8%A7%D9%84%201395/Population.pdf> (Accessed 14 April 2018).

¹⁴ Central Statistics Organization *Afghanistan Statistical Yearbook 2016-2017*.

¹⁵ Central Statistics Organization Afghanistan Living Condition Survey 2016-2017 available at [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf)

¹⁶ UNICEF *Afghanistan Country Office Afghanistan Annual Report 2017* (February 2018) available at <https://www.unicef.org/afghanistan/reports/annual-report-2017> (Accessed December 2018).

¹⁷ UNDP *Human Development Report 2016 Human Development for Everyone* (2016) available at http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf (Accessed December 2018).

¹⁸ UNICEF *The State of World's Children Report 2016 - A Fair Chance for Every Child* (2016) available at https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf (Accessed December 2018).

the age of the child, and the provision of alternatives to detention. However, the 2012-2014 UNODC Country programme report states that children continue to be placed in detention at high rates for behaviours, which, based on international standards, should not be considered criminal offences.

Boys in Afghanistan are more at risk of child trafficking for sexual exploitation and forced labour, than girls¹⁹. In 2014, IOM assisted 124 boy survivors of trafficking, which was 74 per cent of the total number of survivors of trafficking assisted by IOM. Girls in Afghanistan are vulnerable to child or forced marriage, which brings with it risks of maternal morbidity and mortality. In 2010 in Afghanistan one in five deaths of girls aged 15-19 years old were pregnancy related. At the same time, reports on the traditional practices of exchanging girls between families (*badal*) and offering a girl to a family to settle a dispute (*baad*) show that these harmful practices are common in Afghanistan. A 2013 inquiry on honour killings reported 406 cases of rape and/or honour killings with 8.4 per cent involving victims 18 years old or younger.

In 2017, child casualties decreased by 10 per cent compared to 2016, according to UNAMA. UNAMA documented 3,179 child casualties (861 deaths and 2,318 injured) in 2017, mainly from ground engagements. Children also suffered heavily from explosive remnants of war and IEDs²⁰.

Children in Afghanistan are impacted daily by domestic violence. Culturally, physical punishment is seen as a normal and acceptable form of 'discipline'. In a 2014 survey by the Asia Foundation, 41 per cent of household members stated that they believe that in order to raise their children properly, they need to physically punish them, however, in practice 69 per cent of household members used physical punishment to discipline their children. The UNICEF 2014 study on violence against children reported that 63 per cent of the children between 2 to 4 years old, 78 per cent between 5 to 9 years old and 78 per cent between 10 to 14 years old experience either psychological and/or physical punishment as discipline.

The 2016 Afghanistan Living Conditions Survey (2016-2017) completed by the Afghanistan Central Statistics Organisation, showed that 10 per cent of Afghans live in a district different from their district of birth. Returning women and girls faced increased challenges in attending school, accessing ID cards, participating in local decision-making structures and a lack of psychological and social support for survivors of sexual and gender based violence.

Refugees from Afghanistan comprised the second largest group by country of origin worldwide, although their numbers decreased. At the end of 2016, there were 2.5 million Afghan refugees, compared with 2.7 million a year earlier. While this decline was mainly due to returns from Pakistan, that country nonetheless continued to host the largest Afghan refugee population (1.4 million)²¹. UNOCHA reported that only in the first nine months (January – September) of 2017, more than 300,000 people were internally displaced as a result of the conflict²².

¹⁹ Also see Save the Children "More than 1,100 Afghan children a day expected to drop out of school in 2017, putting them at risk of exploitation, Save the Children warns", 23 March 2017, available at <https://www.savethechildren.net/article/more-1100-afghan-children-day-expected-drop-out-school-2017-putting-them-risk-exploitation> (Accessed December 2018).

²⁰ UNAMA *Afghanistan Protection of Civilians in Armed Conflict: Annual Report 2017* (2018), p3 available at https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_annual_report_2017_final_150218.pdf (Accessed December 2018).

²¹ UNHCR Global Trends – *Forced Displacement in 2016* (2017) p. 17 available at <http://www.unhcr.org/uk/statistics/unhcrstats/5943e8a34/global-trends-forced-displacement-2016.html> (Accessed December 2018).

²² UNOCHA *Humanitarian Response Plan 2017 Third Quarter Report - of financing, achievements and response challenges – Afghanistan January-September 2017* (2017) available at https://www.unocha.org/sites/unocha/files/dms/afg_2017_hrp_q3_report.pdf (Accessed December 2018).

1 Demographic and statistical data on children

1.1 Demographic and statistical data on children

Figure 1: Map of Afghanistan



Major sources for statistical data

1. The major sources for statistical data are:
 - The Central Statistics Organisation (CSO) is the national statistics organization for Afghanistan. It functions as an independent governmental administration with the purpose of creating an integrated system for statistics and also ensuring coordination of all statistical activities²³.
 - The National Risks and Vulnerability Assessment (NRVA) also known as the Afghanistan Living Condition Survey (ALCS) has been providing data on Afghanistan for the past 10 years²⁴. It is implemented by the CSO of the Government of the Islamic Republic of Afghanistan (GIROA).

²³ Central Statistics Organization *Statistics Law Article 2* (2013) available at <http://cso.gov.af/en/page/1489/10904> (Accessed December 2018).

²⁴ Central Statistics Organization *National Risk and Vulnerability Assessment: Afghanistan' Living Condition Survey 2016- 2017* Introduction (hereafter National Risk and Vulnerability Assessment) available at <http://cso.gov.af/en/page/1500/1494/nrv-report> (Accessed December 2018).

- The Afghanistan Multiple Indicator Cluster Survey (Afghan MICS) was implemented in 2010-2012 by the CSO and in collaboration with and support from UNICEF²⁵. An international household survey programme developed by UNICEF, the Afghan MICS provides up to date information on children and women and measures progress against key Millennium Development Goals (MDGs) and the Afghanistan National Development Strategy (ANDS).
 - The Survey of the Afghan People is an annual survey implemented by the Asia Foundation. It is the longest-running and broadest nationwide survey of Afghan attitudes and opinions, and has a uniquely broad scope and long duration, tracking trends on questions²⁶.
 - The Afghanistan Demographic and Health Survey 2015, implemented by the CSO²⁷.
2. The Afghanistan statistical yearbook for 2016-2017 produced by the Afghanistan Central Statistical Organization (CSO), estimates the total population for 2016-2017 at 29.2 million²⁸.
 3. According to the City Atlas of Afghanistan in 2016 produced by UN-Habitat 11.5 million Afghans are living in five city regions. Kabul city with proximately of 5 millions population is the biggest city followed by Herat, Kandahar, Mazar-e- Sharif and Jalalabad cities²⁹.
 4. It is important to note that population figures are not representative of actual population growth. The last official Afghanistan population census was in 1979. Therefore, projections are based on an estimated growth rate. The Afghanistan CSO projects yearly population figures in Afghanistan using a 2.03 per cent growth rate based on the Afghan Census of 1979 and the more recent 2003-2004 Household listing data.
 5. The most striking feature of the Afghan population is its very young age structure. 47.7 per cent are under the age of 15 years, where elderly of 65 and over are around 2.7 per cent. The proportion under 15 is among the highest in the world and significantly higher than that of the neighbouring countries³⁰.

²⁵ Central Statistics Organisation and UNICEF *Afghanistan Multiple Indicator Cluster Survey 2010-2011: Final Report* (2012) p11 (hereafter Afghan MICS).

²⁶ The Asia Foundation *Afghanistan in 2014: A survey of the Afghan people* (2014) p. 5 (hereafter Afghanistan in 2014).

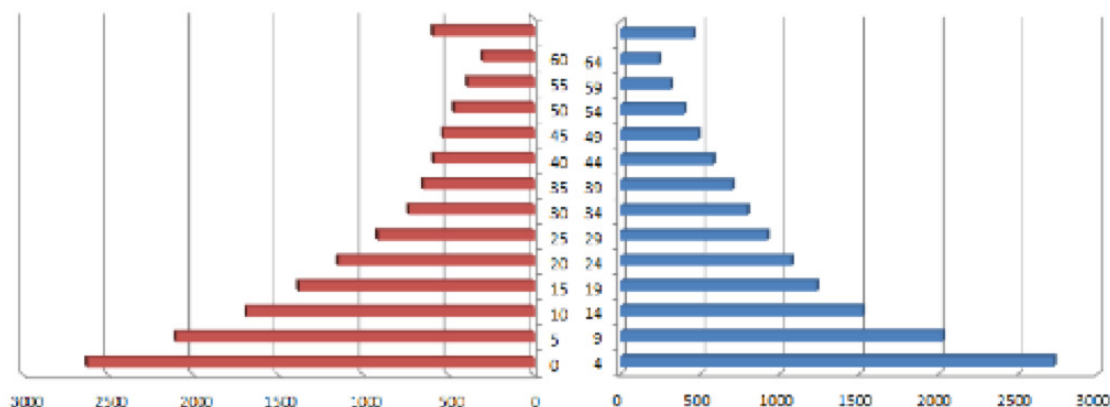
²⁷ Central Statistical Organization, Ministry of Public Health/Afghanistan, and ICF *Afghanistan demographic and health Survey 2015* (Kabul, Afghanistan).

²⁸ Central Statistics Organization *Afghanistan Statistical Yearbook 2016-2017* available at <http://cso.gov.af/en/page/1500/4722/2016-17> (Accessed December 2018).

²⁹ UN-Habitat *Atlas of Afghan City Regions 2016* (2016) available at <https://unhabitat.org/atlas-of-afghan-city-regions-2016/> (Accessed December 2018).

³⁰ Central Statistics Organization *Afghanistan Living Condition Survey 2016-2017* [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf) (Accessed December 2018).

Figure 2: Population Pyramid³¹



Afghanistan Year book 2016-2017 CSO, the blue represents male and red represents female population

- Total population projections include an estimated 1.5 million nomads, however projections for population disaggregated by age, gender and regions do not take into account the nomadic populations. The majority of settled Afghans, approximately 71 per cent, live in a rural setting³².

Table 1: Central Statistics Organization (CSO) 2016-17 Settled Population by Sex and Age Groups-2016-17³³

Total Settled Population	27,657,145			6,919,560			20,737,585		
	Total	M	F	Urban	M	F	Rural	M	F
0-4	5,352,641	2,626,653	2,725,987	1,258,367	648,059	610,309	4,094,273	1,978,595	2,115,678
5-9	4,135,433	2,106,448	2,028,985	1,047,269	539,343	507,926	3,088,164	1,567,105	1,521,059
10-14	3,214,745	1,689,221	1,525,525	862,048	443,954	418,094	2,352,697	1,245,266	1,107,431
15-19	2,620,797	1,385,640	1,235,157	704,718	362,929	341,788	1,916,079	1,022,710	893,369
Total 0-19									

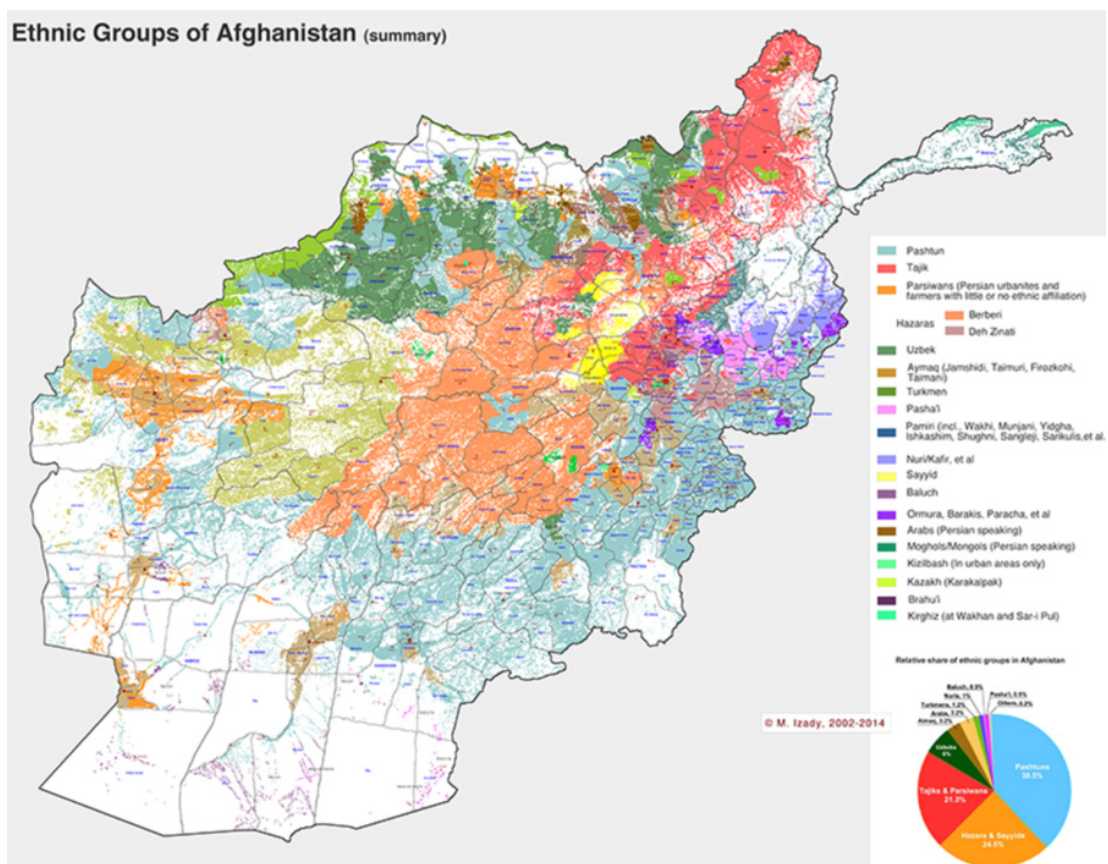
- Afghanistan is an ethnically and linguistically diverse country. However, without official census figures it can be difficult to accurately project ethnic, linguistic and religious minorities.

³¹ Central Statistics Organization *Afghanistan Statistical Yearbook 2016-2017* available at <http://cso.gov.af/en/page/1500/4722/2016-17> (Accessed December 2018).

³² Central Statistics Organization, *Afghanistan Living Conditions Survey 2016-17* (2018) p. 23.

³³ Central Statistics Organization *Afghanistan Statistical Yearbook 2016-2017* p. 5 available at <http://cso.gov.af/en/page/1500/4722/2016-17> (Accessed December 2018).

Figure 3: Map of the ethnicities in Afghanistan, based on 2000 projections³⁴



8. The 2014 Survey of Afghan People, completed by the Asia Foundation, recorded thirteen different ethnic groups represented. Pashtun (40 per cent), Tajik (36 per cent), Hazara (10 per cent) and Uzbek (8 per cent) were the top four, with Turkmeni, Baloch, Nuristani, Aimak, Araba, Pashaye, Sadat, Qezelbash, and Safi signifying 2 per cent or less of the population³⁵. The 2017 Survey of Afghan People does not give an update.

9. The 2014 Asia Foundation survey also recorded twelve different languages represented in the survey responses. Dari (77 per cent), Pashto (51 per cent) and Uzbeki (11 per cent) were the most represented³⁶. Turkmeni, Balochi, Pashayee, Nuristani, Shignee, Pamiri, Arabic, English and Urdu were also reported, although all were below 4 per cent³⁷. The official government languages in Afghanistan are Dari and Pashto³⁸. The 2017 Survey of Afghan People does not give an update.

³⁴ Colombia University SIPA 'Gulf 2000 project' (2000) available at http://gulf2000.columbia.edu/images/maps/Afghanistan_Ethnic_summary_sm.png (Accessed December 2018).

³⁵ The Asia Foundation *Afghanistan in 2014* (2014) p. 211.

³⁶ Many Afghans speak more than one language.

³⁷ The Asia Foundation *Afghanistan in 2014* (2014) p. 210.

³⁸ Central Intelligence Agency *CIA Factbook Afghanistan* (2015) available at <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html> (Accessed December 2018).

10. The majority of Afghans are Sunni Muslims (approximately 80 per cent), while Shia Muslims, including Ismaelis, represent either 10 per cent or 20-25 per cent of the population, depending on estimations of the religious groups themselves³⁹. The remaining includes Sikh, Hindu, Bahai and Christian, as well as one known Jew⁴⁰. The Shia minority faces societal discrimination, while non-Muslim groups, specifically Hindus, Sikhs and Christians face persecution and discrimination⁴¹ (see 3.1 *Non-discrimination*).

1.2 Islam and Religion

11. Islam is the predominant religion in Afghanistan and the country is Islamic Republic of Afghanistan. Article 2 of the Afghanistan Constitution states: The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free within the bounds of law in the exercise and performance of their religious rituals. Article 3 of the Afghanistan Constitution states: No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan⁴².
12. In Islam, a child is defined as a dependent individual who belongs to a family. The rights of children to food, clothing and shelter are to be provided by their parents or guardians, who have unlimited rights over the child.

1.3 Family Structure

13. Family structure follows a very traditional, patriarchal structure and is centred on notions of honour and shame, governed by tribal codes and interpretations of Islam⁴³. The father is seen as the breadwinner, and the wife is seen as the mother. The man generally is the primary decision maker and discipliner in the family. Within the home, the parents are seen as responsible for the upbringing of the child, with support from extended family. Outside of the family, religious leaders, community elders, teachers and mullahs are all seen as responsible for providing guidance in upbringing. Sons are raised to help their father, learning how to provide for the family and become a future breadwinner for their own future family. Daughters are raised to focus more on domestic skills, with social norms attaching honour to preparing for a future marriage.
14. Households in Afghanistan have on average 7.7 members and 3.7 children under the age of 15. Household with 6 to 8 persons are the most common household sizes, but more than half of the Afghan population lives in household with nine persons or more⁴⁴.

³⁹ US Department of State *Afghanistan 2017 International Religious Freedom Report* (2018) p. 2 available at <https://www.state.gov/documents/organization/281260.pdf> (Accessed December 2018).

⁴⁰ US Department of State *Afghanistan 2017 International Religious Freedom Report* (2018) p. 2 available at <https://www.state.gov/documents/organization/281260.pdf> (Accessed December 2018).

⁴¹ US Department of State *Afghanistan 2017 International Religious Freedom Report* (2018) p. 1 available at <https://www.state.gov/documents/organization/281260.pdf> (Accessed December 2018).

⁴² Ministry of Justice of Afghanistan The Constitution of Afghanistan Article 3 available at <http://moj.gov.af/en/page/legal-frames/168329941684> (Accessed December 2018).

⁴³ UNICEF *Children and Women in Afghanistan. A situational analysis 2014*. (November 2014) p. 31 (hereafter *Children and Women in Afghanistan*).

⁴⁴ Central Statistics Organization *Afghanistan Living Conditions Survey 2016-17* (2017) p. 28 available at <http://cso.gov.af/Content/files/ALCS/ALCS%20Mid-termresult-Highlights%202016-17.pdf> (Accessed December 2018).

15. In a report on juvenile justice, War Child UK states:

'Afghan life and culture very much revolve around families and clans. The laws and moral standards are based on these blood ties much more than on the state and the 'rule of law' like in countries such as the UK. Less emphasis is placed on individual rights, and the notion of children's rights isn't as understood or enshrined in the same way as in other countries. Given the decades of conflict that have plagued the country, families do their best to protect their children – especially the girls. Home is usually considered to be the safest place for them, but this sometimes comes at the cost of their education or social life'⁴⁵.
(See 5.3 Education).

16. Female-headed households only account for one per cent of all households, according to the 2016-17 statistics of Afghan Living Conditions Survey. However, the absence of a male head of household can signify a highly vulnerable position in regards to income security and social protection.

17. The National Action Plan for the Women of Afghanistan (NAPWA) 2007-2017, highlighted the vulnerability of female-headed households in regards to social protection and income:

'Land, which is a highly valued economic capital, especially in an agricultural economy like Afghanistan, is generally owned by men. The loss of women's inheritance entitlements to male relatives upon the death of a husband is another reason why very few women own land, a factor that reinforces the economic vulnerability and dependency of women, especially those who are heads of households'⁴⁶.

18. Article 53, section 2 of the GIRoA Constitution contains provisions that explicitly recognize the right of women without caretakers and seeks to correct severe gender disadvantage in the areas of education, family, and policy and decision making, by guaranteeing necessary assistance⁴⁷. However, the specific definition of 'necessary assistance' is not clarified.

1.4 Political Development

19. In September 2014 the National Unity Government agreement was officially signed. This agreement allowed for a power sharing government in which Afghanistan both had a president and a chief executive officer (CEO). While the role of president is clearly defined, the role of the CEO is not officially in the constitution and has never been legally defined by amending the Afghan Constitution⁴⁸.

20. In October 2018 the long overdue parliamentary elections took place. Much feared massive attacks by insurgent groups did not take place but there was no voting at all in two critical provinces, and the government said ahead of the vote that only two-thirds of polling stations

⁴⁵ War Child UK *Juvenile Justice in Afghanistan*.

⁴⁶ Government of the Islamic Republic of Afghanistan. *National Action Policy for the Women of Afghanistan 2007-2017* (2007) available at <http://extwprlegs1.fao.org/docs/pdf/afg149120.pdf> (Accessed December 2018) p. 9 (hereafter NAPWA).

⁴⁷ Government of Afghanistan *Constitution of Afghanistan = Assasi Qanun Article 52 (1964)* (2005). available at Digitized Afghanistan Materials in English from the Arthur Paul Afghanistan Collection Paper 3, <http://digitalcommons.unl.edu/afghanenglish/3> (Accessed December 2018).

⁴⁸ Jalali, Ali *Forging Afghanistan's National Unity Government* (January 2015) USIP, communication with UNICEF November 2018.

would open because of security issues. According to the New York Times security and health officials after polls closed estimated that at least 78 people, including 28 members of the security forces, were killed and least 470, mostly civilians, were wounded in smaller attacks targeting dozens of districts. In Kabul alone, more than a dozen explosions were reported by officials⁴⁹. Schools were made into polling stations and became target of attacks thereby impacting the children's access to education⁵⁰. The parliamentary elections are important since in 2019 the presidential elections will take place.

21. In December 2017, a report on security situation of Afghanistan submitted by the UNAMA to the General Assembly and Security Council of the United Nations states: 'The security situation remained highly volatile, as conflict between government and anti-government forces continued throughout most of the country. The United Nations recorded 3,995 security-related incidents from 15 September to 15 November, representing a 4 per cent decrease compared with the same period in 2016. By 15 November, the United Nations had recorded more than 21,105 security related incidents for the first 11 months of 2017, an increase of 1 per cent since 2016. The continuing high number of incidents is attributed mainly to armed clashes. In line with established trends, armed clashes accounted for the majority of security incidents, at 62 per cent, followed by improvised explosive devices, at 17 per cent. Targeted killings and abductions increased by 16 per cent compared with the same period in 2016. The eastern region experienced the highest number of incidents, followed by the southern region, with the two regions accounting for 56 per cent of all incidents'⁵¹.
22. The Survey of Afghan people in 2017, conducted by Asia Foundation found that insecurity, economic concerns, and governance issues are by far the three most commonly cited reasons for pessimism about the country's direction⁵². Concerns relating to security or crime are the reasons that Afghans say most frequently that the country is moving in the wrong direction, cited by 69.5 per cent of pessimistic respondents. Over a third of respondents (39.9 per cent) cite economic concerns, most related to unemployment (27.2 per cent). Similarly, 37.2 per cent of pessimistic Afghans point to governance issues, with a large proportion of these particular responses (21.1 per cent) citing corruption as a reason they think the country is moving in the wrong direction. Lack of infrastructure is less frequently cited as an issue (9.5 per cent)⁵³.
23. Afghanistan is, after Syria, the least peaceful country in the world, according to the Global Peace Index 2018. The economic impact of the conflict is increasingly high⁵⁴.
24. Afghanistan is one of the 20 most disaster prone countries in the world and ranks 5th and 17th respectively in terms of vulnerability to earthquakes and floods⁵⁵.

⁴⁹ <https://www.nytimes.com/2018/10/20/world/asia/afghanistan-election-vote.html> (Accessed December 2018).

⁵⁰ Information from UNICEF Afghanistan, 7 November 2018.

⁵¹ General Assembly Security Council *Report of the Secretary-General: The situation in Afghanistan and its implications for international peace and security* A/72/651-S/2017/1056 (15 December 2017) paragraph 16 <https://unama.unmissions.org/sites/default/files/sg-report-on-afghanistan-15-december-2017.pdf> (Accessed December 2018).

⁵² The Asia Foundation *Afghanistan in 2017; A Survey of the Afghan People* (2017) figure 1.8 p.25 available at https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf (Accessed December 2018).

⁵³ The Asia Foundation *Afghanistan in 2017; A survey of the Afghan People* (2017) p. 24 https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf (Accessed December 2018).

⁵⁴ Institute for Economics & Peace *Global Peace Index 2018; Measuring Peace in a Complex World* (June 2018), p. 9 & p. 46.

⁵⁵ UNICEF *Children and Women in Afghanistan* (Accessed December 2018).



2 Basic Legal Information

2.1 Conventions on children's and human rights

25. The Government of the Islamic Republic of Afghanistan (GIROA) ratified the United Nations Convention on the Rights of the Child (CRC) on 28 March 1994⁵⁶. Furthermore, Afghanistan has signed or ratified the following optional protocols to the CRC and other international human rights treaties.

Table 2: Ratified International Human Rights Conventions⁵⁷

International Convention on the Elimination of all Forms of Racial Discrimination	1983
International Covenant on Civil and Political Rights	1983
International Covenant on Economics, Social and Cultural Rights	1983
Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment	1987
Convention on the Rights of the Child	1994
Optional Protocol of the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography	2002
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	2003
Convention on the Elimination of all Forms of Discrimination against Women	2003
Convention on the Rights of Persons with Disabilities	2012
Optional Protocol to the Convention on the Rights of Persons with Disabilities	2012

⁵⁶ United Nations *Treaty Collection* available at https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en-title=UNTC-publisher= (Accessed December 2018).

⁵⁷ United Nations *Treaty Collection* available at https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en-title=UNTC-publisher= (Accessed December 2018).

26. Key reservations were made in regards to the International Convention on the Elimination of All Forms of Racial Discrimination, specifically in regards to article 22⁵⁸. Afghanistan states that they will not be bound by the provision of article 22 that disagreements can be referred to the International Court of Justice by the request of only one of the concerned parties. Instead, Afghanistan will refer a matter only when all concerned parties agree with that procedure.

Table 3: Ratified ILO Conventions

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour	2011
Minimum Age Convention	2010
Discrimination (Employment and Occupation) Convention	1969
Equal Remuneration Convention	1969
Abolition of Forced Labour Convention	1963

2.2 National legislation

27. Article 7 of the Afghanistan Constitution, approved in 2004, stipulates that

‘the State shall observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights’⁵⁹.

The Afghan Constitution also includes provisions for child protection and child rights.

Table 4: Afghan laws and strategies relevant to children⁶⁰

National Law / Policy	Year	National Law / Policy	Year
Civil Code	1977	Education Law	2008
National return and Reintegration Strategy	2002	National Justice Sector Strategy	2008
The Comprehensive National Disability Policy	2002	Law on Counter Abduction and Human Trafficking	2008
The Constitution of Afghanistan	2004	National Strategy for Children with Disabilities	2008
National Plan of Action against Trafficking and Kidnapping of Children	2004	Law on Rehabilitations and Correction of Juvenile Offenders	2009
Juvenile Code	2005	National Law for the Rights and Privileges of persons with Disability	2009
National Strategy for Children at Risk	2006	Shia Personal Family Law	2009/10
The Afghanistan HIV/AIDS Strategic Framework	2006	Elimination of Violence Against Women (EVAW)	2010
Labour Code	2007	Action Plan for the prevention of underage recruitment into the Afghan National Security Forces	2011
Afghan National Development Strategy (ANDS)	2008	National Strategy for Street Working Children (2011-2014)	2011

⁵⁸ Government of Afghanistan *Constitution of Afghanistan = Assasi Qanun Article 3* (1964) (2005) available at Digitized Afghanistan Materials in English from the Arthur Paul Afghanistan Collection Paper 3 <http://digitalcommons.unl.edu/afghanenglish/3> (Accessed December 2018).

⁵⁹ Ministry of Justice *Implementing the Convention on the Rights of the Child in Afghanistan* (2011) <http://moj.gov.af/en/news/1383> (Accessed December 2018).

⁶⁰ UNICEF *Child Protection in Emergences (CPIE) Afghanistan Draft Desk Review* (2012).

National Law / Policy	Year	National Law / Policy	Year
The Children Guardianship Law	2014	Penal Law	2017
Anti-Harassment Act against Women and Children	2016	Policy for Protection of Children in Armed Conflict	2017
Law on prohibition of Torture	2017	Annex to Penal Code on alternatives to imprisonment and detention	2018
Law to Combat Crimes of Trafficking in Persons and Smuggling of Migrants	2017	Social Protection Law	2018

Table 5: Afghan Institutions and Ministries relevant to child protection⁶¹

Institutions and Ministries	Year est.
Attorney's General Office	
Supreme Court	
Ministry of Justice	1919
Ministry of Interior	1930
Afghanistan Independent Human Rights Commission (AIHRC)	2002
Ministry of Women Affairs	2002
Inter-Ministerial Steering Committee on Children and Armed Conflict	2010
Ministry of Labour and Social Affairs	2018

28. The Afghan government Ministry of Defence (MoD) approved in year 2017 a policy on prevention of the recruitment of children in Afghanistan National Security Forces (ANSF) under the name of Protection of Children in Armed Conflict:

'This policy has been established to protect and promote the welfare of children during armed conflict and thereby implement the Afghanistan Constitution Articles 7 and 54, international conventions, human rights, and international humanitarian law. The policy aims to shield children from the adverse effects of armed conflict and especially to prevent the perpetration of violence against children during combat operations involving military members or units of the Afghan National Army (ANA) or during activities controlled or conducted by MoD. This policy prescribes procedures for monitoring, reporting and investigating violations by MoD personnel as a party to armed conflict and declares the intent to hold those who commit serious crimes accountable⁶².

29. The Children Protection Law was endorsed by the Ministers Council in 2017. It has 108 articles and provides legal assurances as well as protection for children on different situation⁶³.
30. In November 2016, the Afghan parliament approved the Anti Harassment Act against Women and Children. The law explicitly criminalizes certain acts of harassment against women and children including sexual and street harassment.

⁶¹ UN Committee on the Rights of the Child (CRC) *Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child : concluding observations : Afghanistan* (8 April 2011) CRC/C/AFG/CO/1, available at: <http://www.refworld.org/docid/4dc7bd492.html> (Accessed December 2018) (hereafter Concluding observations).

⁶² Ministry of Defence *Policy for Protection of Children in Armed Conflict* (2017).

⁶³ Interview with Mariam Zurmati Head of Child Protection Secretariat of MoLSAMD January 2018.

31. Although there are laws, policies and institutions that have been established and developed, child protection is still lacking in Afghanistan. The 2014 UNICEF situational analysis of women and children in Afghanistan stated: 'There is inadequate attention afforded to child protection in the national planning strategies of Afghanistan and a consistent, holistic and multi-sectoral approach to child protection is lacking. The absence of a coordinated policy, financial resources and lack of will among senior policy-makers and officials are serious impediments to protecting children from violence, abuse and exploitation'⁶⁴.
32. A 2011 UNDP report titled *Protecting Child Rights in Afghanistan* stated that despite the fact that Afghanistan ratified the CRC in 1994, it had yet to be formalized through national legislature.
33. In 2014 the Afghan president issued a decree on the establishment of a Child Protection Secretariat within the Ministry of Labour, Social Affairs, Martyrs and Disabled. The decree came after the recommendation by the members of the SAARC to the Afghan government to establish a Deputy Ministry level for the protection of children in Afghanistan. Due to lack of resources and political will the process was delayed for almost two years. Finally in 2017 the department for the Child Protection Secretariat became fully functional within the structure of MoLSAMD⁶⁵. Late 2018, the Ministry of Labour, Social Affairs, Martyrs and Disabled changed its name into Ministry of Labour and Social Affairs (MoLSA). In this report, please read MoLSA where MoLSMAD has been written.
34. The UN Committee on the Rights of the Child (CRC), after examining the 2011 report on how Afghanistan is implementing the provisions of the Convention of the Rights of the Child, reported:

'In spite of recent legislative developments in the field of child rights, the State party does not consider the Convention as a legally binding instrument in the internal order and has therefore not incorporated it systematically into domestic legal system in order to make it applicable'⁶⁶.
35. The 2011 UN CRC report went on to say:

'Child rights continue to be negatively affected by the application of different sources of law, namely codified, customary and Sharia laws and that legislation contradictory to the Convention remains in force'⁶⁷ (*See 2.7 Birth registration*).

2.3 Budget

36. The total national budget of Afghanistan in 2017 was 429.4 billion Afghani⁶⁸. Out of the total budget, the security sector received about 34 per cent while the infrastructure sector acquires 21 per cent of the total national budget. The education sector ranked third and made up about 13 per cent of the total budget. Agriculture, Social Protection and Health sectors received 7 per cent, 6 per cent and

⁶⁴ UNICEF *Children and Women in Afghanistan* (November 2014) p. 44.

⁶⁵ Interview with Maryam Zurmatai Head of Social Work in MoLSAMD 17 January 2018 Kabul- Afghanistan.

⁶⁶ UN Committee on the Rights of the Child (CRC) *Concluding observations* (8 April 2011) CRC/C/AFG/CO/1, available at <http://www.refworld.org/docid/4dc7bd492.html> (Accessed December 2018).

⁶⁷ UN Committee on the Rights of the Child (CRC) *Concluding observations* (8 April 2011) CRC/C/AFG/CO/1, available at <http://www.refworld.org/docid/4dc7bd492.html> (Accessed December 2018).

⁶⁸ This would equal to around 30-35 billion USD (April 2018).

3 per cent of the budget respectively⁶⁹. According to this budget allocation most of the budget was spent on security sector while health and social protection, including the protection of vulnerable groups such as women and children, received the least part of the budget. Lack of allocation of financial resources resulted in weak services in social protection area.

37. The Ministry of Finance reported the use of the social budget in 2017 as follows:

- 5300 unskilled labour trained in various fields (35 per cent Female);
- Distribution of 10,873 work permit for foreigners;
- Equipped and computerized the work permit distribution branches for foreigner in six zones;
- Distribution of financial assistance to 21,000 extremely poor families;
- Enrolment of 101,467 retirees to the new system of retirement;
- 341,524 returnees have been returned to country;
- Legal support extended to 59,837 returnees and IDPs;
- Food and non-food assistance to 70,716 returnee families;
- 46,263 displaced families have returned to their hometown;
- 1503 shelters have been constructed for the displaced people and returnees;
- Women harassment prohibition guideline has been drafted and its implementation mechanism has been approved to 49 governmental agencies.

38. Afghanistan's national budget is funded through domestic revenue, international donor assistance and loans. International donors fund the majority of the national budget, with 53 per cent committed for the 2018-19 fiscal year. Domestic revenue constitutes 45 per cent⁷⁰. There is no data or research available on the percentage of the national budget that focuses on children, however, the combined budgets of the Education, Social Protection, Governance, and Health sectors represents 24 per cent of the overall total 2018-19 budget⁷¹. While activities within these sectors go beyond focusing specifically on children, specific outcomes within sectors include the following child related indicators⁷²:

Education:

- A number of 6,575 confined juvenile provided with 'retention'⁷³, education and training facilities;
- 1,036,000 new students enrolled for general, Islamic, teacher training and technical and vocational training educations;
- 10 million textbooks printed;
- 362,000 new students recruited for literacy courses.

⁶⁹ Ministry of Finance Citizens Budget *A simplified version of the National Budget 1396* available at [http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1396_Budget/1396%20English%20Citizen%20budget%20-%20New\(1\).pdf](http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1396_Budget/1396%20English%20Citizen%20budget%20-%20New(1).pdf) (Accessed December 2018).

⁷⁰ Ministry of Finance Citizens Budget *A simplified version of the National Budget 1397* (2018-19) available at http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1397_Budget/Citizen%20Budget/1397%20English%20Citizen%20budget%20.pdf (Accessed December 2018).

⁷¹ Ministry of Finance *National budget 1398* (2018-19) available at http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1397_Budget/Citizen%20Budget/1397%20English%20Citizen%20budget%20.pdf (Accessed December 2018).

⁷² Ministry of Finance *National budget 1398* (2018-19) available at http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1397_Budget/Citizen%20Budget/1397%20English%20Citizen%20budget%20.pdf (Accessed December 2018).

⁷³ This is an exact copy of what is being described in the document of the Ministry of Finance.

Health:

- 9 provinces covered in the pilot program of payment against performances;
- A total of 750 reporting centers on surveillance established in the provincial level;
- 1,071,000 children vaccinated;
- 40 hospitals or health centers built;
- 5,339 employees trained about pregnancy health services.

Social Protection:

- 14,658 displaced families transferred to their main territories;
- Necessary legal facilities provided to 55,499 returnee families;
- 4,309 young people trained in safe border areas;

39. In 2018, additional funding was provided for the implementation of child protection programmes. In the budget review, a troubling lack of transparency and accountability was noted from provincial departments reportedly due to instruction from central ministries⁷⁴. UNICEF's 2014 situational analysis on children and women also noted that existing development allocations highlight a poor national prioritization for children⁷⁵.
40. Overall aid is estimated to have declined from an annual average of US\$ 12.5 billion in the period from 2009 to 2012 to around US\$ 8.8 billion in 2015⁷⁶.

2.4 Government child rights coordination

41. There is no unit or ministry responsible for coordinating the implementation of the CRC. The Child Protection Secretariat under the Ministry of Labour and Social Affairs, Martyrs and the Disabled (MoLSAMD) is staffed but needs further capacity-building to be fully operational. The Secretariat is tasked with the role of coordinator of implementing the child protection agenda in Afghanistan.
42. The Child Protection Action Network (CPAN) is an inclusive network of government, non-governmental and Civil Society Organisations (CSO) with a mandate to intervene in the area of child protection and is managed by MoLSAMD at national level and DoLSAMD at provincial level. It operates at national, provincial and district level. Centralized meetings occur in Kabul and provincial and district levels report monthly to the national group. The national CPAN is based in Kabul, with presence in 32 provinces and more than 100 districts. Statistics on child protection issues are shared by CPAN on a monthly basis. Current members of CPAN include AIHRC, Medica Afghanistan, Children In Crisis (CIC), Hagar International, UNICEF, UNHCR, UNODC, UNAMA, Parsa, Op Mercy Afghanistan, the child protection section of Women for Afghan Women (approximately 50 organizations total)⁷⁷ (see 6.2 *Protection of disadvantaged and vulnerable children*).

⁷⁴ Equality for Peace and Democracy 1394 *Draft national budget review* (November 2014) available at http://www.epd-afg.org/wp-content/uploads/2014/03/1394-Budget-Snapshot_English.pdf (Accessed December 2018).

⁷⁵ UNICEF *Children and Women in Afghanistan* (November 2014) p. 44.

⁷⁶ The World Bank *Afghanistan Development Update* (2017) available at <http://documents.worldbank.org/curated/en/520971510669112194/pdf/121392-WP-P165541-PUBLIC-November-20-12-AM.pdf> (Accessed December 2018).

⁷⁷ CPAN Personal Communication 30 August 2015.

2.5 Independent national human rights institutions

43. The Afghanistan's Independent Human Rights Commission (AIHRC) was established based on article 58 of the Constitution of the Islamic Republic of Afghanistan. AIHRC established a specific Child Rights Desk and supports the protection of child rights by providing coordination and support to stakeholders through its focus on awareness raising, promotion and monitoring of the status and well-being of children in Afghanistan⁷⁸. Like the Women's Rights Unit, its aim is to understand and address the underlying causes of the abuses of children's rights and to advocate for laws and policies that protect children from such abuse.
44. Children are able to make independent requests for help and protection from AIHRC⁷⁹. According to AIHRC staff working in the Child Rights Desk, the most common way of hearing independent requests from children is during monitoring visits into orphanages, Juvenile Rehabilitation Centres, shelters for children and at borders (trafficked and smuggled children). Child rights AIHRC representatives always facilitate meetings with children separately from the adults⁸⁰. The numbers of requests during these monitoring visits were not available. The second option available for children to make independent requests is to directly come to the nearest AIHRC office and request assistance⁸¹. This option is not as common since it is difficult for children to come alone. From 2013-2015, the child rights desk recorded 10 cases where children came alone to request protection⁸².
45. The UN Committee on the Rights of a Child welcomed the creation but expressed concerns:

'about the procedure for nominating the AIHRC members, which may not fully guarantee their independence from the political influence, as well as the insufficient financial support provided by the state party to the AIHRC and the limited expertise of its child rights field monitors'⁸³.

2.6 Non-governmental and civil society organizations

46. An UN Protection Cluster in Afghanistan was established in 2008, including a Child Protection in Emergencies sub cluster, to strengthen coordination of humanitarian action⁸⁴. Led by UNICEF, with support from Save the Children, various international and national NGOs, along with UN agencies, it meets monthly to improve the efficiency and quality of response to various child protection humanitarian needs in Afghanistan.
47. United Nations Assistance Mission in Afghanistan (UNAMA) has a Child Protection Unit within its human rights unit. The Child Protection Unit only works with children affected by armed conflict and focuses on implementation of the International Humanitarian law and the Monitoring and Reporting Mechanism for the six grave violations under the UN Security Council Resolution 1612, which are:

⁷⁸ AIHRC Human Rights Situation: Annual Report (2012) p. 20 available at http://www.aihrc.org.af/home/research_report/1236 (Accessed December 2018) (*hereafter Human Rights Situation*).

⁷⁹ AIHRC Personal Communication 30 August 2015.

⁸⁰ AIHRC Interview with the Child Rights Unit January 2018.

⁸¹ AIHRC Personal Communication 06 September 2015.

⁸² AIHRC Personal Communication 06 September 2015.

⁸³ UN Committee on the Rights of the Child (CRC) *Concluding observations* (8 April 2011) CRC/C/AFG/CO/1, available at <http://www.refworld.org/docid/4dc7bd492.html> (Accessed December 2018).

⁸⁴ UNICEF *Children and Women in Afghanistan* (November 2014) p. 45.

Recruitment and use of children, killing and maiming of children, sexual violence against children, attacks against schools and hospitals, abduction of children, and denial of humanitarian access⁸⁵.

2.7 Justice for children

48. Afghanistan ratified the Juvenile Code in 2005. The Juvenile Code dictates provisions, measures and procedures to protect the human rights and interests of children in conflict with the law, as well as children at risk and those in need of care and protection. Rehabilitative in nature, the Juvenile Code allows for judges to provide the following alternatives to sentencing a child for detention:
- Performing social services.
 - Sending the child to special social services institutions.
 - Issuance of warning.
 - Postponement of trial.
 - Conditional suspension of punishment.
 - Home confinement.
 - Surrender of child to his/her parents or those who have the guardianship rights⁸⁶.
49. There are three stages to the juvenile court process: initially cases go to the primary courts, any disputes in decisions are filed with the appeal court and final decisions made by the Supreme Court⁸⁷ (*see 7.1 Children in conflict with the law*).
50. The 2008 Juvenile Justice Department rules (JRC law) was established to ensure the protection of juvenile offenders, ensure their access to human rights, explain the responsibilities of JRC staff, monitor the conditions of the JRCs, and provide procedures for admission, transfer and reintegration⁸⁸.
51. The new Afghan Penal Code 2017, third chapter (articles 95-114) are focusing on children and the age for criminal responsibility, types of crimes and penalty for children from 12-16 years of age and 16-18 years of age. Chapter 10 of the law (articles 605- 608) is about prohibition of children from recruitment in military institutions and chapter 11 (articles 609- 618) is about the crimes against children. The penal code abolished paragraph 1 of article 4, paragraph 1 of article 5, article 6, 35 and 39 of the juvenile code. The Penal Code is yet to be approved by the Afghan parliament but is effective by presidential decree.
52. The Juvenile Rehabilitation Centres Working Group meets on a monthly base to discuss issues and concerns in regards to the JRCs⁸⁹.

⁸⁵ UNICEF Personal Communication 31 August 2015.

⁸⁶ War Child UK *Implementing alternatives to detention, 'community sanctions', for children in Afghanistan* (2013) p. 3 (hereafter *Implementing alternatives to detention*).

⁸⁷ War Child UK *Implementing alternatives to detention* (2013) p. 3.

⁸⁸ Government of the Islamic Republic of Afghanistan *Presidential decree of Islamic Republic of Afghanistan regarding approval of juvenile justice department rules* (2008).

⁸⁹ JSSP Personal Communication 24 August 2015.

Informal justice system

53. There is varying adherence to codified (national) law, with courts often disregarding applicable statutory law in favour of sharia or local custom, according to the 2017 US Department of State Human Rights report⁹⁰. UNODC observed that whereas the codified law seeks the punishment of the perpetrator of a crime, the customary (informal) system seeks to compensate for the wrong done and provide for social reconciliation, which results in the satisfaction of both victim and offender⁹¹.
54. Though not described in any law or policy, in traditional practise there are two main structures within the informal justice system for deciding justice: jirgas and shuras⁹². A jirga is a Pashtun tribal structure of elders to consult and solve a question or dispute. It decides in both civil and criminal matters, although this is against the law. The shura is an Arabic word for consultation and is referred to in the Quran three times as a means of solving an issue, and therefore in Islamic law it is seen as a recommended form of governance⁹³. Mediation in civil matters is allowed and recommended in civil matters, but not in criminal matters.
55. According to a survey conducted by the United States Institute for Peace (USIP) the customary practice that is contrary to Islamic law is the routine deprivation of women's right to inherit property. Under Islamic law, female relatives may inherit property from their male relatives, albeit in smaller shares than identically situated inheriting males. In contrast, in some parts of the country only males have the right to own property. Respondents justified the bypassing of Islamic legal dictates in this case on the grounds that society as a whole would benefit from greater social cohesion. Any loss of women's property was explained away in terms of the purported benefits accrued through male guardianship. The survey also found an overall reluctance among women to press for their inheritance rights for fear of social stigma⁹⁴.
56. The Asia Foundation 2014 survey observed that similar to previous years local shuras/jirgas continue to be viewed in a highly positive light by a large proportion of the Afghan public. Afghans who used the local shura or jirga were most likely to say that they are fair and trusted, follow local norms and values, and are effective and efficient, while Afghans who used the state courts to resolve their disputes were the least likely to agree with these statements⁹⁵.
57. Concerns have also been raised by UNODC in particular with respect to the history of human rights violations resulting from decisions of informal justice mechanisms, especially towards women and children. Observing that:

'Although the restorative aspect of the informal dispute resolution system in use in Afghanistan, is a positive concept in itself, the way crimes and disputes are settled can have an extremely harmful impact on the lives of women'⁹⁶.

⁹⁰ US Department of State *Country Reports on Human Rights Practices for 2017: Afghanistan* (2017) available at <https://www.state.gov/documents/organization/277519.pdf> (Accessed December 2018) pp. 9- 10.

⁹¹ UNODC *Implementing alternatives to imprisonment* (2008) p. 47.

⁹² Khan, Hamid M. 'Islamic Law, Customary Law and the Afghan Informal Justice' USIP (2015) p. 5 available at <https://www.usip.org/sites/default/files/SR363-Islamic-Law-CustomaryLaw-and-Afghan-Informal-Justice.pdf> (Accessed December 2018).

⁹³ Khan, Hamid M. 'Islamic Law, Customary Law and the Afghan Informal Justice' USIP (2015) pp. 5-6.

⁹⁴ Khan, Hamid M. 'Islamic Law, Customary Law and the Afghan Informal Justice' USIP (2015) p. 10.

⁹⁵ The Asia Foundation *Afghanistan in 2014* (2014) p. 98.

⁹⁶ UNODC *Implementing alternatives to imprisonment* (2008) p. 47.

58. Other concerns recorded by UNODC relate the influence of militia commanders or other powerful figures on the decisions of *jirgas* and *shuras*, which put at risk the human rights of the vulnerable⁹⁷.
59. The 2014 UNICEF situational analysis reported concern that child rights continues to be weakened by Afghanistan's use of different sources of law, including informal justice systems and domestic legislations, which fail to meet international standards for child protection⁹⁸. For example, in regards to early and child marriage, the Afghan Civil code states that girls are legally able to marry at age 16, and can marry at 15 with permission of the father⁹⁹, however Sharia law, which influences the informal justice system states no age limit on marriage, and the Shiite Personal Status law (domestic legislation) permits marriage for boys and girls 'at puberty', making the Afghan Civil Code ineffective¹⁰⁰ (see 4.3 Access to appropriate legal advice and 7.5 Underage and forced child marriage).

2.8 Birth registration

60. According to the Ministry of Interior 'the birth of a child shall be reported by the child's legal guardian to the nearest civil registration office within six months after birth'¹⁰¹. The government established a system of registration in 2003 and is working to register as many children at birth as possible.
61. According to UNICEF in 2016 42 per cent of the children under the age of 5 have a birth certificate, implying that over 3 million under-five children are not registered as citizens of Afghanistan¹⁰². According to the Afghanistan Living Conditions Survey 2016-2017 60.9% of the children under 5 years in urban areas have a birth certificate, 29.5% in rural areas and 10.4% of the Kuch (nomad) children under 5 have a certificate¹⁰³.

2.9 Legal ages for children

Table 6: Legal ages according to Afghan law

Right or responsibility	Age (years)	Key legal source	Main text reference
Age of majority	18	Afghanistan Civil Code	See 6.1
Criminal responsibility	12	Juvenile code	See 7.1
Marriage age	18: Male 16: Female	Afghanistan Civil Code	See 7.5
Sexual consent	Upon marriage	Criminal code	See 7.5
Identity documents	0-17: with parents 18: Independently	Ministry of Interior	See 2.9

⁹⁷ UNODC *Implementing alternatives to imprisonment* (2008) p. 47.

⁹⁸ UNICEF *Children and Women in Afghanistan* (November 2014) p. 35.

⁹⁹ The proposed revised Afghan Civil code states that girls and boys are legally able to marry at age 18.

¹⁰⁰ UNICEF *Children and Women in Afghanistan* (November 2014) pp. 38-39.

¹⁰¹ Ministry of Interior *Newborn Registration system*.

¹⁰² Khaliqyar Sohaila 'Birth registration: A passport to the future' (25 May 2016) UNICEF Afghanistan available at <https://www.unicef.org/afghanistan/stories/birth-registration-passport-future> (Accessed December 2018).

¹⁰³ Central Statistics Organization *Afghanistan Living Conditions Survey 2016-2017*, p. 213.

Right or responsibility	Age (years)	Key legal source	Main text reference
Compulsory education	Enrollment between 6 and 9	Education Law	See 5.3
Voting age	18	Afghan Election Law	Not Applicable
Military service	18	Ministry of Defense	See 7.3
Age of Deprivation	7	Juvenile code	See 7.1

Independent identity and travel documents

62. Both identity documents and passports are issued for children starting from age 0 but only with the consent of a male relative (father, brother, brother of the father)¹⁰⁴. After 18 years old, Afghans are able to access passports and identity documents independently, however they must have the tazkira (national ID) of their father or other male relative to show as proof of nationality¹⁰⁵ (see 8.2 *Settling after return*).
63. AIHRC in a survey conducted between 2015-2016 interviewed 5700 children in 27 provinces of Afghanistan. Some 44 per cent of the respondents told AIHRC that they do not have any Tazkira/ ID card. Complicated bureaucratic systems, distance from the government administration and remoteness were counted as some of the reasons for this.

¹⁰⁴ Information from Ministry of Interior.

¹⁰⁵ Information from Ministry of Interior.



3 General principles

3.1 Non-discrimination

Legislation

64. The Government of the Islamic Republic of Afghanistan (GIROA) is taking policy and legislative steps to promoting human rights for all. Article 22 of the Afghan Constitution clearly indicates that:

‘Any kind of discrimination and privilege between the citizens of Afghanistan is prohibited. The citizens of Afghanistan, whether man or woman, have equal rights and duties before the law’¹⁰⁶.

Article 7 of the constitution also stipulates that:

‘The State shall observe the UN Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights’.

65. The Afghanistan National Development Strategy (a document that outlines the GIROAs strategies for security, governance, economic growth and poverty reduction) and the National Priority Programmes (22 programmes designed by each GIROA ministry to support the mandates within the Afghanistan National Development Strategy (ANDS) 2008-2013 framework)

¹⁰⁶ Government of Afghanistan *Constitution of Afghanistan = Assasi Qanun Article 22* (1964) (2005) available at Digitized Afghanistan Materials in English from the Arthur Paul Afghanistan Collection Paper 3, <http://digitalcommons.unl.edu/afghanenglish/3> (Accessed December 2018).

were drafted with human right principles and CRC provisions¹⁰⁷.

66. In spite of constitutionally accepted rights and policies, the GIRoA does not view the CRC as legally binding¹⁰⁸. Afghanistan's legal system provides a foundation to protect the human rights of all citizens, regardless of ethnicity, language and religion, but lack of rule of law and traditional and customary practices still hinder the rights of children in Afghanistan (*see 2.6 Justice for children*).

Differences between boys and girls

67. One major difference in laws and policies between girls and boys is in regards to the legal age to marry. Article 70 in the Afghan Civil Code defines the legal age of marriage for males as 18 years, and females as 16 years, therefore, while boys are at an age of majority when they are legally allowed to marry, for girls, they are allowed to be married prior to reaching their legally mature age¹⁰⁹ (*see 2.9 Legal ages for children and 7.5 Underage and forced child marriage*).
68. Girls are less likely to be enrolled in schools. The Ministry of Education reported that overall general education enrolment for girls was 3,564,150 by the end of 2017 compared to 5,819,785 boys¹¹⁰.
69. Girls in Afghanistan face the risk of early pregnancy and gender based violence. The Afghanistan Independent Human Rights Commission (AIHRC) in 2015-2016 documented some 682 cases of violence against female children throughout Afghanistan. Some 208 cases of physical violence, 72 cases of economic violence (deprivation of resources), 57 cases of sexual violence including rape and forced prostitution were experienced by the children. Violence against female children are the highest among violence against children. Although the actual number could be much higher than what have been reported and documented by AIHRC¹¹¹.

Access to school

70. Article 3 of the Education Law, recognizes the right to education for all Afghan citizens. However there are reports that minority groups like Hindus and Sikhs are still deprived from having access to acceptable education facilities¹¹². In addition, Hindus and Sikhs' children who attend public schools are insulted and faced with verbal and psychological violence. In some cases, such behaviour makes them drop out of schools. The 2014 situational analysis of children and women by UNICEF also highlighted that children from minority ethnic Jogi and Chori Frosh communities are struggling to gain access to education and are among the most marginalized groups in primary and secondary education¹¹³ (*see 5.3 Education*).
71. The Ministry of Education (MoE) does mandate in chapter 8 of the Law of Education that areas where most of the residents speak one of the third official languages of the country (Uzbeki,

¹⁰⁷ UNICEF *Children and Women in Afghanistan* (November 2014) p. 22.

¹⁰⁸ UNICEF *Children and Women in Afghanistan* (November 2014) p. 22.

¹⁰⁹ Government of the Islamic Republic of Afghanistan *Afghan Civil Code Article 70* available at <http://www.asianlii.org/af/legis/laws/clotroacogn353p1977010513551015a650/> (Accessed December 2018).

¹¹⁰ Ministry of Education *Official website: Reports, Reports Total number of students 2017* <http://old.moe.gov.af/en/page/1831/3031> (Accessed December 2018).

¹¹¹ Interview with AIHRC Child Rights Officer 17 January 2018, Kabul Afghanistan.

¹¹² AIHRC Human Rights Situation (2012) available at http://www.aihrc.org.af/home/research_report/1236 (Accessed December 2018).

¹¹³ UNICEF *Children and Women in Afghanistan* (November 2014) p. 63.

Turkamani, Pashaei, Noristani, Baluchi, Pamiri, etc) in addition to teaching Dari and Pashto, the facilities for teaching the third language will be provided¹¹⁴. The MoE is responsible to provide training, books and teachers to help meet this mandate.

72. Existing surveys and data do however highlight the inequality in access to these services between children living in urban versus rural areas. No more than around two in five rural households live within two kilometres of a primary school¹¹⁵. According to the CSO Afghanistan Living Conditions Survey 2016-2017 the two most important reasons for not starting school are the absence or the large distance to school (36.6 per cent) and family disapproval of going to school (25.2 per cent). Economic reasons include the need for children to work and too high education expenses, which together amount to 12.3 per cent of all reasons. The need for children to work (24.1 per cent) is more important as a reason to stop education¹¹⁶. The 2017 report noted that the population in rural areas is at a severe disadvantage: the youth literacy rate there is only 47.9 per cent, compared to 75.1 per cent in urban areas¹¹⁷, while overall net primary school attendance in rural areas is 54 per cent, while in urban areas it is 74.3 per cent¹¹⁸ (see 5.3 Education).

“I couldn’t go to school because I have to work and provide for my family of eight people. My father is disabled and he is not able to work so my elder brother and I work in a local market as porters and provide for our family. I only attended school for one year in Pakistan when I was very young but then my father told me that I had to quit school and work with my brother. Last year Pakistani police forced us to leave Pakistan and we were deported here and now we live in a IDP settlement in North of Kabul. Life is very hard, much harder than it was in Pakistan but we have no choice.”

- Interview with Gais, a 12 year old returnee/IDP from Pakistan in Charman-e-Babrak Kabul 19 January 2018.

Discrimination against minority groups

73. The constitution does not explicitly address equal rights based on race, disability, language, or social status¹¹⁹.
74. Societal discrimination against Shia Hazaras, including Ismailis, continued along class, race, and religious lines in the form of extortion of money through illegal taxation, forced recruitment and forced labour, physical abuse, and detention¹²⁰. In 2017 a marked rise in violence was reported, principally carried out by ISIS-Khorasan Province (ISIS-K), against the Hazara community. In August 2017, ISIS-K attacked Shia Hazara mosques in Herat and then Kabul, killing more than 100 persons. There were six major attacks on Shia mosques or Shia communities during the first half of 2017,

¹¹⁴ Ministry of Education *Education Law* (farsi version).

¹¹⁵ Central Statistics Organization *National Risk and Vulnerability Assessment 2011-2012* (2012).

¹¹⁶ Central Statistics Organisation *Afghanistan Living Conditions Survey 2016-2017* pp. 164-166.

¹¹⁷ Central Statistics Organisation *Afghanistan Living Conditions Survey 2016-2017* p. 175.

¹¹⁸ Central Statistics Organization *Afghanistan Living Conditions Survey 2016-2017* p. 152.

¹¹⁹ US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed December 2018) p. 37.

¹²⁰ US Department of State *Country Reports on Human Rights Practices for 2017: Afghanistan* (2017) available at <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> (Accessed December 2018).

all attributed to ISIS-K¹²¹. In November 2015 the Taliban kidnapped some 31 Hazara passengers between Kabul- Kandahar highway near Zabul province and seven of them including a seven years old girl and women were decapitated by Taliban/ ISISL¹²². Sikhs and Hindus continued to face discrimination, reporting unequal access to government jobs and harassment in school, as well as verbal and physical abuse in public places¹²³.

Children with disabilities

75. According to the CSO Afghanistan Living Conditions Survey 2016-2017 the participation rate of disabled youth in education and training is 28.7 per cent¹²⁴. 75 per cent of the persons with disabilities never attended school¹²⁵.
76. Children with disabilities face limited access to participating in communities, especially those living in rural areas. According to the Afghanistan State of Youth Report for 2014, there is one school in Kabul for children with visual impairments, and four schools (two in Herat, one in Kabul and Jalalabad) for children with hearing impairments¹²⁶. In 2014, there were 29 pilot general education schools in Kabul where children with and without disabilities are learning¹²⁷. All these programs are located in urban areas (see 5.3 Education).

LGBTI issues

77. The Anti Harassment Act against Women and Children is criminalizing certain acts of harassment including sexual and verbal harassment in private and public, but no Afghan law prohibits discrimination or harassment on the basis of sexual orientation or gender identity¹²⁸.
78. Homosexuals and transgender persons are neither socially accepted nor recognized by law. Article 60 of Afghan civil code states the only legal form of marriage is between mature persons with opposite sex¹²⁹. The Afghan Penal Code 2017, effective by presidential decree, punishes those involved in homosexual acts, for the act of sodomy, and mid-term imprisonment (no longer than two years) for those who were sodomized.
79. Although there is no law provision explicitly on Lesbian, Gay, Bisexual or Transgender (LGBTs) and no definition of LGBTs in the law, the Afghan Penal Code 2017 categorizes this under the crime of *Zina* (out of marriage sexual relationship) and *Lawat* (sodomy). Articles 643-645 of the Afghanistan Penal Code forbid *Zina*. Articles 646-649 of the Afghanistan Penal Code forbid *Lawat*. Articles 653-

¹²¹ US Department of State Country Reports on Human Rights Practices for 2017: Afghanistan (2017) available at <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> (Accessed December 2018).

¹²² Qazi Shereena 'Afghans protest 'beheadings of ethnic Hazara by ISIL' Al Jazeera (11 November 2015) available at <http://www.aljazeera.com/news/2015/11/afghans-protest-killings-hazara-isil-151110135854342.html> (Accessed December 2018).

¹²³ US Department of State Country Reports on Human Rights Practices for 2017: Afghanistan (2017) available at <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> (Accessed December 2018).

¹²⁴ Central Statistics Organisation Afghanistan Living Conditions Survey 2016-2017 p. 157.

¹²⁵ Central Statistics Organisation Afghanistan Living Conditions Survey 2016-2017 p. 166.

¹²⁶ UNFPA Afghanistan State of Youth Report 2014 (2014) p. 74.

¹²⁷ UNFPA Afghanistan State of Youth Report 2014 (2014) p. 74.

¹²⁸ US Department of State Country Reports on Human Rights Practices for 2014: Afghanistan (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed December 2018) p. 52.

¹²⁹ Government of the Islamic Republic of Afghanistan Afghan Civil Code Article 60 available at https://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf (Accessed December 2018).

667 forbid *Bacha Bazi* (abuse of children, mainly boys including sexual, entertainment and other forms of abuse).

80. Article 645 of the Afghan Penal Code 2017 states “If female homosexuals are found to having illicit relationship it could be punishable to short term imprisonment (no longer than three years). Article 649 states “If male homosexual are found of having illicit relationship it could be punishable to short term imprisonment (no longer than three years)”

81. Legal expert Mr. Ezmarey Osmani from Afghanistan on both customary and Sharia law states:

‘One of the reasons that LGBTs are not recognized in the Afghan law is that it contradicts Sharia and Islamic teachings. There is no mention of LGBTs in Quran or Hadiths and thus it is not recognized in our judicial system. Even if someone is born transgender, the person itself and the family will not disclose it to others as it will be some kind of social stigma for the person and the family. The other issue has to do with rights as the right to marriage, the right to custody of children, right to inheritance and many other issues. It will create many complications within the law and Sharia. For this reason it is easier to divide persons between male and female’¹³⁰.

82. While there are not many reports about the situation of LGBTs in Afghanistan, in 2016 the BBC reported on the situation of LGBTs in Afghanistan who are living a double life in order to conceal their identity¹³¹.

“I was living in one of the Eastern provinces where I was born. As I grew up I was more attracted to boys than to girls and this situation caused me a lot of problems. Because of my way of speaking and behaviour, my classmates, teachers, other students and even our neighbours started calling me a name often used for Transgender people in Afghanistan (Ezak). Some boys were scared of becoming my friend while others, including some adults, were sexually harassing me and trying to touch me or pressure me to have sex with them in return for money. My father and my uncle were increasingly concerned about me and even my father beat me several times because the way I was talking was not like a male or a boy should talk and he wanted me to be “like a man”. Finally we moved to Kabul and I started university where I started a relationship with another boy. My family became aware of this relationship and since then I am on the run. If my family knows where I am they will kill me. My father and my uncle told me that I was a disgrace to the family and before I can bring any form of dishonour or disgrace to them, I should be killed.”

– Kabir, an Afghan LGBT interviewed on 7 February 2018 by phone.

83. The 2017 US Human Rights report observed:

‘Members of the lesbian, gay, bisexual, and transgender (LGBT) community did not have access to health services and could be fired from their jobs because of their sexual orientation. Organizations devoted to protecting the freedom of LGBT persons remained underground because they could

¹³⁰ Legal expert Mr. Ezmarey Osmani interviewed in Kabul on 20 January 2018.

¹³¹ Ahmadzai Aria ‘Afghanistan LGBT community living under threat of death’ BBC Afghan (7 October 2016) available at <http://www.bbc.co.uk/news/world-asia-36884732> (Accessed December 2018).

not be legally registered and members of the LGBT community reported they continued to face discrimination, assault, rape, and arrest¹³².

84. An assessment conducted by UNODC in 2008 found that 14 per cent of boys in detention were charged with homosexual behaviour, with some of them very young, one being only eleven years' old and under the age of criminal responsibility¹³³. Others also stated that many of the boys in prison were held for prostitution, although they were victims themselves, and that those who had committed sexual offences, male or female, were treated as adults and not regarded as victims¹³⁴. There is no updated information available in 2018.

3.2 Best interests of the child

85. In article 54 of the Afghanistan Constitution, special care for securing the best interests of the child has been recognized and included.
86. In a similar way, the Afghan Juvenile Code was established in 2005 to strengthen child rights in the Afghan judicial system, ensuring that their rights are safeguarded during investigation and trial. Within the existing budget, indicators and outcomes have been identified by MoLSAMD to make sure children cases are reviewed and decisions made in 'favour of the child'¹³⁵.
87. The Child Protection Law which is initiated by the article 54 of the Afghanistan Constitution is drafted in 108 articles which provides legal assurances and legal base for protection of children in Afghanistan and identifies government stakeholders to provide certain services such as health, education and living condition for children.
88. A child rights expert interviewed in the context of this report said:
- 'Regardless of how many laws and legislation there are to protect children, the reality is different. Most of the laws are not implemented and most government entities do not take any issue regarding children serious or they lack financial and human resources and expertise to deal with the issue regarding the children'¹³⁶.

¹³² US Department of State *Country Reports on Human Rights Practices for 2017: Afghanistan* (2017) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed December 2018) p. 52.

¹³³ UNODC *Implementing alternatives to imprisonment* (2008) p. 37.

¹³⁴ UNODC *Implementing alternatives to imprisonment* (2008) p. 38.

¹³⁵ Ministry of Finance Afghanistan. 1394 budget (2015-2016). http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1394/1394%20National%20Budget_English%20Version.pdf (Accessed December 2018).

¹³⁶ Interview with Mariam Zurmati Child Rights Expert MoLSAMD (20 January 2018).

3.3 Rights to life and development

Legislation

89. Article 23 of the Afghanistan Constitution recognizes the right to life¹³⁷. It indicates that life is a gift from God and a natural right of human beings. No one shall be deprived of this right except by the provision of law.

Children's birth and death rates

90. In 2016, the under-five mortality rate in Afghanistan was 70 per 1,000 live births. The infant mortality rate (under 1) was in 2016 53 per 1,000¹³⁸. According to UNICEF Afghanistan Annual report 2017, 1 in 18 Afghan children fail to reach their first birthday and 46 per cent of children aged 12 to 23 months have not received their basic vaccines. Afghanistan is still battling polio with 14 cases reported in 2017. 2 in 5 children cannot reach full mental or physical development. 1 in every 4 children is underweight and 1.3 million children under 5 years requires treatment for acute malnutrition¹³⁹.

Specific severe risks in childhood

91. Despite implementation of many development projects in Afghanistan, the country remains a dangerous place for children. In Afghanistan civilians, particularly children are the main victims of armed conflict. The United Nations Assistance Mission in Afghanistan (UNAMA) reports on child civilian casualties caused by the ongoing-armed conflict in Afghanistan, based on mid-year and annual reports. UNAMA documented that, in 2017, 359 women were killed – a rise of five per cent – and 865 injured. Child casualties – 861 killed and 2,318 injured – decreased by 10 per cent compared with 2016¹⁴⁰.
92. In 2016, an UNAMA and UNICEF report on education and healthcare at risk documented 132 conflict-related incidents affecting education and education-related personnel, an 86 per cent increase compared to the same period in 2014 and a 110 per cent increase compared to 2013. This trend is attributed to the increase in the number of incidents involving threats and intimidation against education and healthcare personnel (182 per cent more than in 2014 and 376 per cent more than in 2013)¹⁴¹.

¹³⁷ Government of Afghanistan Constitution of Afghanistan = Assasi Qanun (1964) (2005) available at Digitized Afghanistan Materials in English from the Arthur Paul Afghanistan Collection Paper 3, <http://digitalcommons.unl.edu/afghanenglish/3> (Accessed December 2018).

¹³⁸ UNICEF *The State of the World's Children 2017* (December 2017) p. 162.

¹³⁹ UNICEF *Afghanistan 2017 Annual Report* (2017) available at <https://www.unicef.org/afghanistan/reports/annual-report-2017> (Accessed December 2018).

¹⁴⁰ UNAMA 'Afghanistan: 10,000 Civilian Casualties in 2017 – UN Report Suicide Attacks and IEDs Caused High Number of Deaths and Injuries' (15 February 2018) available at <https://unama.unmissions.org/afghanistan-10000-civilian-casualties-2017-un-report-suicide-attacks-and-ieds-caused-high-number> (Accessed December 2018).

¹⁴¹ UN *Education and Healthcare at Risk* (April 2016) available at https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf (Accessed December 2018).

93. In addition to barriers to education arising from insecurity, throughout 2015, Anti-Government Elements deliberately restricted access of women and girls to education, including closure of girls' schools, prohibition of education beyond 4th or 6th grade and complete bans on education for women and girls¹⁴².

Harmful traditional practices

94. Reports on harmful traditional practices affecting children focus mainly on those facing girls. According to the 2013 AIRHC National Inquiry, the cruel practices of *baad*¹⁴³ and *badal*¹⁴⁴ against girls and women are prevailing in many areas of the country. Traditional early and forced marriages tend to limit a girls access to education and health care. UNICEF recorded that a third of the girls are married before their 18th birthday¹⁴⁵ (see 7.5 Underage and forced child marriage).
95. In a two-year period from 2011-2013, AIHRC reported that 406 cases of honour killings were registered in Afghanistan with 8.4 percent involving victims 18 years old or younger. These numbers are not representative of the extent of honour killings in Afghanistan since severe traditional sensitivities keep most cases hidden and unreported¹⁴⁶. The AIHRC recorded the most common type of honour killing was in response to sex outside of marriage (50 per cent of the 406 cases), however being a victim of sexual assault can also result in an honour killing (3.8 per cent of the 406 cases)¹⁴⁷. The AIHRC 2013 national inquiry reported that in 35 per cent of cases the victim knows the perpetrator¹⁴⁸ (see 7.6 Local harmful traditional practices).
96. In 2014, the AIHRC completed a national inquiry into the cultural practice of local men keeping one or more boys typically between 10-18 years old, for the purpose of sexual exploitation, known as *bacha bazi*. The national inquiry raised awareness of the populations of boys most at risk for *bacha bazi*, and also referenced the motivations and characteristics of the perpetrators. The report assessed that most who engage in *bacha bazi* paid bribes to, or had relationships with, law enforcement, prosecutors, or judges that effectively exempted them from prosecution (see 7.2 Victims of child trafficking). The new Penal Code 2017 criminalises and prohibits the practice of *Bacha Bazi*.

¹⁴² UN *Education and Healthcare at Risk* (April 2016) available at https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf (Accessed December 2018).

¹⁴³ "baad" refers to when a daughter is given to another party as a penalty or payment for an offense.

¹⁴⁴ "badal" is the exchange of girls between families for marriage.

¹⁴⁵ UNICEF *Afghanistan 2017 Annual Report* (2017) available at <https://www.unicef.org/afghanistan/reports/annual-report-2017> (Accessed December 2018).

¹⁴⁶ AIHRC *National Inquiry report on factors and causes of rape and honour killing in Afghanistan* (2013) p. 4.

¹⁴⁷ AIHRC *National Inquiry report on factors and causes of rape and honour killing in Afghanistan* (2013) p. 4.

¹⁴⁸ AIHRC *National Inquiry report on factors and causes of rape and honour killing in Afghanistan* (2013) p. 5.



4 Civil rights and freedoms

4.1 Freedom of expression, other freedoms and information access

97. Article 34 of the Afghanistan Constitution recognizes freedom of press and of expression for all Afghan citizens in accordance to the constitution and provisions of law. The Mass Media Law was put in place in 2009 guaranteeing the right of all citizens to obtain information and prohibit censorship¹⁴⁹. According to NAI, the Afghan media watchdog, as of April 2018 there are 97 TV Stations, 214 radio stations and 240 newspapers and publications active in Afghanistan¹⁵⁰.
98. While there are a number of laws that guarantees the freedom of expression and access to information, those laws mostly remain on paper and there is a long way to implementation. Reporters Without Borders releases an annual index on the freedom of press on a global and country level; ranking countries for degree of print, broadcast and Internet freedom. The 2017 Freedom of Press index ranks Afghanistan 118 out of 180 countries globally¹⁵¹.
99. NAI reported that in 2017, 141 cases of violence against journalists were documented by the organization. The Afghan government is responsible for the majority of the cases of violence, followed by the Taliban and other armed insurgent groups and illegal armed groups¹⁵².

¹⁴⁹ Freedom House Freedom of Press 2013. (2013) available at <https://freedomhouse.org/report/freedom-press/2013/afghanistan#.Ven-m77QxGRs> (Accessed December 2018).

¹⁵⁰ Nai Supporting Open Media in Afghanistan is an Afghan non-governmental organization established in 2005 to empower independent media and promote freedom of expression.

¹⁵¹ Reporters Without Borders 2017 *Freedom of Press index* available at <https://rsf.org/en/ranking/2017> (Accessed December 2018).

¹⁵² <https://reliefweb.int/report/afghanistan/21-journalists-killed-afghanistan-2017> (Accessed December 2018).

The violence against journalists include killing, injury and assault and other forms of attacks and violence.

100. Cultural norms and traditional attitudes, rather than government policies and laws, define children's presence in social and political association and peaceful assembly in Afghanistan. The UN Committee on the Rights of the Child reported concern that traditional societal attitudes towards children limit, and often totally prevent, children from expressing their views on issues that affect them and from having their views duly taken into account within the family, schools, other children's institutions, the judicial and administrative system, and society at large. Although the 2005 Juvenile Code provides the right of children to be heard in any judicial or administrative proceedings affecting them, it is rarely respected, especially when girls are concerned, and children are not present or often requested not to speak during proceedings that concern them¹⁵³.
101. There is little space for girls in the decision to marry, initiate sexual activity or have children; instead decisions are generally left to parents, husbands and in-laws¹⁵⁴ (see 3.1 *Non-discrimination* and 1.2 *Family structure*).
102. There is an established national youth body called the Union of Youth of Afghanistan, a youth parliament and the government has set up youth federations in each province¹⁵⁵. However, a 2014 ethnographic study of youth activism in Kabul showed that youth activism is 'generally stifled or co-opted through patronage or intimidation by older leaders or commanders'¹⁵⁶. A survey of 1,980 Afghan youth in 7 provinces, carried out as part of a participatory youth assessment, found that 80.9 per cent of respondents are not actively involved in any political party or political organization¹⁵⁷.
103. Afghanistan is a conservative country in terms of freedom of thought and religion. For instance, neither Muslim nor non-Muslim citizens of Afghanistan can freely critique or have overt talks about Islam or religious oriented violence. According to the 2013 AIHRC report the situation is worsening for non-Muslims, particularly Afghanistan's Hindus and Sikhs if people in these groups talk critically about Islam¹⁵⁸. A 2008 article by Samay Hamed in Freemuse reported that the Afghan Ministry of Culture and Information issued a letter to local media outlets requiring a "self-censorship" anything that is against the Islamic Sharia laws¹⁵⁹.
104. Freedom of expression came under scrutiny in year 2017, after the Afghan president ordered through a decree the amendment of the law governing public gatherings, strikes and demonstrations and attempted to further limit the rights of demonstrators and freedom of expression. The amendments were rejected by the Afghan parliament in January 2018. The parliament called the amendments unacceptable and a step towards the totalitarianism by the president and his team¹⁶⁰.

¹⁵³ Committee on the Rights of the Child Fifty-sixth session 17 January – 4 February 2011 available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/AFG/CO/1&Lang=En (Accessed December 2018).

¹⁵⁴ UNICEF *Children and Women in Afghanistan* (November 2014) p. 23.

¹⁵⁵ UNFPA *Afghan state of youth report* (2014) p. 97.

¹⁵⁶ UNFPA *Afghan state of youth report* (2014) p. 97.

¹⁵⁷ Samuel Hall *Consulting Afghanistan's Future in Transition: A Participatory Assessment of the Afghan Youth* (2013).

¹⁵⁸ AIHRC *Annual Report 1392* (2013) p. 88.

¹⁵⁹ Hamed Samay 'Afghanistan New media restrictions according to Sharia law' Freemuse.(2008) available at <https://freemuse.org/news/afghanistan-new-media-restrictions-according-to-sharia-law/> (Accessed December 2018).

¹⁶⁰ Khwaja Basir Fitri 'MPs reject Ghani's decree on public protests, strikes' (15 January 2018) Pajhwok available at <https://www.pajhwok.com/en/2018/01/15/mps-reject-ghani%E2%80%99s-decree-public-protests-strikes> (Accessed December 2018).

4.2 Access to adequate information

105. The Access to Information Law was signed into law by President Ashraf Ghani in December 2014¹⁶¹. The Access to Information Law is mandated to ensure the right of access to information for all citizens from government and non-government institutions; to ensure transparency and accountability and organize request processing and provision of information¹⁶². Integrity Watch¹⁶³ saw the new law as a positive step but also observed that the law needs further improvement, specifically in ensuring independence from the GIRoA¹⁶⁴.
106. In 2017, radio became second to TV as the most common source of news and information¹⁶⁵. Access to the television increased in 2017 while the internet remained unchanged at 11.6 per cent, as these means for receiving information are used especially in urban areas. Rural areas still rely on radio for the majority of information, particularly popular in the East region¹⁶⁶.
107. The Asia Foundation Survey 2017 states:

'The telecommunications sector in Afghanistan continues to develop. Currently, 100 television and 302 FM radio stations hold active licenses in Afghanistan. Oqaab, the digital TV service that began in 2016, covers most of Kabul and offers 65 channels of national and international stations. Internet penetration remains modest, at 13 per cent, but is expected to grow to 15 per cent by 2018. Mobile phone penetration is high, at 80 per cent (over 25 million subscribers), and is expected to reach 86 per cent to 95 per cent by 2021. There are currently 2 million 3G broadband subscribers. Social media use is low, with 3 million users (9 per cent penetration) as of January 2017, but it has grown 43 per cent since January 2016, with access primarily through mobile phones (67 per cent)'¹⁶⁷.

4.3 Access to appropriate legal advice

108. The 2005 Afghan Juvenile Code was established in compliance with article 54 of the national constitution and the International Conventions protecting human rights, specifically the interests of the child. Article 22 of the Juvenile Code states that all juveniles have the right to a defence attorney¹⁶⁸.

¹⁶¹ 'Afghan President Signs Access to Information law' (9 December 2014) available at <http://www.freedominfo.org/2014/12/afghan-president-signs-access-information-law/> (Accessed December 2018).

¹⁶² Government of the Islamic Republic of Afghanistan *Access to Information Law Article 2* (2014) available at <http://www.freedominfo.org/2014/12/afghan-president-signs-access-information-law/> (Accessed December 2018).

¹⁶³ Integrity Watch is an Afghan Civil Society Organisation, founded in 2006, that focuses on promoting integrity standards through partnerships and capacity building.

¹⁶⁴ Integrity Watch 'We Welcome the signing of access to information law but the law needs to be amended' Integrity Watch (1 December 2014) available at <http://www.freedominfo.org/2014/12/afghan-president-signs-access-information-law/> (Accessed December 2018).

¹⁶⁵ The Asia Foundation *Afghanistan in 2017: A Survey of the Afghan People* (2017) p. 124 available at https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf (Accessed December 2018).

¹⁶⁶ The Asia Foundation *Afghanistan in 2017: A Survey of the Afghan People* (2017) p. 125.

¹⁶⁷ The Asia Foundation *Afghanistan in 2017: A Survey of the Afghan People* (2017) p. 123.

¹⁶⁸ Government of the Islamic Republic of Afghanistan. *Afghan Juvenile Code*. (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed December 2018).

109. The Legal Aid Regulation also affords women and children a right to legal aid in civil cases, where resources exist¹⁶⁹.
110. There is a system of free legal aid for most vulnerable people through the government, the bar association and NGOs providing legal aid services as well as private lawyers.
111. The Ministry of Justice has a legal aid department to manage legal aid services by the government in all provinces. Each provincial justice office as a provincial legal aid department providing free legal aid services in mostly in criminal cases.
112. A 2017 report of the Asia Foundation and the Ministry of Justice assessing legal aid in Afghanistan stated:
- ‘There has been a significant investment by Afghan civil society, the Afghan government, and the donor community to ensure that women and children have enhanced access to resources given the challenges these populations face navigating the justice system given their particular status. It is rare to enter an Afghan detention facility for women or juveniles and find significant numbers of detainees unrepresented by counsel... The legal, policy, and financial imperatives that guarantee legal aid to women and children do effectively ensure access to representation. However, although juveniles have enhanced rights to legal aid, there is no concomitant protection against prosecution as victims or prosecution for petty offenses¹⁷⁰.
113. A study conducted by Samuel Hall and Children in Crisis in 2017 in Afghanistan states:
- ‘Police are required to report the arrest and detention of children to their guardians within 24 hours, and prosecutors have the authority to release children on bail without money. But, the reality diverges from theory, especially for children without legal awareness, strong family support or negotiation power. Of particular concern are long timelines for investigations and children who must idly wait in the JRC without any information while their dossiers are completed, unable to integrate in the JRC until properly sentenced, but excluded from life outside¹⁷¹.
114. Informal justice systems which follow customary (informal) laws, tribal codes and customs are more commonly used than the official state government justice sector, with an estimated 90 per cent of Afghans use non-state legal systems¹⁷². In the non-state legal systems children do not have a voice in the justice process, instead complaints are presented by the child’s parents. A child’s inability to represent their cases means that many abuses go under-reported and unpunished (see 2.7 *Justice for children*).

¹⁶⁹ Legal Aid Regulation, Articles 4, 11, 13, 17, and 29.

¹⁷⁰ The Asia Foundation and the Ministry of Justice *Legal Aid Assessment and Roadmap* (May 2017) pp. 32-33.

¹⁷¹ Samuel Hall *Hope behind bars: the boys of the Kabul JRC* (2017) commissioned by Children in Crisis p. 19 available at <http://samuelhall.org/site/wp-content/uploads/2017/08/Samuel-Hall-Hope-behind-bars-2017-for-Children-in-Crisis-.pdf> (Accessed December 2018).

¹⁷² UNICEF *Children and Women in Afghanistan* (November 2014) p. 38.

4.4 Independent Complaints Procedures

115. Article 42 of the Afghan Juvenile Code describes the complaints procedure saying that the child, his legal representative or the prosecutor can contest the decision of the primary court, make an appeal and submit recourse to the Supreme Court. However, the child cannot waive his/her right of appeal without the consent of the legal representative¹⁷³.
116. Children are able to make independent requests for help and protection from AIHRC¹⁷⁴. According to AIHRC staff working in the Child Rights Desk, the most common way of hearing independent requests from children is during monitoring visits into orphanages, Juvenile Rehabilitation Centres, and shelters/centers for children, since child rights AIHRC representatives always facilitate meetings with children separately from the adults¹⁷⁵. Numbers on requests during these monitoring visits were not available. The second option available for children to make independent requests is to directly come to the nearest AIHRC office and request assistance¹⁷⁶. This option is not as common since it is difficult for children to come alone.

4.5 Privacy

117. The Afghanistan Constitution recognizes the privacy and confidentiality of citizens regardless of their age and sex. Articles 37 and 38 of the national constitution legalizes the privacy and immunity of individuals along with confidentiality and freedom of correspondence and communication whether in the form of letters or through telephone, telegraph and other means. Based on these constitutionally enshrined rights, the state does not have the right to inspect personal correspondence and communication unless authorized by the provisions of law. Article 38 of the Afghanistan Constitution also states that a person's residence is immune from invasion.
118. Afghan laws are silent about children privacy at home; neither thwarts intruders of privacy nor allowing that such incidents to occur.
119. The Afghan Media law contains articles on confidentiality of identities of victims including children, in the media.

4.6 Torture and other cruel and degrading treatment

120. Article 29 of the Afghan Constitution bans degrading, inhuman and cruel treatment against all citizens, including children. It states that no person, even with the intention of discovering the truth, can resort to torture or order the torture of another person who may be under prosecution, arrest, or imprisoned, or convicted to punishment. Any kind of punishment being in contrary to human integrity is prohibited.

¹⁷³ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code. Article 134* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed December 2018).

¹⁷⁴ AIHRC Personal Communication 30 August 2015.

¹⁷⁵ AIHRC Personal Communication 6 September 2015.

¹⁷⁶ AIHRC Personal Communication 6 September 2015.

121. Article 451 of the Penal Code provides details on the nature of punishment for different level of torture committed, including that if a person dies as a result of torture, the perpetrator will be sentenced for the crime of intentional murder; and that those assisting to torture will receive the same punishment as the perpetrator.
122. Article 452 of the Penal Code obliges the perpetrator of torture to provide compensation/ reparation for the victim accordingly.
123. On 14 December 2016, the Law on the Prohibition of Torture was approved. The law defines torture in accordance with the International Convention Against Torture and explicitly prohibits torture of persons. According to the law torture is a crime and the perpetrators are to be punished. According to this law, perpetrators of torture can be sentenced to imprisonment and compensation. Under the law the Commission on the Prohibition of Torture chaired by the AIHRC was established.
124. In 2018 AIHRC concludes in a report on the situation of torture in detention centres in Afghanistan:

‘Although progress has been made in the area of legislation to prevent torture, there has still not been a significant achievement in reducing torture cases. Some of the suspects and defendants are still being tortured in some of the detention facilities, especially in detention centers and in places of custody of the ANP and NDS. The number of cases of torture has declined in recent years compared with previous years, some suspects and defendants are still being tortured during the arrest or during the interrogation in some detention facilities. The suspects and defendants are tortured for eliciting confessions and information or for punishment. The suspect and the accused persons are being tortured and battered during the arrest. Torture and battery take place during the arrest due to the suspect’s and defendant’s resistance, and sometimes for punishment or taking revenge’¹⁷⁷.
125. In April 2017, UNAMA reported on treatment of conflict-related detainees in Afghanistan that more than a third of the interviewees gave credible accounts of being subjected to torture or ill-treatment. Among other findings, 45 per cent of those interviewed who had been detained by police said they had been tortured or ill-treated - the highest level documented since UNAMA began its current monitoring programme in 2010. The report noted that 26 per cent of those interviewed by UNAMA who had been held in NDS custody reported being subjected to torture or ill-treatment. Of 85 child detainees interviewed, 38 gave credible accounts of being subjected to torture or ill-treatment while in the custody of the Afghan security forces¹⁷⁸.
126. The Committee on the Rights of the Child noted in 2011 with concern that even though the education law prohibited physical and psychological punishment of students, the practice is such that punishment in the classroom and school setting does takes place¹⁷⁹.

¹⁷⁷ AIHRC Summary of the report ‘*The Situation of Torture in detention Centres in Afghanistan*’ (2018) available at: www.aihrc.org.af/home/research-reports (Accessed December 2018).

¹⁷⁸ UNAMA/OHCHR *Treatment of Conflict-Related Detainees: Implementation of Afghanistan’s National Plan on the Elimination of Torture* (April 2017) pp. 7-8, 21 available at https://unama.unmissions.org/sites/default/files/treatment_of_conflict-related_detainees_24_april_2017.pdf (Accessed December 2018).

¹⁷⁹ UN Committee on the Rights of the Child (CRC) *Concluding observations* (8 April 2011) CRC/C/AFG/CO/1, available at <http://www.refworld.org/docid/4dc7bd492.html> (Accessed December 2018).



5 Basic Rights

5.1 Food, water and housing

127. According to the UNICEF Annual Report 2017, 1.3 million children under 5 years requires treatment for acute malnutrition and 1 in every 4 children is underweight¹⁸⁰. The 2015 Afghanistan Demographic Health Survey shows that 98 per cent of children aged 0-23 months were ever breastfed. Breastfeeding within one hour after birth was at 41 per cent and exclusive breastfeeding in children aged 0-5 months was 43 per cent, while 15 per cent of children aged 6-23 months had a minimum acceptable diet¹⁸¹.
128. According to the Central Statistics Organization's survey on Afghan Living Condition 2016-2017, some 64.7 per cent of Afghans are having access to an improved source of drinking water¹⁸². However UNICEF Annual Report 2017 found that almost 50 per cent of the improved drinking water sources are contaminated with fecal matter¹⁸³.
129. Typical housing in Afghanistan is made of mud brick walls and a mud roof, with some homes in urban areas using concrete materials. The kuchi (nomads) populations typically use tents. According to the CSO Afghanistan Living Conditions Survey 2016-2017 are housing conditions of the Afghan populations overall very poor:

¹⁸⁰ UNICEF *Afghanistan Annual Report 2017*.

¹⁸¹ World Health Organisation Afghanistan Programme Areas available at <http://www.emro.who.int/afg/programmes/nut.html> (Accessed December 2018).

¹⁸² Central Statistics Organization *Afghanistan Living Conditions Survey Mid-Term Results Highlights April-September 2016* (2017) available at <http://cso.gov.af/Content/files/ALCS/ALCS%20Mid-termresult-Highlights%202016-17.pdf> (Accessed December 2018).

¹⁸³ UNICEF *Afghanistan Annual Report 2017*.

‘..despite different initiatives taken by the Government of Afghanistan and the international community, an important proportion of the Afghan population continues suffering from inadequate housing, shortages of safely managed drinking water and sanitation services, and other basic services and amenities. These forms of deprivation are present both in rural and urban areas, with sometimes large differences between provinces. In addition, an important number of internally displaced people and former refugees continue to live in informal settlements located in and around the major cities of the country, like Kabul, Herat, Mazar-e-Sharif, Jalalabad and Kandahar. More recent migration flows, mainly from Pakistan and Iran, have enlarged the informal communities around cities’¹⁸⁴.

130. Seventy-two per cent of the urban population live in slum-like conditions, informal settlements or inadequate housing¹⁸⁵.

5.2 Health

131. The Afghanistan constitution entitles all Afghans to free and equal access to health services¹⁸⁶. The government of Afghanistan has decreased the national budget for health from 1.3 per cent of total national budget in year 2014-15 to 1.1 per cent in year 2016-17¹⁸⁷.
132. According to Central Statistics Organization in 2016-2017 there were 170 government and 388 private hospitals across Afghanistan which showed 11.1 per cent decrease in government hospitals and 35.6 increase in private hospitals compared to the previous year¹⁸⁸.
133. Under-five mortality rates in Afghanistan were reported at 70 per 1,000 live births for 2016¹⁸⁹. The Afghanistan Central Statistics Organization report 2016-17 indicates that the proportion of women giving birth by skilled birth attendant has increased from 45.2 in 2013-14 to 56.4 in 2016-17 and this could be a factor to decrease the maternal mortality rate in Afghanistan¹⁹⁰.

¹⁸⁴ Central Statistics Organization *Afghanistan Living Conditions Survey 2016-17* Kabul 2018 pp. 223-224.

¹⁸⁵ Central Statistics Organization *Afghanistan Living Conditions Survey 2016-17* Kabul 2018 p. 223.

¹⁸⁶ Government of Afghanistan *Constitution of Afghanistan = Assasi Qanun Article 52 (1964)* (2005) available at Digitized Afghanistan Materials in English from the Arthur Paul Afghanistan Collection Paper 3, <http://digitalcommons.unl.edu/afghanenglish/3> (Accessed 24 April 2018).

¹⁸⁷ Central Statistics Organization, *Afghanistan Statistical Yearbook 2016-2017* <http://cso.gov.af/Content/files/%D8%B3%D8%A7%D9%84%D9%86%D8%A7%D9%85%D9%87%20%D8%A7%D8%AD%D8%B5%D8%A7%D8%A6%DB%8C%D9%88%D-B%8C%20%D8%B3%D8%A7%D9%84%201395/Health.pdf> (Accessed 25 April 2018).

¹⁸⁸ Central Statistics Organization *Afghanistan Statistical Yearbook 2016-2017* (Accessed 3 March 2018).

¹⁸⁹ UNICEF *The State of World Children 2017*, page 154 <https://data.unicef.org/wp-content/uploads/2018/03/SOWC-2017-statistical-tables.pdf> (Accessed 25 April 2018).

¹⁹⁰ Central Statistics Organization *Afghan Living Condition Survey 2016-17* p. 19.

Table 7: Under-5 mortality rates for bordering countries¹⁹¹

Inhabitants living in:	Under-5 mortality rate per 1000
Pakistan	79
Tajikistan	43
Uzbekistan	24
Turkmenistan	51
Iran	15
China	10

134. According to UNICEF Afghanistan Annual report 2017, 1 in 18 Afghan children fail to reach their first birthday, 46 per cent of children aged 12 to 23 months have not received their basic vaccines¹⁹².
135. Afghanistan is still battling polio with 14 cases reported in 2017 and 2 in 5 children cannot reach full mental or physical development. Also 1 in every 4 children is underweight, 1.3 million children under 5 years requires treatment for acute malnutrition¹⁹³.
136. Over 4 million people still practice open defecation¹⁹⁴.
137. Drug use is on the rise in Afghanistan¹⁹⁵. A 2009 UNODC report observed that children aged 10-15 years were using cannabis, opium and heroin; and children under 10 years old were commonly using opium, tranquillizers and cannabis¹⁹⁶. The 2015 Afghanistan National Drug Use Survey shows that 9 per cent of the Afghan children under the age of 14 tested positive for drugs, overwhelmingly opioids, including 2 per cent in urban areas and 11 per cent in rural areas – over 500 per cent higher in these locations. The data indicates that between 1.0 and 1.2 million children would test positive for one or more drugs, and 0.7-0.8 million would test positive for opioids¹⁹⁷. Narcotics are sometimes used as general painkillers to treat children’s headaches, fevers and stomach problems and stories of parents sedating children while they weave carpets or work in the field are not uncommon¹⁹⁸. In 2018, there are at least 20 drug rehabilitation centers across the country that treat women and children. However, officials have said that there are not enough centers to treat women and children¹⁹⁹.
138. According to the United Nations Office of Drugs and Crimes (UNODC) Afghanistan Opium Survey, the total area under opium cultivation increased by 63 per cent in 2017, to an estimated 328,000 hectares (ha). The majority (60 per cent) of opium poppy cultivation took place in the southern region of the country. The western region accounted for 17 per cent of total cultivation; the Northern for 13 per cent and the Eastern for 7 per cent. The remaining regions (North-Eastern and Central)

¹⁹¹ Central Statistics Organisation and UNICEF *Afghan MICS* (2012) p. 21.

¹⁹² UNICEF *Afghanistan Annual Report 2017* (2017).

¹⁹³ UNICEF *Afghanistan Annual Report 2017* (2017).

¹⁹⁴ UNICEF *Afghanistan Annual Report 2017* (2017).

¹⁹⁵ UNICEF *Children and Women in Afghanistan* (November 2014) p. 42.

¹⁹⁶ UNODC *Drug use in Afghanistan: 2009 Survey* (2009).

¹⁹⁷ *SGI Global Afghanistan National Drug Use Survey 2015*, p. 221.

¹⁹⁸ UNICEF *Children and Women in Afghanistan* (November 2014) p. 42.

¹⁹⁹ <https://www.tolonews.com/afghanistan/afghanistan-has-one-million-female-drug-addicts> (Accessed December 2018).

together accounted for 3 per cent. The report also highlighted an increase of 87 per cent in opium production i.e. 9,000 tonnes from its 2016 level (4,800 tonnes)²⁰⁰.

139. Mental health is another risk encountered by children living in Afghanistan. Stress disorders and mental health problems were estimated to effect 60 per cent of Afghans according to the Ministry of Public Health²⁰¹. A survey of young people by Samuel Hall in 2013 reported that more than half of all participants, out of 1,980 participants needed psychological or counselling support²⁰². No update available in 2018.
140. Access to quality basic and specialized health care for children is hindered by limited availability of health workers, shortage of female staff, and a shortage of skilled staff. The Committee on Child Rights states in 2011 that health facilities are inadequate, significantly underfunded as well as subject to attacks by insurgent groups, and occupation by the State party's armed forces²⁰³. A lack of female health care providers in Afghanistan hinders access to health care for Afghan girls²⁰⁴.
141. Health care access continued to be disrupted from the ongoing conflict and attacks on medical facilities and personnel have continued to compound challenges to children's health. The *Watchlist on Children in Armed Conflict* stated in a report on 2017:

'In the past year, as with the two years before it (2015 and 2016), an increase in conflict and targeted attacks on medical facilities and personnel have led to more children directly injured and suffering from acute malnutrition, diarrheal disease, and vaccine-preventable diseases (e.g. polio and measles)'²⁰⁵.

5.3 Education

142. The Afghanistan Constitution stipulates that all Afghans have an equal right to access free and equal education up to bachelor degree at the governmental higher education institutions²⁰⁶.
143. The compulsory school age in Afghanistan is set between six and fourteen years old²⁰⁷. The education law states that a child should be enrolled between the age of 6 and 9. Compulsory education is between the first grade and the 9th grade. The educational system in Afghanistan includes General Education (GE), Community Based Education (CBE), a parallel system of Islamic

²⁰⁰ UNODC *Afghanistan Opium Survey 2017 Cultivation and Production* (2017) available at http://www.unodc.org/documents/afghanistan//Afghan_opium_survey_2017_cult_prod_web.pdf (Accessed December 2018).

²⁰¹ UNFPA *Afghanistan State of Youth Report 2014* (2014) p. 5.

²⁰² Hall Samuel *Afghanistan's Future in Transition: A Participatory Assessment Of the Afghan Youth* (2013).

²⁰³ UN Committee on the Rights of the Child (CRC) *Concluding observations* (8 April 2011) CRC/C/AFG/CO/1, available at <http://www.refworld.org/docid/4dc7bd492.html> (Accessed December 2018).

²⁰⁴ UNICEF *Children and Women in Afghanistan* (November 2014) p. 52.

²⁰⁵ Watch List on children in armed conflict "Every Clinic is Still on the Frontline" Attacks on Health Care in Afghanistan in 2017 (2018) p. 2 available at https://watchlist.org/wp-content/uploads/2271-watchlist-afghanistan-update_final-web.pdf (Accessed 10 May 2018).

²⁰⁶ Government of Afghanistan *Constitution of Afghanistan = Assasi Qanun Article 34 (1964)* (2005) available at Digitized Afghanistan Materials in English from the Arthur Paul Afghanistan Collection Paper 3, <http://digitalcommons.unl.edu/afghanenglish/3> (Accessed December 2018).

²⁰⁷ AIHRC *Children's situation summary report* (December 2013) available at http://www.aihrc.org.af/home/research_report/2115 (Accessed December 2018).

Education, Technical and Vocational Education (TVE) and Teacher Training (TTC)²⁰⁸.

144. The budget for education in 2017 is about 13 per cent of the entire national budget²⁰⁹. Ninety per cent of the budgeted amount goes to salaries, with ten per cent left to cover teacher trainings, infrastructure, and learning materials²¹⁰.
145. The 2015-2016 AIHRC survey interviewing some 5700 children in 27 provinces of Afghanistan shows that 38 per cent of the total respondents do not attend school. Some 28 per cent of the respondents said that they have to work, while the remaining of the respondents counted insecurity, lack of permission by family to attend school and remote distance to school were identified as reasons.
146. The conflict in Afghanistan has a severe impact on the educational sector. In 2015, UNAMA and UNICEF documented 132 conflict-related incidents affecting education and education-related personnel, an 86 per cent increase compared to the same period in 2014 and a 110 per cent increase compared to 2013. This trend is attributed to the increase in the number of incidents involving threats and intimidation against education and health care personnel (182 per cent more than in 2014 and 376 per cent more than in 2013)²¹¹.
147. According to the Ministry of Education by the end of 2017 more than 1000 schools remained closed; the majority of them were in Southern and Eastern regions of Afghanistan²¹². Some schools were closed as result of the direct attack on schools including setting fire, shelling or as result of the threats to school, students and teachers and generalized violence in those areas. Save the Children reported in 2017 that every day 1000 children across Afghanistan are dropping out of school due to insecurity and conflict²¹³.
148. The June 2018 report of the UN Secretary-General to the General Assembly on the situation of Afghanistan noted that around 75 per cent of election-related security incidents occurred in schools or mosques used for election related purposes, disrupting education activities²¹⁴.

Enrolment rates disaggregated by gender, age and region

149. According to the 2016-2017 survey conducted by the Afghanistan Central Statistics Organization, the total number of schools were 16,049 all over the country. The total number of students were 8,868,122 persons, out of which 3,418,877 students were female. This includes all students in primary, secondary, professional, night time schools, teacher training, vocational and religious

²⁰⁸ Ministry of Education *Afghanistan National Education for All (EFA) Review Report* (2015) p. 15.

²⁰⁹ Ministry of Finance *Citizens Budget A simplified version of the National Budget 1396* available at [http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1396_Budget/1396%20English%20Citizen%20budget%20-%20New\(1\).pdf](http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1396_Budget/1396%20English%20Citizen%20budget%20-%20New(1).pdf) (Accessed December 2018).

²¹⁰ Ministry of Finance *National Budget 1397 Hijri* (2018-19) p. 11.

²¹¹ UN *Education and Healthcare at Risk* (2016) Contributors UNAMA/OHCHR, UNICEF, UNOCHA available at https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf (Accessed December 2018).

²¹² Ministry of Education *Official website: EMIS Data set – 1396* available at <http://old.moe.gov.af/en/page/1831/3031> (Accessed December 2018).

²¹³ Save the Children 'More Than 1,100 Afghan Children a Day Expected to Drop Out of School in 2017, Putting Them at Risk of Exploitation, Save the Children Warns' (23 March 2017), available at <https://secure.savethechildren.org/site/apps/nlnet/content2.aspx?c=8rKLIXMGIpI4E&b=9506655&ct=14988181¬oc=1> (Accessed December 2018).

²¹⁴ UN Report of the Secretary-General *The Situation in Afghanistan and its implications for international peace and security* June 2018 p. 8.

schools. There was a decrease of 5.8 % in female students in 2016-17 compared to 2015-16. The total number of teachers were 197,160 in 2016-17, out of which 64,271 were female²¹⁵. The data from the Ministry of Education below shows the total number of schools is 17,859. The reason for the discrepancy is unknown.

Table 8: Ministry of Education Data 2016-2017²¹⁶

All Schools by Gender 2017					
S. No	Province	Only Male	Only Female	Mix	Total
1	Kabul	141	64	330	535
2	Kapisa	173	88	14	275
3	Parwan	192	114	224	530
4	Wardak	162	63	252	477
5	Logar	177	65	78	320
6	Ghazni	326	99	303	728
7	Paktia	246	68	88	402
8	Nangarhar	276	153	592	1,021
9	Laghman	115	77	115	307
10	Kunar	150	96	270	516
11	Badakhshan	109	112	515	736
12	Takhar	110	106	475	691
13	Baghlan	108	62	390	560
14	Kunduz	128	94	303	525
15	Samangan	104	52	146	302
16	Balkh	131	83	498	712
17	Jawzjan	137	82	185	404
18	Faryab	270	136	142	548
19	Badghis	317	103	61	481
20	Heart	205	135	839	1,179
21	Farah	293	87	26	406
22	Nimrooz	41	14	118	173
23	Helmand	313	8	81	402
24	Kandahar	394	11	174	579
25	Zabul	195	13	41	249
26	Uruzgan	246	41	33	320
27	Ghour	277	157	392	826

²¹⁵ Central Statistics Organization *Yearbook 2016-17* (Accessed December 2018).

²¹⁶ Ministry of Education *Official website: EMIS Data set – 1396* available at <http://old.moe.gov.af/en/page/1831/3031> (Accessed 17 February 2018). The original document was in Dari and is translated to English.

All Schools by Gender 2017					
S. No	Province	Only Male	Only Female	Mix	Total
28	Bamyan	57	75	237	369
29	Paktika	259	35	128	422
30	Nuristan	76	58	111	245
31	Sar-e- Pul	127	104	199	430
32	Khost	297	68	121	486
33	Panjshir	63	44	57	164
34	Daikundi	75	68	268	411
35	Kabul city	91	77	960	1,128
Total		6,381	2,712	8,766	17,859

150. By the end of 2017, more than 1000 schools remained closed across Afghanistan according to the data from the Ministry of Education of Afghanistan²¹⁷.
151. The number of children enrolled in schools are much higher than the number of students who graduate. There is a sharp decrease in the number of students once they reach the working age in Afghanistan. According to Save the Children in March 2017, every day 1000 students are dropping out of school in Afghanistan²¹⁸. There are several reasons for students to leave school. Displacement, insecurity and conflict as well as early marriage, child labour and other factors can play a key role²¹⁹.
152. Afghanistan is among the poorest performers in providing sufficient education to its population²²⁰. According to UNICEF 3.7 million children are out-of-school of which 60 per cent are girls²²¹. Enrolment rates show that male attendance is higher than female attendance. Certain sociocultural factors and traditional beliefs also undermine girls' education. Girls continue to marry very young – 17 per cent before their 15th birthday.

²¹⁷ Ministry of Education *Official website: EMIS Data set – 1396* available at <http://old.moe.gov.af/en/page/1831/3031> (Accessed December 2018).

²¹⁸ Save the Children 'More Than 1,100 Afghan Children a Day Expected to Drop Out of School in 2017, Putting Them at Risk of Exploitation, Save the Children Warns' (23 March 2017), available at <https://secure.savethechildren.org/site/apps/nlnet/content2.aspx?c=8rKLIXMGlpI4E&b=9506655&ct=14988181¬oc=1> (Accessed December 2018).

²¹⁹ Interview with Mr. Wasey Arian an official from the Ministry of Education of Afghanistan (16 January 2018, Kabul- Afghanistan).

²²⁰ Central Statistics Organization *National Risk and Vulnerability Assessment 2011-2012* (2012) p. 71.

²²¹ UNICEF <https://www.unicef.org/afghanistan/education> (Accessed December 2018).

Table 9: All students by Grade 2017²²²

Students by program and Gender (2016-2017)							
Program	Total Male Students	Total Female Students	Gender Ratio	Total Male Students Percentage	Total Female Students Percentage	Total Students	Total Program Students Percentage to all Program students
General Education	5,495,523	3,443,049	0.63	61.48%	38.52%	8,938,572	95.25%
Islamic Education	261,675	81,441	0.31	76.26%	23.74%	343,116	3.66%
TVET	35,015	4,404	0.13	88.83%	11.17%	39,419	0.42%
TTC	17,412	25,887	1.49	40.21%	59.79%	43,299	0.46%
Literacy school's Students	10,160	9,369	0.92	52.03%	47.97%	19,529	0.21%
CBE			0.00	0.00%	0.00%	0	0.00%
Cross Border			0.00	0.00%	0.00%	0	0.00%
Total	5,819,785	3,564,150	0.61	62.02%	37.98%	9,383,935	100.00%

153. The overall net attendance rates found for Afghanistan in 2016-2017 (56.1 per cent for primary education, 35.7 per cent for secondary and 9.7 per cent for tertiary) indicate that the country is still among the poorest performers in providing adequate education to its population. The ALCS survey 2016-17 result for primary education places Afghanistan at the seventh-lowest place of all countries in the world²²³.

Educational facilities

154. In 2017 only 9,714 out of 17,859 or about 54 per cent of schools were conducted in permanent buildings. 6,875 schools have no buildings. 210 school buildings are under construction. Only 38 per cent of the schools have boundary walls²²⁴. Schools are understaffed and cannot provide quality education because there is a need of capacity building for teachers. Low girl enrolment can be explained in part by a lack of female teachers, especially in rural schools. Only 16 per cent of Afghanistan's schools are girls-only, and many of them lack proper sanitation facilities, which further hinders attendance²²⁵. In 2016 at least 3.5 per cent of the schools did not have access to water.²²⁶

²²² Ministry of Education *Official website: EMIS Data set – 1396* available at <http://old.moe.gov.af/en/page/1831/3031> (Accessed December 2018). "CBE" referred to in the MoE Table means Community Based Education.

²²³ Central Statistics Organization *Afghanistan Living Conditions Survey 2016-2017* p. 152.

²²⁴ Ministry of Education *Official website: EMIS Infrastructure 1396-Done* (2017) available at <http://old.moe.gov.af/en/page/1831/3031> (Accessed December 2018).

²²⁵ UNICEF <https://www.unicef.org/afghanistan/education> (Accessed 21 August 2018).

²²⁶ Ministry of Education *Official website: EMIS Drinking water facilities by Program 1395* (2016) available at <http://old.moe.gov.af/en/page/1831/3031> (Accessed December 2018).



155. Teachers' credentials are poor and there is a lack of qualified teachers. Fifty-eight per cent of the teachers do not have the minimum required qualification. The pupil-teacher ratio is 47 students per teacher. Much higher than the norm of the Ministry of Education (35 students per teacher)²²⁷.
156. In 2017 the total number of registered Islamic education schools and madrassas that are running parallel to the formal education has reached 1003. There is no record of unregistered and informal Islamic education schools and madrassas operating in Afghanistan. The Islamic schools and Madrassas are teaching Islamic studies and Sharia. The curriculum is approved by the Ministry of Education of Afghanistan, while the curriculum in unregistered Islamic schools and Madrassas are not controlled and there is a fear of extremism promotion in those places²²⁸.

Equal access to education

157. The national constitution states that all Afghans have an equal right to access free education; however in practice this is not evident.
158. The Afghanistan Living Conditions Survey 2016-2017 shows that – apart from the quality of education– the main problem of Afghanistan's education system first and foremost making a start at school. Residence, gender, disability status and poverty status are factors that invariably differentiate education outcomes, always strongly and often accumulatively impairing the outcomes for girls, rural and Kuchi residents, people with disabilities and the poor²²⁹.

²²⁷ Central Statistics Organization *Afghanistan Living Conditions Survey 2016-2017* p. 149.

²²⁸ Interview with the Spokesperson of the MoE Mr. Abdul Mujeeb Mehrdad 17 January 2018.

²²⁹ Central Statistics Organization *Afghanistan Living Conditions Survey 2016-2017* p. 148.

159. Attacks against schools violate the right of children to access quality education. A large number of boys and girls in 32 out of 34 provinces had no access to schools by 2018, due to insurgents' attacks and threats that lead to closure of the schools. By the end of 2017 more than 1000 schools remained closed²³⁰.
160. The UN Secretary-General reported in his report on children and armed conflict in 2017 68 verified incidents of attacks against schools and education personnel:
- 'Armed groups perpetrated 55 of the incidents (Taliban, 41; ISIL-KP, 7; undetermined armed groups, 7). Furthermore, three such incidents were attributed to pro-government militias, two to Afghan National Defence and Security Forces, two to international military forces and two to cross-border shelling out of Pakistan'.
- And:
- 'The United Nations verified 16 incidents of the military use of schools and hospitals: 10 by the Afghan National Defence and Security Forces, 4 by the Taliban and 2 by ISIL-KP'²³¹.
161. According to the CSO Afghanistan Living Conditions Survey 2016-2017 the participation rate of disabled youth in education and training is 28.7 per cent²³². 75 per cent of the persons with disabilities never attended school²³³ (see 3.1 *Non-discrimination*).
162. The CRC committee noted their concern in the concluding observations of the 56th session that children from minorities, notably Hindu and Kuchi (nomad) children, have limited access to education.
163. UNICEF and the MoE introduced a unique program called Alternative Education pathways in 2010. Community based schools, mosque based education and accelerated learning were introduced as techniques to increase access to education for children who were currently able to go to school. More female teachers were trained to cope with the cultural demands. UNICEF established some 4,055 community-based education classes between 2016-2017, ensuring over 119,000 children in rural areas, including over 58,000 girls, have access to education by support of USAID²³⁴.

²³⁰ Interview with the MoE official 15 January 2018, Kabul- Afghanistan.

²³¹ UN General Assembly, *Report of the Secretary-General on children and armed conflict* (CA/72/865-S/2018/465) (16 May 2018) p. 6.

²³² Central Statistics Organisation *Afghanistan Living Conditions Survey 2016-2017* p. 157.

²³³ Central Statistics Organisation *Afghanistan Living Conditions Survey 2016-2017* p. 166.

²³⁴ USAID Afghanistan web page: Education available at <https://www.usaid.gov/afghanistan/education> (Accessed December 2018).



6 Family environment and alternative care

6.1 Rights and responsibilities

164. Articles 218, 219, 229, 236, 256 of the Civil Code govern and specify responsibilities and duties of parents. Article 230 states that in case of being legally married, the mother is obliged to foster her children. However, Article 231 of the Civil Code specifies that when the mother of a child has been divorced, the father of the child pays her in exchange for her 'fostering' the child.
165. Legally a child reaches the age of maturity at 18. Customary practices in Afghanistan make decisions on the age of maturity based on physical and mental maturity. A study by the Peace Training and Research Organization shows that social norms in Afghanistan view transition from child to adult as occurring sometime starting from 13-18 years old²³⁵.
166. The average household size in Afghanistan is 7.7 persons, averaging 3.7 children under the age of 15²³⁶.
167. According to Afghanistan's Civil Code and other ordinary related laws, no rights have been defined for children born outside of marriage. Article 427 of the Penal Code considers illegal sexual relation as adultery, which has long-term imprisonment for the perpetrator. According to Sharia law the *zani* (doer of sexual intercourse - usually men) and *zaniah* (receiver, usually women) are subjected

²³⁵ Peace Training and Research Organization (PTRO) *Child Rights in Afghanistan* 2013.

²³⁶ Central Statistics Organization *Afghanistan Living Conditions Survey 2016-2017* p. 22.

to harsh sentences such as honour killings, local customary norms as well as Islamic Sharia Law. The child born outside marriage is called *harami* illegitimate and Afghanistan's Civil Code does not address these children at all.

168. There is no specific, consolidated, inter-sectoral budgeting for child protection. The budget allocation to child protection is not visible in the state budget because it is distributed across different activities such as education, social welfare, allowances and benefits, care, health, and justice. Funding of child protection interventions are extremely dependent on external aid. As donors reduce their commitments in the context of overall economic downturn and demands of increasing humanitarian crises, there might be even less budget available for the child protection system²³⁷.

6.2 Protection of disadvantaged and vulnerable children

169. MoLSAMD is the designated government ministry responsible for overarching child protection services. Most of the child protection issues fall under the Division of Social Affairs of the Ministry. In order to operationalise domestic legislations, the country has also developed a series of policies. The National Strategy for Children At Risk is best known and promotes the rights of vulnerable children, disabled, orphans, street working children, children in conflict with the law and children with mothers in detention²³⁸. It is based on article 53 and 54 of the GIROA constitution, the Afghan Juvenile Code and the UN CRC²³⁹. There is no comprehensive child protection policy framework. Its absence prevents planning processes from being strategic²⁴⁰.
170. The GIROA approved the Law on the Rights of Persons with Disabilities in 2010. Article 16 of the law states that those children with disabilities have the same rights and freedom as other children. Ministries and governmental institutions are obliged to ensure children with disabilities to have access to appropriate sports and hobby facilities. Particular education and health facilities along with social awareness are specified in programme 1 of the Social Protection Five Year Strategy in 2005²⁴¹.
171. MoLSAMD is responsible, with support of UNICEF and other NGOs for enforcing the Labour code, managing orphanages (private and government owned), and literacy and vocational training classes for street children²⁴². Along with MoLSAMD, the following ministries have responsibilities for child protection services as well:
- **Ministry of Justice:** responsible for care of children in detention and regulation of rehabilitation centres.
 - **Ministry of Interior:** responsible for enforcing laws related to child labour, trafficking and sexual exploitation.

²³⁷ Ministry of Labour, Social Affairs, Martyrs and Disabled *Mapping and Assessment of Afghanistan's Child Protection System 2015-2016* p. 82.

²³⁸ Child Protection in Emergencies (CPiE) *Afghanistan Draft Desk Review* (2012).

²³⁹ CPAN Personal Communication 30 August 2015.

²⁴⁰ Ministry of Labour, Social Affairs, Martyrs and Disabled *Mapping and Assessment of Afghanistan's Child Protection System 2015-2016* p. 13.

²⁴¹ Government of the Islamic Republic of Afghanistan. *Social Protection Five Year Strategy 2008-2013* (2009) p. 30.

²⁴² Child Protection in Emergencies (CPiE) *Afghanistan Draft Desk Review* (2012).

- **Ministry of Foreign Affairs:** takes lead on all international trafficking cases and participates in the UN led Task Force on Children and Armed Conflict.
 - **Ministry of Women Affairs:** responsible to refer girls who have run away from gender based violence (GBV) to safe shelters and provide legal services to victims of violence.
 - **Afghanistan Independent Human Rights Commission:** the Child Right's Unit assesses the situation on children rights, and monitors processes used to monitor children in border areas in relation to labour, trafficking and drug smuggling, children under detention and access to quality education²⁴³.
172. At provincial level, Department of Labour, Social Affairs, Martyrs and Disabled (DoLSAMD) is the primary child protection system. DoLSAMD reports to MoLSAMD and conduct case management with their social workers, it also maintains CPAN. The main activities of CPAN include participating to case planning, strengthening the provincial referral system, development of prevention strategies and addressing sensitive cases that are under-reported. There are case planning committees held within 24 hours for emergency cases and 72 hours of reporting for non-emergency cases²⁴⁴. The case planning committee has a ToR and guidelines and there are a number of cases followed up. CPANs use their guidelines during the assessment of the victims and refer cases to support services in a timely manner. Many learning events have been organized at provincial and district level and some of the provincial level CPANs and district level CPANs members attended workshops on CPAN and child protection issues, including coordination and referral mechanisms, case management and follow up trainings²⁴⁵ (see 2.4 Government child rights coordination).
173. In an interview for this research the CPAN coordinator describes the general process of CPAN:
- 'When a child is referred to DoLSAMD, the case will be discussed at CPAN meeting with its members consisting of DoLSAMD social workers and other actors. If the child needs urgent action the committee makes a decision within 24 hours. In some cases, CPAN brings the issue to the monthly member meeting to discuss it in the group to find a solution'²⁴⁶.
174. CPAN provides support to member organizations who implement the child protection services and helps to raise awareness of current child protection issues with top officials in MoLSAMD.
175. Although the DoLSAMDs are present in 33 provinces, it faces challenges in their functioning:
- 'They have limited human and financial capacities, receive little feedback from central level and are confronted by growing numbers of children in need of protection. In reality, the majority of DoLSAMDs are not able to develop an assessment of child protection needs in their province, comprehensive action plans, or to coordinate and supervise implementing agencies working under their supervision'²⁴⁷.

²⁴³ Child Protection in Emergencies (CPiE) *Afghanistan Draft Desk Review* (2012).

²⁴⁴ CPAN Personal Communication 30 August 2015.

²⁴⁵ Development Consultants South and Central Asia *Child Protection Action Network*.

²⁴⁶ CPAN Personal Communication 30 August 2015.

²⁴⁷ Ministry of Labour, Social Affairs, Martyrs and Disabled *Mapping and Assessment of Afghanistan's Child Protection System 2015-2016*, Kabul p. 14.

176. The report *Mapping and Assessment of Afghanistan's Child protection System 2015-2016* concludes:

'Despite all improvements made by the country, the legislative framework for child protection in Afghanistan remains incomplete and difficult to enforce due to inconsistencies between civil law, sharia and customary laws for certain rights (minimum legal age for marriage for boys and girls)'²⁴⁸.

Protection from violence and abuse

177. There is no legal provision to define, criminalize and prohibit acts of domestic violence against children in Afghanistan. However, the Law on the Elimination of Violence against Women (LEVAW) enumerates a list of forms of physical, sexual, emotional, and economic violence against women and girls that are punishable whether they occur inside or outside the family environment. This law also grants victims access to appropriate assistance for recovery, reintegration, and compensation. The law may help in combatting the different forms of abuse that occur within the family (i.e. forced and child marriage, sale of children, economic exploitation, forced self-immolation, etc.)²⁴⁹. CPAN can refer children identified as victims of violence to a state run orphanage or non-government organization shelter for temporary care while the violence within the family is addressed through mediation. Physical, verbal and physiological violence against children are common among many families in the country.

178. A 2015-2016 research by AIHRC with 5700 children conducted in 28 provinces of Afghanistan shows that 88 per cent of interviewees experienced violence whether physical or psychological and 38 per cent of children under the age of 18 experience violence at home by their close relatives such as parents or uncles or elder siblings²⁵⁰.

179. During the year 2015-2016 AIHRC registered some 682 cases of violence against girls in its offices across Afghanistan. Some 208 cases of physical violence, 74 economic violence, 57 sexual violence and the rest were other forms of violence against girls²⁵¹.

Adoption and Guardianship

180. Afghanistan is not a party to the Hague Convention on Protection of Children and Co-operation in respect of inter-country adoption. Islamic Sharia law, which is the main source for the Afghan legal system does not allow for adoption of Afghan children in Afghanistan. Guardianship is possible, but only through the Afghan Family Court²⁵². Article 228 of the Afghan Civil Code states that when the lineage of a person is known but he has been adopted, therefore the adoptee shall not be subject to rights and obligations such as maintenance and fosterage charges, inheritance, prohibition of marriage with relatives of adopter and with divorcee.

²⁴⁸ Ministry of Labour, Social Affairs, Martyrs and Disabled *Mapping and Assessment of Afghanistan's Child Protection System 2015-2016*, Kabul p. 39.

²⁴⁹ Ministry of Labour, Social Affairs, *Martyrs and Disabled Mapping and Assessment of Afghanistan's Child protection System 2015-2016*, Kabul p. 38.

²⁵⁰ AIHRC *Condition of Children in Afghanistan* (2015-2016) in Dari available at <http://www.aihrc.org.af/media/files/Research%20Reports/Dari/%DA%AF%D8%B2%D8%A7%D8%B1%D8%B4%20D9%88%D8%B6%D8%B9%DB%8C%D8%AA%20%D8%A7%D8%B7%D9%81%D8%A7%D9%84%201395.pdf> (Accessed December 2018).

²⁵¹ Interview with AIHRC Child Rights Officer Kabul- Afghanistan (interview 17 January 2018).

²⁵² US Department of State, Bureau of Consular Affairs *Inter-country adoption: Afghanistan*. (2013) available at <http://travel.state.gov/content/adoptionsabroad/en/country-information/learn-about-a-country/afghanistan.html> (Accessed December 2018).

181. The Afghanistan parliament passed the Law on Guardianship of Children in 2013. The Afghan Court is responsible for guardianship²⁵³. Based on the child guardianship law Afghanistan does not use the *kafalah* (Islamic guardianship model) system. There is no foster care policy²⁵⁴.
182. The UN Committee on the Rights of the Child noted with concern that Afghanistan does not practice adoption or *kafalah* (Islamic guardianship model), stating that there is no system to provide special protection and assistance to children deprived of a family environment²⁵⁵.
183. Article 52 in chapter 6 of the Afghan Juvenile code states:
- ‘A child is abandoned by parents, this child should be protected and based on the request of the child, the legal guardian, prosecutor or other legal sources, the juvenile court can make a decision about this child’²⁵⁶.
184. Afghan child protection legislation is in line with the CRC international standards, but the concern is that the Afghan government does not see the international standards as legally binding²⁵⁷. There is little direct reference to the rights of children in the Constitution, in policy and legislative frameworks or national level policy dialogues²⁵⁸.

Child protection services

185. Child protection services are available by both state and non-state actors. Within the state, CPAN is the primary network facilitating the provision of child protection services. CPAN is mandated to provide case management services for children with protection needs. However, CPAN’s capacity to respond to child protection concerns is limited by the lack of services such as post-trauma counselling, shelters for children who need separation from their families, and educational or vocational programs for at-risk children²⁵⁹. CPAN does not provide direct services for child protection itself but facilitates and refers cases to CPAN members, and does follow up monitoring of children after reintegration. Child protection services for children referred to CPAN are implemented by CPAN members, with the support and under the monitoring of MoLSAMD and CPAN²⁶⁰.
186. Social workers provided by MoLSAMD work in cooperation with CPAN²⁶¹. By the end of 2017 MoSALMD had 43 social workers within its official structure and was planning to hire a further 53 social workers to work with children in orphanages²⁶².

²⁵³ Ministry of Justice Guardianship Law (2012) available (in farsi) at http://moj.gov.af/content/files/OfficialGazette/01101/OG_01130.pdf (Accessed December 2018).

²⁵⁴ Ministry of Justice Personal Communication 30 August 2015.

²⁵⁵ UN Committee on the Rights of the Child (CRC) *Concluding observations* (8 April 2011) CRC/C/AFG/CO/1, available at <http://www.refworld.org/docid/4dc7bd492.html> (Accessed December 2018).

²⁵⁶ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 52* (2005) available at <http://www.asianlii.org/af/legis/laws/lcogn846p2005032313840103a495/> (Accessed December 2018).

²⁵⁷ UN Committee on the Rights of the Child (CRC) *Concluding observations* (8 April 2011) CRC/C/AFG/CO/1 available at <http://www.refworld.org/docid/4dc7bd492.html> (Accessed December 2018) and Ministry of Labour, Social Affairs, Martyrs and Disabled *Mapping and Assessment of Afghanistan’s Child Protection System 2015-2016*, Kabul p. 39.

²⁵⁸ UNICEF *Children and Women in Afghanistan* (November 2014) p. 21.

²⁵⁹ UNICEF *Children and Women in Afghanistan* (November 2014) p. 45.

²⁶⁰ Hagar International Personal Communication 5 September 2015.

²⁶¹ UNICEF Personal Communication 6 September 2015.

²⁶² UNICEF personal communication with MoSALMD Child Protection Secretariat 24 April 2018.

187. In 2017, CPAN had responded to nearly 5,000 child protection violations across 110 districts in 33 provinces²⁶³. Cases of children in conflict with the law and children without family care are the most commonly reported by CPAN (see table below). Child protection issues involving girls, early childhood marriages and sexual abuse are under-reported, due to the traditional sensitivities and social stigma attached with such types of exploitation²⁶⁴. Recorded cases represent the cases that CPAN has supported, and are dependent on the each provincial office to decide and identify how to record cases.

Table 10: Cases reported to CPAN in 2017

Cases	Number of Children Affected		
	Boys	Girls	Total
Rape	24	21	45
Sexual Abuse (except for rape)	19	0	19
Physical Abuse	19	22	41
Trafficking	30	0	30
Smuggling	28	1	29
Abduction/ Kidnapping	23	3	26
Child Marriage	171	161	332
Children in Conflict With The Law	1568	156	1724
Children Separated From Family	574	112	686
Drug Abuse	249	100	349
Child labour	290	50	340
Disability	85	45	130
Injured (MRM)	534	160	694
Killed (MRM)	253	24	277
Rape (MRM)	22	3	25
Recruitment	234	36	270
Attack against school	47	30	77
Attack against health center	5	0	5
Self immolation	16	15	31
Other please specify	328	558	886
TOTAL	3405	1347	4752

188. The cases fall into one of the following categories: rape, sexual abuse, physical abuse, child marriage, separated children, child trafficking, child kidnapping, drug abuse, children in conflict with law and children affected by armed conflict/CAAC (the six grave violations under UN SCR 1612, MRM mechanism)²⁶⁵.

²⁶³ UNICEF *Afghanistan Child Protection* <https://www.unicef.org/afghanistan/child-protection> (Accessed December 2018).

²⁶⁴ UNICEF *Child Protection in Emergencies (CPIE) Afghanistan Draft Desk Review* (2012).

²⁶⁵ UNICEF Personal Communication 6 September 2015.

189. A child helpline was established in Herat Province, in western Afghanistan, by War Child UK and UNICEF in 2011 to respond to protection cases, including family tracing²⁶⁶. MoLSAMD now has responsibility for this call centre. In 2017 it is still operational²⁶⁷.
190. Although the Afghanistan government, particularly the Ministry of Labour, Social Affairs, Martyrs & Disabled (MoLSAMD) is obliged to provide social services for all children and youth focusing on vulnerable groups, so far there is no report to show activities of MoLSAMD to facilitate equal access of children to social services²⁶⁸.

6.3 Provision of alternative care for children

191. The Department of Orphanages in MoLSAMD is tasked with providing quality care for vulnerable children, by creating a clean, safe, healthy and affectionate environment, as well as providing relevant education and training that will give them every opportunity to gain employment and to develop their full potential as citizens of Afghanistan²⁶⁹. The mechanisms and systems necessary to successfully accomplish this mandate are weak.
192. There is no legislation in Afghanistan governing alternative care in family environment besides institutionalization. The MoLSAMD report *Mapping and Assessment of Afghanistan's Child Protection System 2015-2016* reports:

'The plan to promote alternative, more comprehensive family based and community based alternative care for children to replace residential institutions, and to introduce cost-recovery measures for the kindergartens, was decided several years ago but was not implemented due to lack of will in the MoLSAMD to change the status quo and engage in a process that needs new expertise and dedicated fundraising'²⁷⁰.

Alternative care centres

193. The primary referral of a child to an orphanage is the family of the child, or in some cases police or other child protection partners²⁷¹. Only the Afghanistan Juvenile Code predicts some exceptional conditions for children in conflict with the law who need particular protection or care. Article 38 of the Code states while a child seems to be psychologically abnormal during the due process in juvenile court, judge and legal defendant are free to introduce him/ her to psychological centres for remedy or treatment.

²⁶⁶ War Child UK *Annual report 2012* (2012) p. 9.

²⁶⁷ UNICEF Personal Communication 6 September 2015 and in 2018.

²⁶⁸ University of New York 'Development of National Occupational Skills Standards for social work with a focus on child protection' (2012) and Ministry of Labour, Social Affairs, Martyrs and Disabled *Mapping and Assessment of Afghanistan's Child protection System 2015-2016*, Kabul pp. 15-16.

²⁶⁹ MoLSAMD *Official website* available at <http://molsamd.gov.af/en/page/1611> (Accessed December 2018).

²⁷⁰ Ministry of Labour, Social Affairs, Martyrs and Disabled *Mapping and Assessment of Afghanistan's Child protection System 2015-2016*, Kabul p. 57

²⁷¹ CPAN Personal Communication 30 August 2015.

194. The MoLSMAD report *Mapping and Assessment of Afghanistan's Child Protection System 2015-2016* reports:

'In Afghanistan a very small portion of children without permanent parental care is placed in the 84 residential care centres (64 government and 20 private) provided or with oversight by the MoLSAMD Directorate of Orphanages. The living conditions of many of the 19,400 children in institutional care (13,506 in public and 5,896 in private) are reported to be very poor due to lack of space, bedding, food and heating. Only 27 per cent of boys and 4 per cent of girls attend public primary school, though some centres provide alternative forms of education. An assessment of 2014 by Children in Crisis confirmed the UNICEF findings of 2004 that 80 per cent or more of the children in such institutions were not lacking permanent parental care as they had at least one living parent and returned home for long school holidays. The 2014 study found that 12 per cent of children had lost both parents, and 8 per cent had both parents alive²⁷².

195. The US Department of State reports in 2016:

'Living conditions for children in orphanages were poor. The MoSALMD oversaw 84 Child Protection Action Network centers and 78 residential orphanages, which were designed to provide vocational training to children from destitute families. Of these, 30 were privately funded orphanages and 48 were government-funded centers operated by NGOs by agreement with the ministry²⁷³.

196. Staff working in government run orphanages are recruited by MoLSAMD, specifically the Department of Orphanages. The AIHRC provides independent external monitoring of alternative care facilities²⁷⁴. In 2010, the MoLSAMD developed minimum standards for residential care centres but, due to its lack of experienced professionals, these standards have been poorly implemented²⁷⁵.

197. The 20 private residential care centres are the ones registered at MoLSMAD. There might be many more, not registered. The private centres might also be closed suddenly due to funds ending. The MoLSMAD reports:

'These centres are extremely dependent upon private and external donations so that many are in general poorly funded, thereby resulting in the problems of sustaining for children continued access to decent living conditions and quality education. Running of these facilities is carried out through the delivery of an integrated package including a strong education or health component (scholarships, school grants, basic health care) and a smaller child protection component²⁷⁶.

²⁷² Ministry of Labour, Social Affairs, Martyrs and Disabled *Mapping and Assessment of Afghanistan's Child protection System 2015-2016*, Kabul pp. 56-57.

²⁷³ US Department of State *Afghanistan 2016 Human Rights Report* (2016) p. 45 available at: <https://www.state.gov/documents/organization/265742.pdf> (Accessed December 2018).

²⁷⁴ AIHRC *Annual Report 1392* (2013).

²⁷⁵ Ministry of Labour, Social Affairs, Martyrs and Disabled *Mapping and Assessment of Afghanistan's Child protection System 2015-2016*, Kabul p. 14.

²⁷⁶ Ministry of Labour, Social Affairs, Martyrs and Disabled *Mapping and Assessment of Afghanistan's Child protection System 2015-2016*, Kabul p. 16.

198. There are 28 shelters especially for assistance and protection for girls and women in Afghanistan and the Ministry of Women Affairs (MoWA) is responsible to monitor services and the referral process²⁷⁷.
199. AIHRC's regular monitoring of government and private run shelters indicate that most of the child shelters and rehabilitation centres are facing lack of food, clothes, clean water in the shelter, safe buildings etc²⁷⁸. Comparing the actual condition of the Afghan child with international minimum standards of condition (food, clean water, indiscriminately treatment, training services etc) the minimum conditions are not met²⁷⁹. Children in orphanages reported mental, physical, and sexual abuse; sometimes were trafficked and did not always have access to running water, winter heating, indoor plumbing, health services, recreational facilities, or education²⁸⁰.
200. There is no law prohibiting corporal punishment in child rehabilitation centres, orphanages and shelters explicitly. Article 5 of the Juvenile Justice Department rules and regulations does state that staff members are not allowed to restrict freedom of the children within the centres, unless the order and discipline of the centre is at risk²⁸¹.

²⁷⁷ MoWA Personal Communication, 12 February 2018.

²⁷⁸ Interview with Child Rights Officials of AIHRC, 17 January 2018.

²⁷⁹ AIHRC *Annual Report of Child rights protection 2014* (Farsi edit).

²⁸⁰ US Department of State *Afghanistan 2016 Human Rights Report* available at <https://www.state.gov/documents/organization/265742.pdf> page 45 (Accessed 27 April 2018).

²⁸¹ Government of the Islamic Republic of Afghanistan. *Presidential decree of Islamic republic of Afghanistan regarding approval of juvenile justice department rule*. Article 5 (1387/2008).



7 Special protection measures

7.1 Children in conflict with the law

Criminal responsibility

201. The 2005 Juvenile code established three classes of children:

- Non-discerning: under seven years old,
- Discerning: 7-12 years old.
- Juvenile: 13-18 years old²⁸².

202. Children are generally separated in two categories: a) discerning²⁸³ and b) non-discerning children. Among discerning children those that can be prosecuted and punished are the children who are over the age of criminal responsibility²⁸⁴. Article 47 of the Juvenile Code says that if a crime has been committed by a discerning child (above 7 years), but below the age of criminal responsibility (which in Afghanistan is 12 years), the court has the right to impose only social measures and not a proper punishment (e.g. confinement)²⁸⁵.

²⁸² Government of the Islamic Republic of Afghanistan. *Afghan Juvenile Code Article 4* (2005) available at <http://www.asianlii.org/af/legis/laws/lcogn846p2005032313840103a495/> (Accessed December 2018).

²⁸³ Discerning: aware of what he or she is doing.

²⁸⁴ UNODC *Justice for Children in Conflict with the Law: A Training manual for Judges and Prosecutors* (2009) available at https://www.unodc.org/documents/afghanistan/Juvenile_Justice/Juvenile_Justice_Manual_complete_2009_Nov_10.pdf (Accessed December 2018) pp. 197-198.

²⁸⁵ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 47* (2005) available at <http://www.asianlii.org/af/legis/laws/lcogn846p2005032313840103a495/> (Accessed December 2018).

203. Due to lack of identification/Tazkira, some of the young offenders allegedly below the age of 12 are facing challenges and in some cases they could be detained in Juvenile Correction Centers. The Afghan Penal Code amended and issued in July 2017 identifies the challenge of identification and age confirmation of the child. Article 102 states if there is no ID or if his or her physical appearance indicates an age difference from that indicated in the ID, the court or prosecution office shall seek the opinion of an expert. If the court and prosecution still find a contradiction, or if the defendant or his or her defence attorney objects, the court shall refer the redetermination of the age to a medical team of at least three doctors.

204. Sentencing within the Afghan juvenile system is dependent on age. Articles 95-114 of the Penal Code 2017 deal with the criminal responsibility of children²⁸⁶. Article 97 reads:

‘A child who has reached the age of 12 but not yet reached the age of 16, and commits a felony shall not be sentenced to more than one-quarter (1/4) of the maximum punishment of the same crime as determined for adults of more than 18 years in this law’.

Article 98 reads:

‘A child who has reached the age of 16 but not yet reached the age of 18, and commits a felony shall not be sentenced to more than one-third (1/3) of the maximum punishment of the same crime as determined for adults of more than 18 years in this law’.

205. It is against the law to sentence a child to life imprisonment or death penalty (article 99).

Juvenile justice system

206. The Afghan juvenile justice system is based on article 54 in the national constitution and on the International Conventions protecting human rights, specifically the interests of the child²⁸⁷. The 2005 Juvenile Code mandates the safeguarding and protection of the rights of Afghan children. Emphasis is on rehabilitation as the priority, with prosecution and detention as a last resort²⁸⁸. Within the juvenile code, child offenders are categorised into two groups:

- *Children in conflict with the law*: Those who have infringed the law.
- *Children in need of care and protection*: Those whose physical, psychological, emotional health and security are at risk²⁸⁹.

207. The 2005 Juvenile Code states that trials for juvenile offenders are to be conducted by a juvenile court, and therefore primary juvenile courts are to be established in all 34 provinces. The Juvenile Code also dictates that trials should take place within relevant areas of jurisdiction, located either

²⁸⁶ Government of the Islamic Republic of Afghanistan *Penal Code* Official Gazette #1260 (15 May 2017).

²⁸⁷ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code* Article 1 (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed December 2018).

²⁸⁸ George Washington University Law School ‘Afghan Juvenile Code in Practice: Assessing against international juvenile law’ (April 2015) available at http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=christopher_carlson (Accessed December 2018) p. 19.

²⁸⁹ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code* Article 1,3 52 (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed December 2018).

where the crime was committed or where the child was residing or arrested and/or in detention²⁹⁰. The 2016 US report on Human Rights observed that due to limited resources, special juvenile courts functioned in only six areas (Kabul, Herat, Balkh, Kandahar, Nangarhar, and Kunduz)²⁹¹. In provinces where primary juvenile courts do not exist (28 provinces), juvenile cases fall under the adult courts, but still viewed within the juvenile justice law. The law also states that children's cases will be addressed in private and similar to criminal cases, may involve three levels: Primary, Appeals, and the Supreme Court²⁹².

208. The 2005 Juvenile Code provides specific details on duration of the trial process, from investigation to indictment. In total, the maximum waiting time between detention and completion of trial is 40 days²⁹³. A study conducted on behalf of Children in Crisis by Samuel Hall in 2017 on Juvenile Rehabilitation Centre (JRC) in Kabul found that the police are required to report the arrest and detention of children to their guardians within 24 hours, and prosecutors have the authority to release children on bail without money. But, the reality diverges from theory, especially for children without legal awareness, strong family support or negotiation power. Of particular concern are long timelines for investigations and children who must idly wait in the JRC without any information while their dossiers are completed, unable to integrate in the JRC until properly sentenced, but excluded from life outside²⁹⁴.
209. The Afghan Juvenile Code states the confinement of a child is 'considered to be the last resort for rehabilitation and re-education of the child'²⁹⁵. When confinement occurs the Ministry of Justice requires children suspected, accused, or sentenced to be detained only in Juvenile Rehabilitation Centres (JRC)²⁹⁶. The 2005 Juvenile Code speaks of juvenile rehabilitation and social service institutions in article 35, and article 10.4 mandates that children be kept separately from adults²⁹⁷. Article 12 of the Juvenile Code also states that there should be range of specialist and appropriate health, social and educational services for detained children²⁹⁸. The Ministry of Justice's Juvenile Rehabilitation Directorate (JRD) is responsible for all JRCs. The AIHRC, UNAMA, the International Committee of the Red Cross (ICRC), and International Security Assistance Force (ISAF) were reported to have access for monitoring detention facilities, including the JRCs²⁹⁹. The monitoring visits focus on identifying needs of detainees and violations of human rights.

²⁹⁰ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code* Article 28 (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed December 2018).

²⁹¹ US Department of State *Afghanistan 2016 Human Rights Report* (2016) available <https://www.state.gov/documents/organization/265742.pdf> p. 9 (Accessed December 2018).

²⁹² Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code* Article 27, 32 (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed December 2018).

²⁹³ UNICEF and AIHRC *Justice for Children: The situation for children in conflict with the law in Afghanistan* (2008).

²⁹⁴ Samuel Hall *Hope behind bars: the boys of the Kabul JRC* (2017) commissioned by Children in Crisis p. 19 available at <http://samuelhall.org/site/wp-content/uploads/2017/08/Samuel-Hall-Hope-behind-bars-2017-for-Children-in-Crisis-.pdf> (Accessed December 2018).

²⁹⁵ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code* Article 8 (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed December 2018).

²⁹⁶ UNDP *Afghanistan Human Development Report* (2007) p. 59.

²⁹⁷ UNODC *Implementing alternatives to imprisonment* (2008) p. 61.

²⁹⁸ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code* Article 12 (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed December 2018).

²⁹⁹ US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed December 2018) p. 9.

210. In March 2018 the Afghanistan government approved an annex to the penal code on the use of alternatives to imprisonment and (juvenile) detention. The annex mentions different kinds of alternatives such as counselling sessions, vocational training, skills development, compensation to the victim, community service, treatment of psychological, behavioural and physical disorders³⁰⁰.

Children's legal advice services

211. The 2005 Juvenile Code protects the right of all children to have access to a defence counsel and an interpreter, and makes provisions for the court to assign one if the parents and/or family of the child cannot afford counsel³⁰¹. However, article 22 of the Juvenile Code also says that absence of the child's legal representative during investigation cannot stop the investigation process³⁰². The TdH 2010 assessment reported that out of the 246 juvenile offenders who were specifically asked whether or not they had a defence attorney in court, 8.1 per cent indicated that they did not have an attorney while the remaining 91.9 per cent showing that they were being provided with their right to a defence attorney³⁰³. However, the same 246 juvenile offenders also were consistent in their complaints that their attorney did not visit them in the Juvenile Rehabilitation Centres (JRC), did not talk in court and did not talk to them prior to trial³⁰⁴.
212. Juveniles have reported signing various documents while in the custody of the police, often only to find out in court that they unknowingly signed a confession. The TdH 2010 assessment reported that out of the 250 juvenile offenders who were interviewed, 52 per cent of the juveniles reported that a confession played a role in their convictions³⁰⁵:

'This 52 per cent reported that they were either physically forced or intimidated to sign confessions written by the police. 24 per cent of the juveniles reported that they unknowingly signed confessions written by police and were unaware that they signed a confession until they went to court. Some juveniles reportedly signed blank pieces of paper, in which confessions were later written on'³⁰⁶.

Number of children in detention and reasons

213. UNICEF sources indicate that as of end of 2017 some 784 young offenders were held in JRCs in all 34 provinces of Afghanistan: 704 are male offenders and 80 are female young offenders³⁰⁷. The June 2018 statistics (Table 11) indicate 530 juveniles in detention.
214. According to a 2013 report by War Child UK on alternative detentions, the number of children in JRCs in Afghanistan has more than doubled in the last five years from 455 in 2008 to 1,118 in 2013³⁰⁸.

³⁰⁰ Government of the Islamic Republic of Afghanistan *Annex 2 to the Criminal Procedures Code on Use of Alternatives to Imprisonment and (Juvenile) Detention* (4 March 2018).

³⁰¹ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 22* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed December 2018).

³⁰² Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 22* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed December 2018).

³⁰³ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 34.

³⁰⁴ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 34.

³⁰⁵ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 37.

³⁰⁶ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 37.

³⁰⁷ UNICEF data on Juvenile Rehabilitation Centers 2017, Personal Communication 26 March 2018.

³⁰⁸ War Child UK *Implementing alternatives to detention* (2013) available at <https://www.warchild.org.uk/sites/default/files/Alternatives-to-Detention-in-Afghanistan-June-2013.pdf> (Accessed December 2018) p. 3.

The War Child UK report goes on to say that:

‘This is alarming not just because it reflects the accelerated growth of adult imprisonment which has increased three-fold since 2007, but because it is clear that many of these children could have been sentenced to an alternative to detention’³⁰⁹.

215. The reasons for detention in the JRCs are varied. The June 2018 statistics shows that Juveniles are charged in different categories of crimes as cited in the below chart:

Table 11: Nationwide statistics of crimes committed by Juveniles detained in JRC (June 2018)³¹⁰:

S #	Provinces	Region	Immoral actions	Other misdemeanor INFRACTION	Stabbing/Injuring	National Security Related Charges	Kidnapping	Forgery	Weapons Smuggling	Narcotics Smuggling	Traffic Accident	Armed theft	Robbery	Theft	Sodomy	Adultery	Murder	Total
1	Kabul	Center	1	2	11	27	5	1	2	18			9	47	10	2	24	159
2	Parwan	Center		1	1	3								1			6	12
3	Kapisa	Center													2		3	5
4	Logar	Center			1										1			2
5	Wardak	Center				2												2
6	Dikundi	Center			2													2
7	Panjsher	Center																0
8	Bamyan	Center			1									2	1		1	5
Subtotal			1	3	16	32	5	1	2	18	0	0	9	50	14	2	34	187
9	Nangarhar	East			1	7	2			6				10			4	30
10	Laghman	East				4									1		2	7
11	Kunar	East				4							1		2	1		8
12	Nuristan	East																0
Subtotal			0	0	1	15	2	0	0	6	0	0	1	10	3	1	6	45
13	Balkh	North								1	1			2	4	1	3	12
14	Faryab	North		1		3	1							1	2	3	6	17
15	Saripul	North												1	1		1	3
16	Jawzjan	North			2	5								3	2	1	1	14
17	Samangan	North				2									3	2	8	15
Subtotal			0	1	2	10	1	0	0	1	1	0	0	7	12	7	19	61
18	Kundu	North East			2	10	1										4	17
19	Baghlan	North East			2	2				2					4	2	1	13

³⁰⁹ War Child UK *Implementing alternatives to detention* (2013) available at <https://www.warchild.org.uk/sites/default/files/Alternatives-to-Detention-in-Afghanistan-June-2013.pdf> (Accessed 30 August 2015) p. 3.

³¹⁰ Ministry of Justice. The General Directorate of Juvenile Rehabilitation Centers: statistics on Juveniles detained in JRC as of June 2018. Personal Communication with UNICEF 26 March 2018.

S #	Provinces	Region	Immoral actions	Other misdemeanor INFRACTION	Stabbing/Injuring	National Security Related Charges	Kidnapping	Forgery	Weapons Smuggling	Narcotics Smuggling	Traffic Accident	Armed theft	Robbery	Theft	Sodomy	Adultery	Murder	Total
20	Takhar	North East			2	1	2			2			1	2	2	1	4	17
21	Badakshsan	North East			1	3								2	1	3	7	17
Subtotal			0	0	7	16	3	0	0	4	0		1	4	7	6	16	64
22	Kandahar	South				3											4	7
23	Zabul	South				3				1				2				6
24	Helmand	South			1	15	1				1			7			3	28
25	Uruzgan	South	1			4								1			2	8
26	Nimroz	South								5	1						3	9
Subtotal			1	0	1	25	1	0	0	6	2	0	0	10	0	0	12	58
27	Herat	West		1	1		1		1		5	2	1	20	6	7	2	47
28	Ghor	West			1	2								3		1	1	8
29	Farah	West			2	1				1			1	3	2	1	1	12
30	Badghis	West			1	5		1				1		1	5	2		16
Subtotal			0	1	5	8	1	1	1	1	5	3	2	27	13	11	4	83
31	Paktya	South East			1	1								1				3
32	Khost	South East				6	2						2	1			1	12
33	Ghazni	South East				6							1		1		4	12
34	Paktika	South East				2								1	1		1	5
Subtotal			0	0	1	15	2	0	0	0	0	0	3	3	2	0	6	32
Total			2	5	33	121	15	2	3	36	8	3	16	111	51	27	97	530

216. Of the 530 children in custody 64 are suspected of a crime and 466 have been accused.
217. There is an increase in the numbers of children held on charges against national security. According to the statistics from Ministry of Justice there are 121 juveniles who are detained in JRC in relation to crimes against National and International Security by June 2018.
218. The Country Director of Tabish, the NGO that works with Juvenile Rehabilitation Centres states:

‘Children who are arrested for crimes against national security including terrorism are challenging for NGOs and the Afghan government itself. Many of these children who were trained as insurgents, fighter and suicide bomber and have very extreme views of the religion and Sharia, are kept among young offenders who are detained or imprisoned for other crimes. In the Bagram detention facility where many of the war and insurgency related detainees are kept, the young offenders who are detained for crimes of terrorism are also kept with the adults. In both situations there is always

a danger that those children spread their extremist views to other young inmates in the facility or they will be further radicalized by older prisoners/detainees who are there for insurgency and terrorism related crimes. There are some projects and initiatives by NGOs who are working towards the reintegration of the children who were involved in acts of terrorism including murder, suicide bomber to be and etc³¹¹.

Reports on detention

219. While article 12 in the 2005 Juvenile Code mandates the existence of appropriate health, social and educational services for detained children, assessments on JRCs in Afghanistan report that these services do not exist in most cases. The Juvenile Code stresses confinement as a last resort and for the minimum duration possible. It also obliges detention authorities to provide educational, vocational, psychosocial, and health services for detained children. Yet, according to the Children in Crisis and Samuel Hall joint study on the state of the JRC in Kabul many children in the JRC have been confined for minor offenses, and service provision and needs often go neglected³¹².
220. The 2012-2014 UNODC country program for Afghanistan also reported the lack of essential services such as medical, educational and vocational training, which would benefit children and facilitate their transition back to their families³¹³.
221. UNODC reported that:
- ‘If the juvenile girls come in with children of their own they also stay with them in the already overcrowded rooms at the JRC. In several of the JRCs small children under the age of 5 that were the responsibility of the juvenile girls were also living at the JRC³¹⁴.
222. The 2017 US Human Rights Report on Afghanistan noted:
- ‘Reports indicated children in juvenile rehabilitation centers across the country lacked access to adequate food, health care, and education. Detained children frequently did not receive the presumption of innocence, the right to know the charges against them, access to defense lawyers, and protection from self-incrimination. The law provides for the creation of special juvenile police, prosecution offices, and courts. Due to limited resources, special juvenile courts functioned in only six provinces (Kabul, Herat, Balkh, Kandahar, Nangarhar, and Kunduz). Elsewhere, children’s cases went to ordinary courts. The law mandates authorities handle children’s cases confidentially³¹⁵.
223. The 2012-2014 UNODC Country programme report stated that children continue to be placed in detention at high rates for behaviours which, based on international standards, should not be considered criminal offences. A large proportion of girls are prosecuted and imprisoned for ‘home

³¹¹ Interview with Country Director of Tabish, a NGO that works for reintegration of children under 18 who are detained for insurgency or terrorism related crimes. 23 January 2018.

³¹² Samuel Hall *Hope behind bars: the boys of the Kabul JRC* (2017) commissioned by Children in Crisis pp. 19-20 available at <http://samuelhall.org/site/wp-content/uploads/2017/08/Samuel-Hall-Hope-behind-bars-2017-for-Children-in-Crisis-.pdf> (Accessed 27 April 2018).

³¹³ UNODC *Country Program for Afghanistan 2012-2014* (2012) pp. 22-23.

³¹⁴ UNODC *Country Program for Afghanistan 2012-2014* (2012) pp. 22-23.

³¹⁵ US Department of State *Country Reports on Human Rights Practices for 2017: Afghanistan* (2017) available at <https://www.state.gov/documents/organization/277519.pdf> (Accessed August 2018) pp. 7-8.



escape' (running away from home) even though it is not a crime pursuant to the Juvenile Code³¹⁶ (see 7.7 Domestic violence).

224. The 2008 UNODC report on alternatives to imprisonment stated that children are being held in prison charged with offences such as homosexuality, debauchery and running away from home and are being punished, although most are almost certainly victims themselves and are in need of care and protection³¹⁷. The UNODC report also observed:

'AIHRC commissioners have said, for example, that many children were arrested by the police, having been apprehended while having sex with an adult, and that both the adult and the child were treated the same, the latter not being perceived as a victim. Additionally AIHRC has found that the worst risk of abuse of children is during the period of detention by the police'³¹⁸.

225. The 2017 US Human Rights Report also stated that some of the children in the criminal justice system were victims rather than perpetrators of crime. In the absence of sufficient shelters for boys, authorities detained abused boys and placed them in juvenile rehabilitation centers because they could not return to their families and shelter elsewhere was unavailable³¹⁹.

³¹⁶ UNODC *Country Program for Afghanistan 2012-2014* (2012) pp. 22-23

³¹⁷ UNODC *Implementing alternatives to imprisonment* (2008) p. 34.

³¹⁸ UNODC *Implementing alternatives to imprisonment* (2008) p. 37.

³¹⁹ US Department of State *Country Reports on Human Rights Practices for 2017: Afghanistan* (2017) available at <https://www.state.gov/documents/organization/277519.pdf> (Accessed December 2018) pp. 7-8.

226. An UNAMA survey carried out in 2015 established that 336 children were accompanying the 727 female prisoners held at that time in Afghanistan's provincial prisons. UNAMA found that the high percentage (46 per cent) of children accompanying their mothers in prison presents significant concerns for the children's wellbeing and recommended that the concerns about the number of children accompanying their mothers in prison can best be addressed by increased reliance on alternative forms of punishment than incarceration for female prisoners³²⁰.

Alternatives to detention

227. The Juvenile Code of Afghanistan provides specific details on providing alternatives to detention for juvenile offenders. Article 10 states that the courts have authority to consider alternatives to detention, and the legal representative of the child can demand his or her release on bail at the time of arrest³²¹. Article 8 of the Juvenile Code mandates that confinement of a child should be a last resort for rehabilitation and re-education of the child³²². This aligns with the Beijing Rule 19.1 that states: 'The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period'³²³. However TdH, in their 2010 assessment, observed that despite Article 8 and the rehabilitative purposes of the juvenile code, formal alternatives to detention measures were reported as being used in an extreme minimal amount of cases³²⁴.

228. Alternatives to detention are sentences that are issued by courts but served in the community rather than in the JRCs. The Afghan Juvenile Code addresses the use of alternatives to detention for children in article 35. According to the Code, when a child between the age of 13 and 18 is being sentenced in court, the judge can then serve one of the following sanctions:

- Performing social services.
- Sending the child to special social services institutions.
- Issuance of warning.
- Postponement of trial.
- Conditional suspension of punishment.
- Home confinement.
- Surrender of child to his/her parents or those who have the guardianship rights.
- Sending the child to the juvenile rehabilitation centres for confinement³²⁵.

229. In March 2018 the Afghanistan government approved an annex to the penal code on the use of alternatives to imprisonment and (juvenile) detention. The annex mentions different kinds of alternatives such as counselling sessions, vocational training, skills development, compensation to the victim, community service, treatment of psychological, behavioural and physical disorders³²⁶.

³²⁰ UNAMA *Rule of Law Unit Assessment of Afghanistan Prison Health Services* (2016) p. 19 available at https://unama.unmissions.org/sites/default/files/assessment_of_afghanistan_prison_health_services_-_english.pdf (Accessed December 2018).

³²¹ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code* Article 12 (2005) available at <http://www.asianlii.org/af/legis/laws/lcogn846p2005032313840103a495/> (Accessed December 2018).

³²² Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code* Article 12 (2005) available at <http://www.asianlii.org/af/legis/laws/lcogn846p2005032313840103a495/> (Accessed December 2018).

³²³ United Nations *Standard Minimum Rules for the Administration of Juvenile Justice*, known as the Beijing Rules (1985).

³²⁴ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 58.

³²⁵ Government of the Islamic Republic of Afghanistan. *Afghan Juvenile Code* Article 35 (2005) available at <http://www.asianlii.org/af/legis/laws/lcogn846p2005032313840103a495/> (Accessed December 2018).

³²⁶ Government of the Islamic Republic of Afghanistan *Annex 2 to the Criminal Procedures Code on Use of Alternatives to Imprisonment and (Juvenile) Detention* (4 March 2018).

230. The 2013 War Child UK report on alternatives to detention in Afghanistan stated:

‘In some provinces like Herat the alternative to detentions seem more effective than the other parts of the country, in Jalalabad and Kabul it is growing, but usage of the alternative to detention is limited in some provinces like Daikundi, Kandahar, Mazar and Panjshir’³²⁷.

231. The War Child UK report concluded that underlying factors for the limited use of alternatives to detention appears to be based on a lack of knowledge of the Juvenile Code, lack of confidence, lack of guidance, and lack of understanding of the resources available as the main reason behind limitations in use of alternative to detentions in Afghanistan³²⁸.

232. There are no specialized juvenile mental health care facilities in Afghanistan, the one State-run mental health hospital is in Kabul. Other provinces only have mental wards within the local hospital³²⁹.

Rehabilitation and discrimination after detention

233. Information on rehabilitation and discrimination after detention is limited. Out of the ten national and international organizations working within the juvenile justice sector, two (TdH and Children in Crisis) are providing reintegration services for juvenile offenders, and only in Kabul and Nangarhar³³⁰. Until mid July 2018, Children in Crisis (CiC) implemented a project in the JRC in Kabul on psychosocial support and educational support, providing reintegration assistance through³³¹.

234. The foundation of social norms in Afghanistan is based on upholding honour within the family and the community³³². Therefore the social stigma and shame attached to being charged with a crime, even if you are found innocent, can be expected. However, there is little information available on specific incidences of discrimination. UNODC, in their 2008 report on alternatives to imprisonment, stated that for girls who are released from detention, the family shame at the detention places them at ‘serious risk’ for discrimination³³³.

7.2 Victims of child trafficking

Legislative and institutional arrangements

235. The Afghan Law to Combat Crimes of Trafficking in Persons and Smuggling of Migrants was signed by President Ashraf Ghani in 2017, with the following mandate:

³²⁷ War Child UK *Implementing alternatives to detention* (2013) available at <https://www.warchild.org.uk/sites/default/files/Alternatives-to-Detention-in-Afghanistan-June-2013.pdf> (Accessed December 2018) p. 3.

³²⁸ War Child UK *Implementing alternatives to detention* (2013) available at <https://www.warchild.org.uk/sites/default/files/Alternatives-to-Detention-in-Afghanistan-June-2013.pdf> (Accessed December 2018) p. 3.

³²⁹ Tabish (Afghan NGO working within the psychosocial sector) Personal Communication 31 August 2015.

³³⁰ Juvenile Justice Working Group *Juvenile Justice Services Provided and Places* (August 2015).

³³¹ UNICEF Personal communication, August 2018.

³³² UNICEF *Children and Women in Afghanistan* (November 2014) p. 31.

³³³ UNODC *Implementing alternatives to imprisonment* (2008) p. 61.

- Prevent crimes of trafficking in persons and trafficking of refugees.
 - Support victims of crimes of abduction and trafficking in persons (especially women and children) and refugees victims of human trafficking.
 - Ensure punishment of the perpetrators of trafficking in person and trafficking of refugees.
 - Ensure international coordination and cooperation in fight against trafficking in person and trafficking of refugees³³⁴.
236. Article 510 -520 of the Penal Code 2017 also prohibits forms of human trafficking, and articles 521-528 criminalizes human trafficking for the purpose of immigration. However, the new law on to Combat Crimes of Trafficking in Persons and Smuggling of Migration articles 10 and 11 criminalizes the acts of trafficking against women and children. The crimes of sexual violence, sexual slavery, rape and pornography are punishable to long term imprisonment no less than 10 years.
237. The Afghan Penal Code 2017, chapter five articles 579- 586 protect children from sexual abuse and criminalizes many acts of violence against children including Bacha Bazi, the abuse of children for entertainment of adults, and Bacha Bazi by the Afghan National Security Forces (ANSF).
238. The High Commission for Combating Crimes of Abduction and Trafficking in Persons, established by the 2008 Law on Combating Abduction and Human Trafficking still works towards the coordination of activities, studies and evaluations on the crimes of abduction and trafficking in persons³³⁵. Representatives from 11 different government ministries, along with representatives from the AIHRC, Kabul municipality and two civil society organisations participate on the High Commission.
239. The following Afghan government ministries have responsibilities in regards to the prevention and protection of trafficking in persons:
- The Ministry of Interior is responsible for enforcing laws related to trafficking and sexual exploitation. It operates trafficking and smuggling units in each of the 34 provinces and in Kabul, with 16 officers in Kabul and two officers in each province.
 - The Ministry of Labor, Social Affairs, Martyrs and Disabled (MOLSAMD) provided registration, referral, and social services for trafficking victims, including those repatriated to Afghanistan from other countries
 - The Ministry of Foreign Affairs takes lead on all international trafficking cases.
 - The AIHRC Child Right's Unit assesses the situation on children rights, and monitors processes used to monitor child trafficking.
 - CPAN provides case management services, family tracing and reintegration for victims of trafficking.
 - The National Directorate of Security has an anti-trafficking in persons/smuggling unit³³⁶.
240. However, the 2018 US Trafficking In Persons (TIP) report observed that law enforcement and judicial officials continue to have limited understanding of trafficking, in part because the word for trafficking in Dari (one of the main Afghan languages) uses the same word for both human

³³⁴ Government of the Islamic Republic of Afghanistan *Law to Combat Crimes of Trafficking in Persons and Smuggling of Migrants*, Issued by the Ministry of Justice of Afghanistan, approved by the Afghan President 2017, Article 2.

³³⁵ Government of the Islamic Republic of Afghanistan *Law Combating Abduction and Human Trafficking* Article 4 and 5 (2008).

³³⁶ UNICEF *Child Protection in Emergences (CPIE) Afghanistan Draft Desk Review* (2012).

trafficking and human smuggling³³⁷. Official complicity remained a serious problem and political will to combat the crime is low, while victims of trafficking are routinely prosecuted and convicted as criminals for moral crimes, the government fails to hold the vast majority of traffickers criminally accountable for their offenses³³⁸.

241. A 2017 AFP article on *bacha bazi* stated that powerful police commanders — who should be the ones disciplining the perpetrators — are themselves kidnapping boys for sexual purposes:

‘That leaves no hope for families in a system with no specific law against bacha bazi, no mechanism for redress and apparently no official will to act against abusive policemen who are seen as the lesser of two evils in the fight against the Taliban’³³⁹.

Reports on child trafficking

242. The 2018 US TIP report lists Afghanistan as a source, transit and destination country for men, women and child victims of forced labour and sex trafficking³⁴⁰. Children are the majority of trafficking victims in Afghanistan, involving working in carpet making and brick factories, domestic servitude, commercial sexual exploitation, begging, transnational drug smuggling and assistant truck driving³⁴¹.
243. Numbers on child trafficking are difficult to estimate, due to limited data collection. The government does not compile victim identification, referral, and assistance statistics. The high commission reported identifying 476 potential trafficking victims in 2017³⁴². The 2015 CPAN record of child protection cases recorded 20 cases of trafficking in Afghanistan, all boys³⁴³.
244. Hagar Afghanistan published a study in 2013 on male child trafficking in Afghanistan. Out of 130 boys interviewed through selective sampling, one in ten were survivors of male child trafficking³⁴⁴. Boys aged 13 and younger were more likely to be trafficked for sexual exploitation and boys 14-18 were more likely to be trafficking for forced labour³⁴⁵.
245. AIHRC completed and published a national inquiry into the practice of bacha bazi in 2014. *Bacha Bazi* is the practice of local individuals keeping one or more boys typically between 10-18 years old for the purpose of sexual exploitation³⁴⁶. The report highlighted that *bacha bazi* is a form of trafficking in persons that impacts boys in Afghanistan between 13-18 years old³⁴⁷. The report stated

³³⁷ US Department of State *Trafficking in Persons report* (2018) pp. 64-67.

³³⁸ US Department of State *Trafficking in Persons report* (2018) pp. 64-67.

³³⁹ AFP *Behind the shame and silence* (8 January 2018) available at <https://correspondent.afp.com/behind-shame-and-silence> (Accessed December 2018).

³⁴⁰ US Department of State *Trafficking in Persons report* (2018) p. 66.

³⁴¹ US Department of State *Trafficking in Persons report* (2018) p. 66.

³⁴² US Department of State *Trafficking in Persons report* (2018) p. 65.

³⁴³ CPAN Personal Communication 30 August 2015.

³⁴⁴ Thorson, Jane E. *Forgotten No More: Male child trafficking in Afghanistan* (2013) p. 65 (hereafter *Forgotten No More*).

³⁴⁵ Thorson, Jane E. *Forgotten No More* (2013) p. 7.

³⁴⁶ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed December 2018).

³⁴⁷ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed December 2018).

that 89 per cent of the perpetrators interviewed said they had not been prosecuted³⁴⁸.

246. EASO stated in the 2017 COI report on Afghanistan:

‘There is a culture of silence and shame that prevents *bacha bazi* victims and their families from seeking assistance. Victims and their families reportedly face social isolation, particularly if the boy becomes well known in *bacha bazi* circles. Those who try to complain to authorities also face threats from perpetrators or are fearful due to the high status of perpetrators who are sometimes officials or police. Running away has reportedly resulted in beatings. Victims are frequently themselves punished, detained when seeking assistance, or revictimised.

Victims and family members have at times fled their homes to relocate and avoid threats from perpetrators³⁴⁹.

Patterns of child trafficking

247. Afghanistan is a transit, source and destination country for trafficking in persons³⁵⁰. However the US 2015TIP report says that internal trafficking is more prevalent than transnational trafficking³⁵¹. The 2013 Hagar Afghanistan report reported that male child trafficking for sexual exploitation was more likely to occur internally, while male child trafficking for labour exploitation was both internal and transnational across the Iran and Pakistan borders³⁵². According to both the 2013 Hagar Afghanistan report and the US 2015TIP report, boys from the north of Afghanistan (Badakhshan, Takhar, Baghlan, Kunduz and Balkh provinces) are at more risk for trafficking, along with those traveling unaccompanied.

248. The 2018 US TIP report states:

‘Afghan returnees from Pakistan and Iran and internally displaced Afghans are vulnerable to exploitation in sex trafficking and forced and bonded labor. Men, women, and children in Afghanistan often pay intermediaries to assist them in finding employment, primarily in Iran, Pakistan, India, Europe, or North America; some of these intermediaries force Afghans into labor or prostitution. Afghan women and girls are subjected to sex trafficking and domestic servitude primarily in Pakistan, Iran, and India, including through forced marriages in Iran and Pakistan. Afghan boys and men are subjected to forced labor and debt bondage in agriculture and construction, primarily in Iran, Pakistan, Greece, Turkey, and the Gulf states. Boys, especially those traveling unaccompanied, are particularly vulnerable to trafficking. Some Afghan boys are subjected to sex trafficking in Greece after paying high fees to be smuggled into the country. Reportedly, the Iranian government and the Islamic Revolutionary Guards Corps (IRGC) coerce male Afghan migrants, including boys as young as 12, to fight in Syria in IRGC-organized and commanded militias, by threatening them with arrest and deportation to Afghanistan³⁵³.

³⁴⁸ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed December 2018).

³⁴⁹ EASO COI Report *Afghanistan; Individuals targeting under societal and legal norms* (December 2017) p. 70.

³⁵⁰ US Department of State *Trafficking in Persons report* (2015) p. 64.

³⁵¹ US Department of State *Trafficking in Persons report* (2015) p. 64.

³⁵² Thorson, Jane E. *Forgotten No More* (2013)p. 28.

³⁵³ US Department of State *Trafficking in Persons report* (2018) p. 66.

249. The 2014 AIHRC inquiry on *bacha bazi* indicates that there are many child victims who have been sexually harassed and exploited for long periods of time. Interviews with 31 victims of *bacha bazi* in the report indicate that they are mostly coming from poor families³⁵⁴. The AIHRC report went on to say that:

‘Rich individuals keep one or more children as bodyguard, apprentice, servants at home, shop, bakery, workshop, hotels, and restaurants and in other paid jobs. In some parts the victims wear female clothes in order to dance in parties and wedding ceremonies. At the end, they are taken to private houses or hotels and raped; sometimes they are even gang raped. As sex slaves, these victims constantly encounter sexual exploitation or other forms of harassments for long period of time’³⁵⁵.

Identification and referral of child trafficking

250. According to the 2013 Hagar Afghanistan report on male child trafficking, CPAN is responsible to identify child trafficking in person cases, place survivors in safe places and begin the prosecution process³⁵⁶. The investigation of identified cases is the responsibility of the TIP unit with the Ministry of Interior (Mol), while responsibility for the prosecution is found with the National Directorate of Security (NDS) TIP unit and the final decision on punishment is made by the court within the Ministry of Justice³⁵⁷. In 2017 there were 33 convictions under the trafficking statute³⁵⁸. However, the US 2018 TIP report stated that official complicity in trafficking remained a serious problem, even indicating reports that some government and security officials engaged in the practice of *bacha bazi*, facilitated trafficking and raped sex trafficking victims³⁵⁹.
251. As of 2018, the government of Afghanistan still has not developed or employed a systematic procedure for identifying and referring victims to protective services³⁶⁰. Separate government ministries and departments, specifically Mol and CPAN, as well as IOM and AIHRC, keep records on numbers of victims of trafficking. However these records are not shared between government stakeholders and are not easily accessible by the public³⁶¹. Referrals of victims of trafficking are mainly facilitated by CPAN and AIHRC. Girl victims will be referred to one of the 29 women shelters; for boys, as of 2017, there is only one recovery centre designed for male child survivors of trafficking in Afghanistan, located in Kabul³⁶².

Preventing child trafficking

252. The High Commission on Combatting Abduction and Human Trafficking met three times in 2017 to coordinate prevention activities, and established 33 provincial anti-trafficking commissions. However only 16 were operational in 2017³⁶³.

³⁵⁴ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed December 2018).

³⁵⁵ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed December 2018).

³⁵⁶ Thorson, Jane E. *Forgotten No More* (2013) p. 51

³⁵⁷ Thorson, Jane E. *Forgotten No More* (2013) p. 51

³⁵⁸ US Department of State *Trafficking in Persons report* (2018) p. 64.

³⁵⁹ US Department of State *Trafficking in Persons report* (2018) p. 65.

³⁶⁰ US Department of State *Trafficking in Persons report* (2018) p. 65.

³⁶¹ Hagar International Personal Communication 5 September 2015.

³⁶² Hagar International Personal Communication 5 September 2015 and US Department of State *Trafficking in Persons report* (2018) p. 65.

³⁶³ US Department of State *Trafficking in Persons report* (2018) p. 66

7.3 Children in armed conflict

253. The 2017 UNAMA report on Civilian Casualties found that throughout 2017, conflict-related violence continued to kill and injure children. Whilst noting an overall decrease in the number of victims, children casualties accounted for 30 per cent of all civilian casualties. UNAMA recorded 3,179 child casualties (861 deaths and 2,318 injured), an overall 10 per cent decrease compared to 2016, with decreases in both fatalities and injuries. As in 2016, boys comprised 71 per cent of the casualties among children, and girls made up 29 per cent. UNAMA attributed 44 per cent of child casualties to Anti-Government Elements, responsible for 1,384 child casualties (330 deaths and 1,054 injured), a five per cent decrease compared to 2016. Pro-Government Forces caused 913 child casualties (313 deaths and 600 injured), responsible for 29 per cent of all child casualties, marking a 19 per cent decrease from the previous year³⁶⁴.
254. UNAMA reported that despite a decrease of 19 per cent compared with 2016, the leading cause of child casualties remained ground engagements between Anti-Government Elements and Pro-Government Forces, accounting for nearly half of the cases³⁶⁵.
255. The Afghan national policy states that 18 is the minimum age for enlistment in the Afghan National Security Forces (ANSF). In order to prevent the recruitment of children by the Afghan National Security Forces in 2015 the Afghan government issued a policy on Age Assessment in an attempt to minimize the recruitment of children within the armed forces in the country. The guidelines identifies five steps in which the age of a person if doubted should be determined including: (1) direct interviews with the volunteer, (2) interviews with family or community members, (3) cross checking of documentation and all available information, (4) documentation and (5) referral to services and reintegration³⁶⁶. However, insufficient age verification procedures, extremely low levels of birth registration, opportunities to manipulate age in national identity documents, and fast-tracked recruitment drives within the Afghan National Police have led to under-age recruitment³⁶⁷.
256. Boys in Afghanistan are recruited and used by armed forces and armed groups as instruments in the conflict³⁶⁸. Throughout 2017, UNAMA continued to receive reports of recruitment and use of children by Anti-Government Elements and Afghan national security forces³⁶⁹. It received 30 reports of the recruitment and use of children involving 247 boys; it verified the recruitment and use of 19 boys (12 by ISIL-KP, 6 by the Taliban and 1 by the Afghan local police). In addition, UNAMA received three reports of abductions by the Taliban involving at least four boys and two unverified incidents

³⁶⁴ UNAMA/OHCHR *Afghanistan Protection of Civilians in Armed Conflict Annual Report 2017* (2018) p. 11 available at https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_annual_report_2017_final_6_march.pdf (Accessed December 2018).

³⁶⁵ UNAMA/OHCHR *Afghanistan Protection of Civilians in Armed Conflict Annual Report 2017* (2018) p. 11 available at https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_annual_report_2017_final_6_march.pdf (Accessed December 2018).

³⁶⁶ *Afghanistan National Security Forces Age Assessment Guidelines to Prevent and Respond to Child Recruitment in the Afghanistan National Security Forces (ANSF)* (2015) available at https://unama.unmissions.org/sites/default/files/afghanistan_age_assessment_guidelines_eng_0.pdf (Accessed December 2018).

³⁶⁷ UNICEF *Children and Women in Afghanistan* (November 2014) p. 29.

³⁶⁸ UNICEF *Children and Women in Afghanistan* (November 2014) p. 29.

³⁶⁹ UNAMA/OHCHR *Afghanistan Protection of Civilians in Armed Conflict Annual Report 2017* (2018), p. 13 available at https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_annual_report_2017_final_6_march.pdf (Accessed December 2018).

of sexual violence against children that remain under investigation³⁷⁰.

257. The 2017 UNICEF Afghanistan Annual Report mentions that during first nine months of 2017 some 437 individual child recruitment cases were reported. UNICEF Afghanistan set up child protection units in ANSF in all 34 provinces of Afghanistan to prevent the recruitment of children. In 2017 11 more units were established as part of the national police which prevented the recruitment of at least 1411 children into armed groups³⁷¹.
258. Armed opposition groups also recruit and use under-18 year olds, reportedly in various capacities which can include suicide attacks, transportation of weapons and explosive materials, manufacturing and planting of IEDs, tea-making, domestic duties, and spying³⁷². There are no legal obligations for armed opposition groups to protect children from recruitment as insurgents and informants. None of the guidelines issued by the Taliban in the past, addresses the recruitment of children by the insurgents group. Human rights groups raises concerns over the recruitment of the children by Taliban and other insurgent groups as fighters and suicide bombers³⁷³.
259. Local officials in the North of Afghanistan reported in 2017 that some 300 children under 18 are trained by the Islamic States (Daesh) in Jawzjan province North of Afghanistan³⁷⁴. The province has been long contested between the Taliban, government and Daesh.
260. The AIHRC survey with 5700 children in 28 provinces of Afghanistan between 2015-2016 shows that 57 of the interviewees were recruited by the military or militants. From the 57 interviewed 33 per cent joined the armed groups under family pressure, 17% because of economic situation, 14 per cent because they needed a job which could be relevant to economic situation of the individual, 2 per cent because of religious beliefs and 1 per cent under pressure from the armed groups³⁷⁵.
261. Attacks against schools and hospitals and their personnel violate the right of children to access quality education and health services. The UN Secretary-General reported in his report on children and armed conflict in 2017 68 verified incidents of attacks against schools and education personnel: 'Armed groups perpetrated 55 of the incidents (Taliban, 41; ISIL-KP, 7; undetermined armed groups, 7). Furthermore, three such incidents were attributed to pro-government militias, two to Afghan National Defence and Security Forces, two to international military forces and two to cross-border shelling out of Pakistan.'

³⁷⁰ UN General Assembly Security Council *Report of the Secretary-General: The situation in Afghanistan and its implications for international peace and security A/72/651-S/2017/1056* (2017) p 8 <https://unama.unmissions.org/sites/default/files/sg-report-on-afghanistan-15-december-2017.pdf> (Accessed December 2018).

³⁷¹ UNICEF *Children and Women in Afghanistan* (February 2018) p. 22.

³⁷² UNICEF *Children and Women in Afghanistan* (November 2014) p. 29 and UNAMA/OHCHR Afghanistan *Protection of Civilians in Armed Conflict Annual Report 2017* (2018), p. 13 available at https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_annual_report_2017_final_6_march.pdf (Accessed December 2018).

³⁷³ Interview with Child Rights Activist on the context of this report. 21 January 2018, Kabul- Afghanistan

³⁷⁴ Ariana News '300 Afghan Children Under IS Military Training in Northern Afghanistan' (6 December 2017) available at <https://ariananews.af/300-afghan-children-under-is-military-training-in-northern-afghanistan/> (Accessed December 2018).

³⁷⁵ AIHRC *Condition of Children in Afghanistan* (2015-2016) (Dari) available at <https://www.aihrc.org.af/media/files/Research%20Reports/Dari/%20%20%201395.pdf> (Accessed December 2018).



And:

'The United Nations verified 16 incidents of the military use of schools and hospitals: 10 by the Afghan National Defence and Security Forces, 4 by the Taliban and 2 by ISIL-KP'³⁷⁶.

(see 5.3 Education)

262. In June 2017, Special Inspector General for Afghanistan Reconstruction (SIGAR) reported that between 2010- 2017 some 75 cases of gross human rights violations including sexual abuse of children were committed by the members of the Afghanistan National Security Forces including the Afghan Local Police³⁷⁷.

263. The Child Rights Officer of the Afghanistan Independent Human Rights Commission (AIHRC) said in 2018:

'Unfortunately many cases of child abuse by the Afghan security forces or others go unpunished in Afghanistan. Sometimes families do not report such incidents due to social stigma against the victim specially if the victim is a girl. We do believe that violence against children and specially sexual violence against children are highly under reported due to different reasons including some of those violence are happening within the family or in mosques'³⁷⁸.

³⁷⁶ UN General Assembly, *Report of the Secretary-General on children and armed conflict (CA/72/865-S/2018/465)* (16 May 2018) p. 6.

³⁷⁷ Special Inspector General for Afghanistan Reconstruction *Child Sexual Assault in Afghanistan; Implementation of the Leahy Laws and Reports of Assault by Afghan Security Forces* (18 January 2018) <https://www.sigar.mil/pdf/inspections/SIGAR%2017-47-IP.pdf> p. 18 (Accessed December 2018).

³⁷⁸ Interview with Afghanistan Independent Human Rights Commission Child Rights Officials (17 January 2018) Kabul.

7.4 Female Genital Mutilation

264. FGM is not a culturally accepted practice in Afghanistan and there are no reports of it being practiced. The law does not specifically address FGM³⁷⁹.

7.5 Underage and forced child marriage

Legislation

265. Article 70 of the civil code regulates the legal age of marriage. According to this article, the legal marriage ages for men and women are 18 and 16 respectively.³⁸⁰ The legal marriage age does not match the age of majority or full legal capacity, which is stipulated in article 39 of the civil code to be 18 for both men and women. Therefore, men reaching the age of 18 become marriageable and acquire legal capacity at the same time. Women, on the other hand, are already marriageable at 16, but acquire full legal capacity only at 18, and therefore, are still lacking full legal capacity³⁸¹.
266. Afghanistan signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1980 and ratified it in 2003³⁸². CEDAW mentions the right to protection from child marriage in article 16, which states:
- ‘The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage’³⁸³.
267. The Shia Personal Status Law is also recognizing the age of marriage for females 16 and males 18 years old³⁸⁴, but it also refers to marriage as permissible ‘prior to the mentioned ages’ by a guardian before the court³⁸⁵. Although the age of marriage is identified by law, child marriage and marriage under the age of 16 is common in Afghanistan and the law has failed to penalize the ones who violate the law and marry their children or children under their custody below the legal age of marriage.
268. Afghanistan is a member of the Organization of Islamic Cooperation (OIC), which in 2008 adopted the Plan of Action for the Advancement of Women³⁸⁶. The Plan of Action stresses the importance of special legislation to ensure effective participation by women in all fields of life and it calls for the elimination of all forms of discrimination against women, including preventing early and forced marriages by all possible means³⁸⁷.

³⁷⁹ US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed December 2018) p. 42.

³⁸⁰ The proposed revised Afghan Civil code states that girls and boys are legally able to marry at age 18.

³⁸¹ Rastin-Tehrani, Kabeh and Nadjma Yassari *Max Planck Manual on Family Law in Afghanistan: Amended 2nd edition* (July 2012) p. 33.

³⁸² United Nations *Convention on the elimination of all forms of discrimination against women*. available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (Accessed December 2018).

³⁸³ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 134.

³⁸⁴ Afghanistan Shia Personal Status Law 2009, Chapter four, article 94.

³⁸⁵ UNICEF *Children and Women in Afghanistan* (November 2014) pp. 38-39.

³⁸⁶ Human Rights Watch *Ending Child Marriage and domestic violence: Afghanistan Brochure* (2013) p. 9.

³⁸⁷ Human Rights Watch *Ending Child Marriage and domestic violence: Afghanistan Brochure* (2013) p. 9.

269. In April 2017 the Afghan government launched a National Action Plan to Eliminate Early and Child Marriage. The Action Plan seeks to develop and support initiatives to prevent and end child marriage, and improve the implementation of laws and provision of services to people affected by child marriage³⁸⁸.

270. Child marriage is widely prevalent in Afghanistan, but there are no known cases where parents have been prosecuted for marrying off their under-age daughters³⁸⁹.

Age of sexual consent

271. There is no law specifying age of consent since all sexual activity outside of marriage is illegal³⁹⁰.

Reports of forced and underage child marriage

272. Data on child marriage in Afghanistan are scarce and controversial because of the absence of reliable civil registration data, specifically since only 29.5 per cent of children under-five are registered³⁹¹ (see 2.8 Birth registration). Also, registration of marriage is exceedingly rare, with few of those marrying under 18 recently reporting having registered with the government³⁹². However, according to a joint 2010 UNAMA/ OHCHR report on harmful traditional practices, underage marriage is 'common across Afghanistan, in all regions and all ethnic groups'³⁹³. Child marriage in Afghanistan is so common that 35 percent of all girls are married before the age of 18³⁹⁴.

273. An investigation conducted by the Institute for War and Peace Reporting in 2016 (IWPR) revealed that 'child marriage remains rampant in the north of Afghanistan, with the local authorities warning that they are powerless to combat the practice'. According to the IWPR's investigation fathers and tribal elders in Balkh, Faryab, and Jowzjan provinces all said that 'most girls in their communities were married off between the ages of nine and 14'³⁹⁵.

274. According to a joint 2018 study by UNICEF and the Ministry of Labour, Social Affairs, Martyrs and Disabled in both urban and rural areas of five of the 34 Afghan provinces, 42 per cent of families have at least one member who was married before the age of 18, although the figure varies widely from region to region³⁹⁶.

³⁸⁸ <https://www.girlsnotbrides.org/afghanistan-launches-national-action-plan-end-child-marriage/> (Accessed December 2018).

³⁸⁹ UNICEF *Children and Women in Afghanistan* (November 2014) pp. 38-39.

³⁹⁰ Government of the Islamic Republic of Afghanistan *Afghan Penal Code*. Article 427 and 29 (1976).

³⁹¹ Central Statistics Organization *Afghanistan Living Conditions Survey 2016-2017* p. 213.

³⁹² Ministry of Labour, Social Affairs, Martyrs and Disabled and UNICEF Afghanistan *Child marriage in Afghanistan* Kabul (July 2018), p. 23.

³⁹³ UNFPA Afghanistan *State of Youth Report 2014* (2014) p. 107.

³⁹⁴ UNICEF *State of the World's Children 2017*.

³⁹⁵ Babak Qayum 'Child Marriage Rife in Northern Afghanistan' IWPR 7 November 2016 <https://reliefweb.int/report/afghanistan/child-marriage-rife-northern-afghanistan> (Accessed December 2018).

³⁹⁶ Ministry of Labour, Social Affairs, Martyrs and Disabled and UNICEF Afghanistan *Child marriage in Afghanistan* Kabul (July 2018) p. 11.

275. According to local NGOs, some girls as young as six or seven were promised in marriage, with the understanding the actual marriage would be delayed until the child reached puberty³⁹⁷. Reports indicated, however, this delay was rarely observed and young girls were sexually violated by the groom or by older men in the family, particularly if the groom was also a child³⁹⁸.
276. One of the major driver for child marriage is economic reasons. The joint study from 2018 states:
 ‘Economics is a critical element of marriage in Afghanistan, including child marriage. Marriage is in many ways a transaction shaped by economic circumstances, ranging from debt and a lack of resources to general economic situation, and it is an economic relationship in itself’³⁹⁹.
277. The 2014 UNFPA report on the state of Afghan youth also noted that child marriage is influenced by the financial pressures within families. Poor households may marry off their daughters to settle debts, including those originating from the opium trade, which has led to the coining of the terms “loan bride” and “opium child bride”⁴⁰⁰.
278. Another reason for the child marriage is the harmful tradition of *Badal* in Afghanistan. *Badal* is a tradition of exchanging the girls between two families for marriage. Parents exchange their daughters for marriage⁴⁰¹. These exchanges occur during the daughter’s childhood. Parents thus commit two types of violation of their child’s rights: they violate their child’s right to marry or not to marry as well as their right to dignity⁴⁰².
279. *Baad* is another tradition that still exists in the country, which leads to the practice of child marriage⁴⁰³. The practical way of carrying out this custom is that a girl or a woman is given for marriage to a victim’s family by the aggressor family in order to settle the dispute or strife between the two ethnic groups, clans, tribes, or even two families⁴⁰⁴. A 2014 study by Civil and Liberal Initiative for Peace (CLIP) on the practice of baad in Afghanistan indicated that since 2001, the custom was reduced amongst the 10 districts survey in Panjshir, Parwan and Kabul⁴⁰⁵. The CLIP 2014 study theorized that the reduction in reported numbers was in part due to the sensitivity and negative image of *baad*, therefore communities were not reporting cases, and secondly noted that programs for raising awareness were having a positive impact on preventing the practice⁴⁰⁶.

³⁹⁷ US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed December 2018) p. 48.

³⁹⁸ US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed December 2018) p. 49.

³⁹⁹ Ministry of Labour, Social Affairs, Martyrs and Disabled and UNICEF Afghanistan *Child marriage in Afghanistan* Kabul (July 2018) p. 24.

⁴⁰⁰ UNFPA *Afghanistan State of Youth Report 2014* (2014) p. 110.

⁴⁰¹ Women and Children Legal Research Foundation (WCLRF) *Early Marriage in Afghanistan, Women and Children Legal Research foundation* (2008) p. 18 (hereafter *WCLRF Early marriage in Afghanistan*).

⁴⁰² WCLRF *Early marriage in Afghanistan* (2008) p. 16.

⁴⁰³ WCLRF *Early marriage in Afghanistan* (2008) p. 17.

⁴⁰⁴ WCLRF *Early marriage in Afghanistan* (2008) p. 17.

⁴⁰⁵ Civil and Liberal Initiative for Peace (CLIP) *Assessment of Practice of BAD and its negative impact on Afghanistan* (August 2014) available at <http://openasia.org/en/g/wp-content/uploads/2015/01/Research-Draft-21-Oct-2014-3-1.pdf> (Accessed December 2018).

⁴⁰⁶ Civil and Liberal Initiative for Peace (CLIP) *Assessment of Practice of BAD and its negative impact on Afghanistan* (August 2014) available at <http://openasia.org/en/g/wp-content/uploads/2015/01/Research-Draft-21-Oct-2014-3-1.pdf> (Accessed December 2018).

Impact of child marriage

280. Child marriage brings with it significant risks of maternal morbidity and mortality, in Afghanistan one in five deaths of girls aged 15-19 were pregnancy related according to a study published in 2010⁴⁰⁷. Afghan girls who marry early are at greater risk of giving birth at younger ages and suffering a terrible childbirth injury, obstetric fistula, which leaves girls in constant pain, vulnerable to infection, incontinent and often shunned by husbands, families and communities⁴⁰⁸.
281. The 2018 study confirms this:
- ‘..the qualitative research frequently highlighted the health impacts upon mothers and children, with multiple reports of pregnancy complications, infant mortality, and chronic illness resulting from early pregnancies’⁴⁰⁹.

7.6 Local harmful traditional practices

Honour killings and other harmful practice

282. The 2013 AIHRC national inquiry report on rape and honour killing reported 406 cases of rape and/or honour killings with 8.4 per cent involving victims 18 years old or younger⁴¹⁰. The 2018 AIHRC survey on the harassment of women and children in Afghanistan showed that of the 1,530 women interviewed, 1307 women confirmed that they were victims of one or more type of harassment. Women and girls who have been harassed by men confirmed that they have been repeatedly the victim of one or more types of harassment⁴¹¹.
283. *Badal* is a tradition of exchanging the girls between two families for marriage. *Baad* is the practice of giving a girl to another family to settle a dispute. In both cases the girls’ human rights are being violated (see 3.3 Rights to life and development and 7.5 Underage and forced marriage).
284. *Bacha Bazi* is the harmful tradition of a local elder man, of position and power, keeping one or more boys typically between 10-18 years old, for the purpose of sexual exploitation. The AIHRC completed a national inquiry into the causes and impact of bacha bazi in 2014⁴¹². The findings of the AIHRC national inquiry highlighted that perpetrators were between the ages of 31-50 years old and victims were below 18 years old⁴¹³. Based on the national inquiry, AIHRC recommended additional legislation criminalizing the *bacha bazi*, providing mental health recovery services to child victims

⁴⁰⁷ Ministry of Public Health *Afghanistan Mortality Survey: Key findings* (2010) p. 14 available at <https://www.usaid.gov/sites/default/files/documents/1871/Afghanistan%20Mortality%20Survey%20Key%20Findings.pdf> (Accessed December 2018).

⁴⁰⁸ UNFPA *Marrying Too Young: End child marriage* (2012) p. 11.

⁴⁰⁹ Ministry of Labour, Social Affairs, Martyrs and Disabled and UNICEF Afghanistan *Child marriage in Afghanistan* Kabul (July 2018), p. 26.

⁴¹⁰ AIHRC *National Inquiry report on Factors and causes of Rape and Honour Killing in Afghanistan* available at http://www.aihrc.org.af/home/daily_report/3316 (Accessed December 2018).

⁴¹¹ AIHRC *Summary report on Harassment of Women and Children in Afghanistan* Kabul March 2018 p. 1.

⁴¹² AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed December 2018).

⁴¹³ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed December 2018).



and fighting a culture of impunity in regards to *bacha bazi*⁴¹⁴. The new Penal Code 2017 criminalises and prohibits the practice of *Bacha Bazi* (see 3.3 *Right to life and development* and 7.2 *Victims of child trafficking*).

7.7. Domestic violence

Legislation and policy to protect children

285. Article 7 in the Afghanistan Constitution obliges the government to observe the international instruments and commitments, in addition to the CRC, which it has signed or ratified⁴¹⁵. These commitments include the following international conventions and covenants supporting women's and girl's rights:

- Convention on Elimination of all Forms of Discriminations against Women.
- Declaration on Elimination of Violence against Women.
- Covenant on Civil and Political Rights.
- Covenant on Economic, Social and Cultural Rights⁴¹⁶.

⁴¹⁴ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed December 2018).

⁴¹⁵ Government of Afghanistan *Constitution of Afghanistan = Assasi Qanun* Article 7 (1964) (2005) available at Digitized Afghanistan Materials in English from the Arthur Paul Afghanistan Collection Paper 3, <http://digitalcommons.unl.edu/afghanenglish/3> (Accessed December 2018). AIHRC *Children's situation summary report* (December 2013) available at http://www.aihrc.org.af/home/research_report/2115 (Accessed December 2018).

⁴¹⁶ AIHRC *Violence against Women in Afghanistan* (1392/2012) available at <http://www.aihrc.org.af/media/files/PDF/Violence%20against%20women%20Eng.pdf> (Accessed December 2018).

286. With respect to the physical punishment of a child, article 7 of the Afghan Juvenile Code (2005) clearly points that contemptuous and harsh punishment of the child, even if for correction and rehabilitation purposes, is not allowed⁴¹⁷. Laws related to sexual exploitation are not fully developed and do not cover marital rape⁴¹⁸.
287. Corporal punishment is prohibited in schools, but not in the homes, penal systems and institutions⁴¹⁹.
288. The Law on the Elimination of Violence against Women (2009) is not interpreted as prohibiting corporal punishment⁴²⁰.
289. The Juvenile Code (2005) prohibits 'contemptuous and harsh punishment even if for correction and rehabilitation purposes'⁴²¹.

Domestic violence against children

290. The family is the first layer of protection for children. Yet domestic violence against children is common in Afghanistan. A 2008 Afghan Research and Evaluation Unit (AREU) study found some form of domestic violence in all 61 homes it surveyed⁴²². The study went on to explain:
- 'Domestic violence in the form of violent punishment is more often used to instil fear. Parents and caregivers feel that children are exposed to greater risks of 'immoral' behaviors. Therefore, children who are fearful of their caregivers are less likely to transgress strict social norms'⁴²³.
291. A survey conducted by AIHRC 2015-2016 found that 38 per cent of the total interviewees identified their home as a place where they experienced violence and 11 per cent identified the school as a place where they faced violence⁴²⁴.
292. Sexual abuse of children and violence towards young brides is a major child rights concern across the country⁴²⁵. CPAN reported 108 cases of rape and sexual abuse against children in 2012, noting that in 'most cases' the perpetrator was a relative or a person known to the child⁴²⁶. Of these cases, 52 per cent involved girls and 48 per cent boys⁴²⁷.

⁴¹⁷ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code* Article 7(2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed December 2018).

⁴¹⁸ Human Rights Watch *Ending Child Marriage and domestic violence: Afghanistan Brochure* (2013) p. 9.

⁴¹⁹ SAIEVAC *Agenda and Action: Ending Corporal Punishment in South Asia* (September 2011).

⁴²⁰ UNICEF *Child Protection in Emergences (CPIE) Afghanistan Draft Desk Review* (2012).

⁴²¹ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code* Article 7 (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed December 2018).

⁴²² Smith, Deborah J. *Fear, Love and Discipline: Everyday Violence to Children in Afghan Families* Afghan Research and Evaluation Unit (AREU) February 2008.

⁴²³ Smith, Deborah J. *Fear, Love and Discipline: Everyday Violence to Children in Afghan Families* Afghan Research and Evaluation Unit (AREU) February 2008.

⁴²⁴ AIHRC *Condition of Children in Afghanistan* (2015-2016) (Dari) p. 23. <https://www.aihrc.org.af/media/files/Research%20Reports/Dari/%20%20%201395.pdf> (Accessed December 2018).

⁴²⁵ UNICEF *Children and Women in Afghanistan* (November 2014) p. 41.

⁴²⁶ Sayed Abdul Shami Hashemi *Provincial Child Protection Action Network: CPAN Report* (2012) MoLSAMD.

⁴²⁷ Sayed Abdul Shami Hashemi *Provincial Child Protection Action Network: CPAN Report* (2012) MoLSAMD.

293. In 2012 74.4 per cent of children in different age groups experience either psychological and/or physical abuse as a way to discipline them⁴²⁸. 38 per cent of the children faced severe physical punishment⁴²⁹. The UNICEF 2014 study on violence against children reported that 63 per cent of the children between 2 to 4 years old, 78 per cent between 5 to 9 years old and 78 per cent between 10 to 14 years old experience either psychological and/or physical punishment as discipline⁴³⁰.
294. The 2011 Afghan MICS survey reported that overall, 92 per cent of the women in Afghanistan feel that their husband has a right to hit or beat them for at least one of a variety of reasons, including neglecting the children, demonstrating their autonomy such as going out without telling their husbands, and/or arguing with their husbands⁴³¹. Almost two thirds of women accept their husband's violence for the reason of wearing inappropriate clothing, and almost half of the women believe that their husbands have a right to hit or beat them if they refuse to have sex with their husband or if they burn the food⁴³².
295. While only 41 per cent of the household members believe that in order to raise their children properly, they need to physically punish them, in practice 69 per cent of the household members used physical punishment to discipline their children⁴³³.
296. The 2017 survey of Save the Children on violence and harmful practices against children in Afghanistan showed that children in Afghanistan experience high levels of all types of violence. Almost half of the children in the survey experienced at least a form of psychological violence at home, including shouting, insults, blaming for parent's misfortune, cursing, public embarrassment, threats of abandonment, and locking out of the home. Approximately 30 per cent of children experienced emotional and physical neglect. Physical violence remains high where the worst forms of violence include kicking (40 per cent); hitting with objects (approximately 40 per cent); beating (34 per cent); choking to be prevented from breathing (21 per cent); burning or branding (15 per cent). 15 per cent of children were also given drugs⁴³⁴.

7.8 Child labour and other forms of exploitation

Legislation and policy to protect children

297. According to article 49 of the Afghan Constitution, forced labour of children is not allowed⁴³⁵.

⁴²⁸ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 130.

⁴²⁹ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 130.

⁴³⁰ UNICEF *Hidden in plain sight: A statistical analysis of violence Against Children* (2014) p. 99.

⁴³¹ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 140.

⁴³² Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 140.

⁴³³ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 130.

⁴³⁴ Save the Children *Knowledge, Attitudes and Practices on Violence and Harmful Practices against Children in Afghanistan; a baseline Study* (2017).

⁴³⁵ Government of Afghanistan *Constitution of Afghanistan = Assasi Qanun* Article 7 (1964) (2005) available at Digitized Afghanistan Materials in English from the Arthur Paul Afghanistan Collection Paper 3, <http://digitalcommons.unl.edu/afghanenglish/3> (Accessed December 2018).

298. Chapter 11 of the Labour Code of Afghanistan prohibits women and children to be employed in work that are physically arduous or harmful to health or carried out in underground sites⁴³⁶.
299. Based on the Afghan law, the legal age for work in Afghanistan is 15 years⁴³⁷. Children between the ages of 15-17 are allowed to work only if the work is not harmful to them, requires less than 35 hours a week, and represents a form of vocational training. Under the law, children 14 and younger are not allowed to work.
300. The law prohibits the employment of children in work likely to threaten their health or cause disability and the labour ministry has released a list of 'hazardous occupations' forbidden for children, including mining, begging, and garbage collection; work in blast furnaces, waste-processing plants, and large slaughterhouses; work with hospital waste; drug-related work; security guard services; and work related to war⁴³⁸.
301. The Government ratified the Minimum Age Convention (No. 138) establishing 14 years as the minimum age of entry into employment and the Worst Forms of Child Labour Convention (No. 182) prohibiting children below 18 years from entering into any kind of worst form of child labour in 2010⁴³⁹.
302. The following national policies and strategies have been adopted by the country in dealing with problems faced by children including child labour:
- **The National Strategy for Street Working Children:** Its purpose is to guide and inform the Government, specifically the Ministry of Social, Martyrs and Disabled Affairs (MoLSAMD) and other concerned Ministries, child-focused NGOs and UN agencies on providing effective and sustainable interventions to street working children and their families in order to both prevent children from working in the streets and to reduce the current number of street working children by providing adequate family and community-based support.
 - **The National Strategy for Children at Risk:** The plan proposes a comprehensive child protection and family support system based on the existing network of facilities and services which is affordable and sustainable⁴⁴⁰.
 - **The Afghan National Labour Policy:** The policy identifies working children as a vulnerable population that should be brought into the fold of the education system and provided with food, stipend, health and shelter homes should be made conditional to ensure their continuous attendance and prevent dropouts⁴⁴¹. The International Labour Organization is working with the MoSALMD to create a Child Labour Policy Framework for Afghanistan, a policy which will identify working children as vulnerable population and will identify and prevent children from working in hazardous industries or working environment.

⁴³⁶ Government of the Islamic Republic of Afghanistan *Labour Code* available at <http://www.ilo.org/dyn/natlex/docs/MONO-GRAPH/78309/83636/F774573068/AFG78309.pdf> (Accessed December 2018).

⁴³⁷ US Department of State *Findings on the Worst Forms of Child Labour* (2013) available at <https://www.dol.gov/ilab/reports/child-labor/findings/2013TDA/afghanistan.pdf> (Accessed December 2018).

⁴³⁸ US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed December 2018) p. 54.

⁴³⁹ MoLSAMD *National Labour Policy* (2012) p. 25.

⁴⁴⁰ MoLSAMD *National Strategy for Children at Risk* (2004) available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/AF/AFG_Afghanistan_National_Strategy_for_Children_at-risk.pdf (Accessed December 2018).

⁴⁴¹ MoLSAMD *National Labour Policy* (2012) p. 27.

303. The 2017 US Human Rights report states that the Afghan government lacked a specific policy on implementing the law's provisions on child labour⁴⁴². The report went on to say:

'Poor institutional capacity was a serious impediment to effective enforcement of the labor law. Deficiencies included inadequate resources, inspections, remediation, and penalties for violations, and the government made minimal efforts to prevent child labor or remove children from exploitative labor conditions'⁴⁴³.

Reports on child labour and slavery

304. A 2014 report by Risk Analysis Firm Maplecroft identified Afghanistan as one of the 10 places where child labour is most prevalent; the other nine countries were Eritrea, Somalia, Democratic Republic of Congo, Myanmar, Sudan, Pakistan, Zimbabwe, Yemen, and Burundi⁴⁴⁴.

305. Child labour is a systemic, countrywide problem according to the 2014 UNICEF situational analysis. The 2010-2011 Afghan MICS reported the total prevalence of child labour among children ages 5-14 years at 25 per cent⁴⁴⁵. 27 per cent of children aged 5 to 11 years and 22 per cent aged 12 to 14 years were engaged in child labour activities⁴⁴⁶. Boys appear more involved than girls (28 per cent and 23 per cent respectively), and almost twice as many children in rural areas (28 per cent) as in urban locations (15 per cent) are involved in child labour⁴⁴⁷.

306. In 2014, according to labour ministry estimates, 1.9 million children ages six to 17 years worked, 1.2 million children in the formal sector and 700,000 in the informal sector⁴⁴⁸. The ministry also estimated three million children were 'at risk,' since they did not attend school and often faced exploitation⁴⁴⁹.

307. A Human Rights Watch report in 2016 on child labour states:

'At least a quarter of the Afghan children between ages 5 and 14 work for a living or to help their families. Many are employed in jobs that can result in illness, injury, or even death due to hazardous working conditions and poor enforcement of safety and health standards'⁴⁵⁰.

⁴⁴² US Department of State *Country Reports on Human Rights Practices for 2017: Afghanistan* (2017) available at <https://www.state.gov/documents/organization/277519.pdf> (Accessed December 2018).

⁴⁴³ US Department of State *Country Reports on Human Rights Practices for 2017: Afghanistan* (2017) available at <https://www.state.gov/documents/organization/277519.pdf> (Accessed December 2018).

⁴⁴⁴ Verisk Maplecroft. *Child Labour Index 2014* (2014) available at <https://www.maplecroft.com/> (Accessed December 2018).

⁴⁴⁵ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 127.

⁴⁴⁶ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 127.

⁴⁴⁷ UNICEF *Children and Women in Afghanistan* (November 2014) p. 42.

⁴⁴⁸ US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed December 2018) p. 55.

⁴⁴⁹ US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed December 2018) p. 55.

⁴⁵⁰ Human Rights Watch "They Bear All the Pain" Hazardous Child Labor in Afghanistan (2016) available at <https://www.hrw.org/report/2016/07/14/they-bear-all-pain/hazardous-child-labor-afghanistan> (Accessed December 2018).

308. The AIHRC conducted a survey in year 2015-2016 on children and found that 51 per cent of the total respondents are working as child labourer from 2-12 hours of working during two to seven days a week⁴⁵¹. Some children were also working in night shifts.
309. The 2014 US Human Rights Report stated:
- ‘Child labourers in Afghanistan worked as domestic servants, street vendors, peddlers, and shopkeepers, as well as in carpet weaving, brick making, the coal industry, and poppy harvesting. Children were also heavily engaged in the worst forms of child labour in agriculture, mining (especially family-owned gem mines), commercial sexual exploitation, transnational drug smuggling, and organized begging rings’⁴⁵².
310. The system of bonded labour is prevalent not only in the traditional agriculture sector but also in informal economic activities such as brick kilns, carpets, mining-stone crushing etc⁴⁵³. In many instances, children below 14 years of age are found to be working as bonded labour especially in the brick kiln sector⁴⁵⁴. Migrants, women, children, and minorities are particularly vulnerable to bonded labour in Afghanistan⁴⁵⁵.
311. A 2011 survey by the International Labour Organization (ILO) found that 47 per cent of the labour force in the brick kiln sector was under the age of 14 years⁴⁵⁶.
312. A 2015 study by the International Labour Organization and UNICEF into Brick Kilns in two provinces show that the labour division varies from place to place for children. The youngest children (approximately aged 4-7 years) mostly take care of the preliminary phases of the brick-making process. In Surkh Rod, Nangarhar, these activities included directing water through small channels to the area where the dirt is turned into wet clay. Typically, 80-100m-deep wells provide water to the kilns using electric pumps. The water is brought to the surface and stored in a small pool, from where it is directed to the different work areas through narrow channels. Once the water has been delivered to the work area, younger children must then roll the clay into oblong balls before pressing the clay into a brick mould. The moulded bricks are then placed to dry in the sun. Older children (7-11 years) tend to be involved in more physically demanding activities such as loading the bricks onto carts and wheelbarrows⁴⁵⁷.
313. According to the country director of the International Labour Organization the bad economic situation, migration and armed conflict and loss of livelihood or the breadwinner of the family has unfortunately resulted in children working at a much younger age. Many of them work in a hazardous environment which is forbidden by law and International Labour Organization’s

⁴⁵¹ Interview with Child Rights Officer AIHRC 17 January 2018 Kabul- Afghanistan.

⁴⁵² US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed December 2018) p. 55.

⁴⁵³ MoLSAMD *National Labour Policy* (2012) p. 27.

⁴⁵⁴ MoLSAMD *National Labour Policy* (2012) p. 27.

⁴⁵⁵ MoLSAMD *National Labour Policy* (2012) p. 27.

⁴⁵⁶ International Labour Organization *Child & bonded labour in Afghanistan’s brick kilns. New Survey highlights obstacles to ending practice* ILO Press release (February 7, 2012) http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_172721/lang-en/index.htm (Accessed December 2018).

⁴⁵⁷ UNICEF and ILO *Breaking the Mould Occupational Safety Hazards Faced by Children Working in Brick Kilns in Afghanistan* (2015) available at <http://www.ilo.org/public/libdoc/ilo/2015/487460.pdf> (Accessed December 2018).

convention No 182 and Worst Form of Child Labour Convention No. 138 on Minimum Age of Employment. Meanwhile, in donor conferences the Afghan government was criticized for not doing enough to protect children against hazardous and dangerous working environments and some countries have banned carpet import from Afghanistan due to the fact that most of the carpet weavers are young children. Children in Afghanistan, contrary to the law, are working as young as five or six years old including in Brick Kilns, ice factories, carpet weaving, mines, military and armed groups or other places where there is a danger to child's physical and mental wellbeing⁴⁵⁸.

Impact on children's lives

314. The 2013 AIHRC report on the Afghan child states that child labour is mentally, physically, socially or morally dangerous and harmful to children, and interferes with their education⁴⁵⁹. The report also states that:

‘Most of these children are obliged to work late at night on the streets. They usually vendor, clean the cars or work as porters which endanger their security and health conditions’⁴⁶⁰.

315. The 2014 US Human rights report observed that Afghan children faced numerous health and safety risks at work, and there were reports children were exposed to sexual abuse by adult workers, as well as exposure to landmines⁴⁶¹.

7.9 Children living and/or working in street situations

Protection services for children living and/or working in street situations

316. The 2004 National Strategy for Children at Risk includes a focus on street working children⁴⁶².
317. The Social Protection Strategy for 2008-2013, a component of the Afghanistan National Development Strategy (ANDS) included specific provisions for establishing evening classes and skill development training for street working children by 2010⁴⁶³. Actual implementation and impact of the specific provisions are not known.
318. The 2011-2014 National Strategy for Street Working Children was created to guide and inform the Afghan government, MoLSAMD, child focused NGOs and UN agencies in providing effective and sustainable interventions to street working children and families to reduce the number of street working children in the future⁴⁶⁴. The strategy has faced challenges to its implementation due to lack

⁴⁵⁸ Interview with the Country Director of the International Labour Organization Afghanistan, 22 January 2018.

⁴⁵⁹ AIHRC *Summary of AIHRC report on Children's Situation* (2013) available at http://www.aihrc.org.af/home/research_report/2115 (Accessed December 2018) p. 36.

⁴⁶⁰ AIHRC *Summary of AIHRC report on Children's Situation* (2013) available at http://www.aihrc.org.af/home/research_report/2115 (Accessed December 2018) p. 36.

⁴⁶¹ US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed December 2018) p. 55.

⁴⁶² MoLSAMD *National Strategy for Children at Risk* (2004) available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/AF/AFG_Afghanistan_National_Strategy_for_Children_at-risk.pdf (Accessed December 2018) p. 6.

⁴⁶³ Government of the Islamic Republic of Afghanistan *Afghanistan National Development Strategy (ANDS) Social Protection Strategy for 2008-2013* (January 2008) p. 26.

⁴⁶⁴ MoLSAMD *National Strategy for Street Working Children* (2011).



of a clear set of top priorities, human resources and funding⁴⁶⁵. Actual impact of the national strategy is not known. Components of the national strategy were comprehensive and included psychosocial support (via MoPH), health care, education, awareness campaigns, data collection and mapping, improve birth registration, prevent drug use, promote saving and investment within communities, provide support services such as child-friendly spaces, referral mechanisms, social assistance, establish new legislation and policies on protecting the wellbeing of street working children⁴⁶⁶.

319. There are a limited number of Non-Governmental Organizations (NGOs) in Afghanistan who are working with street children. There is no significant programme or mechanism by the Afghan government to deal or protect street children. Despite the fact that social protection falls under the mandate of MoLSAMD, due to the lack of financial and personnel resources this mandate has become limited to orphanages where protection is provided⁴⁶⁷.

Harassment and ill-treatment

320. A 2011 AIHRC report stated that street child labourers faced degrading exploitation and family tensions, including poverty, unemployment, displacement, weakness of protection networks in the society, lack of family care, health problems in the families, insufficient opportunities, inaccessibility to education and training facilities⁴⁶⁸.
321. Female-headed families, where women and girls are not allowed to work outside the family, force their children to work on the streets and earn for their living⁴⁶⁹.

⁴⁶⁵ Ministry of Labour, Social Affairs, Martyrs and Disabled *Mapping and Assessment of Afghanistan's Child Protection System 2015-2016* Kabul p. 42.

⁴⁶⁶ MoLSAMD *National Strategy for Street Working Children* (2011).

⁴⁶⁷ Interview with Tabish a NGO working towards protection of children in Kabul- Afghanistan. Interview 22 January 2018.

⁴⁶⁸ Nussrat Hussain, '*Situation of Street Working Children, under Street Child Labourers*' AIHRC (October, 2011).

⁴⁶⁹ Nussrat Hussain, '*Situation of Street Working Children, under Street Child Labourers*' AIHRC (October, 2011).

322. Children working in the streets are more likely to be exposed to intravenous drug users, the group most at risk of HIV infection⁴⁷⁰.
323. Street children have little or no access to government services, although several NGOs provide access to basic needs, such as shelter and food⁴⁷¹.

7.10 Children of refugees and internally displaced people

Legislation

324. Afghanistan lacks sound national asylum legislation to receive asylum-seekers and determine their status. A direct consequence is that refugees, returnees and internally displaced children face harsh living conditions and problems in accessing birth registration, identity, and education⁴⁷².

Numbers of child refugees and IDPs

325. The total number of Internally Displaced People (IDPs) by the end of 2016 reached more than 1.5 million. The vast majority of the people are displaced due to conflict, general violence and insecurity in Afghanistan⁴⁷³. Around 653,000 people were newly displaced by conflict and violence in 2016 alone, the highest annual figure on record for the country. Conflict escalated again in 2017 – resulting –in a further displacement of 448,000 people. Afghanistan has now been reclassified from a post-conflict country to one in active conflict⁴⁷⁴. The majority of IDPs in the sample displaced in 2017 were from Nangarhar and Kunduz. Eighty-four per cent of those from Nangarhar said their places of origin were controlled by ISIL, and 97 per cent of those from Kunduz that they had fled areas under Taliban control⁴⁷⁵.
326. A 2018 IOM displacement survey shows that there are 3.5 million internally displaced and returnees from abroad in the 15 Afghan provinces that host the most returnees and displaced populations⁴⁷⁶. These provinces are Baghlan, Balkh, Farah, Herat, Kabul, Kandahar, Khost, Kunar, Kunduz, Laghman, Logar, Nangarhar, Nimroz, Paktya, and Takhar.

⁴⁷⁰ UNICEF *Children and Women in Afghanistan* (November 2014) p. 42.

⁴⁷¹ US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed December 2018) p. 50.

⁴⁷² Ministry of Labour, Social Affairs, Martyrs and Disabled *Mapping and Assessment of Afghanistan's Child Protection System 2015-2016* Kabul p. 39.

⁴⁷³ IDMC and Norwegian Refugee Council *2017 Global Report on Internal Displacement* (2017) p. 31 - graph of the number of displaced globally available at <http://www.internal-displacement.org/sites/default/files/publications/documents/20170522-GRID.pdf> (Accessed December 2018).

⁴⁷⁴ IDMC, Norwegian Refugee Council and Samuel Hall *Escaping War: Where to Next? A Research Study on The Challenges of IDP Protection in Afghanistan* (2018) p. 13 available at <http://www.internal-displacement.org/sites/default/files/publications/documents/20180124-NRC-IDMC-SamuelHall-escaping-war-where-to-next.pdf> (Accessed December 2018).

⁴⁷⁵ IDMC, Norwegian Refugee Council and Samuel Hall *Escaping War: Where to Next? A Research Study on The Challenges of IDP Protection in Afghanistan* (2018) p. 13 available at <http://www.internal-displacement.org/sites/default/files/publications/documents/20180124-NRC-IDMC-SamuelHall-escaping-war-where-to-next.pdf> (Accessed December 2018).

⁴⁷⁶ <https://afghanistan.iom.int/press-releases/displacement-survey-shows-35-million-internally-displaced-returnees-abroad-15-afghan> (Accessed December 2018).

Basic services offered

327. The government of Afghanistan does not have any national asylum and refugee legislation in Afghanistan, so UNHCR conducts refugee status determination (RSD)⁴⁷⁷. UNHCR has assisted the Afghan government in preparing a draft national refugee and asylum law, and it is waiting for inclusion in the legislation agenda⁴⁷⁸.
328. Within the refugee population, women and girls faced increased challenges in attending school, accessing ID cards, participating in local decision-making structures and a lack of psychological and social support for survivors of sexual and gender based violence (SGBV)⁴⁷⁹.
329. Services for IDPs are provided by international organisations in coordination with UNHCR and meet the most basic of needs, including non-food items, food, cash and sanitary/hygiene products⁴⁸⁰.

Internally displaced people

330. The Amnesty International 2016 report Afghanistan's broken promise to the displaced highlights the challenges and difficulties the IDPs communities face across Afghanistan from living condition to access to health, education and livelihood. In 2014 the Afghan government launched an IDPs National Policy to address and improve the situation of the IDPs, the policy like many other laws, legislations and policies largely remains unimplemented and on the paper. The organization reported:

'Some of the children and their parents reported to Amnesty International that the children stay away from school because they are bullied by their classmates for being poor and coming from a camp. Many children, in particular those from Charahi Qambar and Chaman-e-babarak in Kabul, said that they are often being told that they are dirty, smelly and called names by both students and teachers'⁴⁸¹.

331. A survey conducted by the Norwegian Refugee Council (NRC) in 2017 shows that due to prolonged conflict and trauma of war many IDPs are suffering from some form of psychological and mental health issues. This is more evident among displaced women:

'Women IDPs we spoke with were struggling to cope with cramped living conditions and the stress of adapting to their new environment and circumstances. In many instances, women reported psychosocial and mental health concerns – often exacerbated by domestic tensions in the household. A lack of community-based safety networks also heightens exposure of IDP women to GBV risks, including domestic violence'⁴⁸².

⁴⁷⁷ UNHCR 2015 Afghanistan country operations profile (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed December 2018).

⁴⁷⁸ UNHCR 2018 Factsheet Afghanistan (31 July 2018) available at <http://reporting.unhcr.org/sites/default/files/UNHCR%20Afghanistan%20Fact%20Sheet%20-%20July%202018.pdf> (Accessed December 2018).

⁴⁷⁹ UNHCR 2015 Afghanistan country operations profile (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed December 2018).

⁴⁸⁰ UNHCR IDP monthly update (June 2015) available at <https://www.humanitarianresponse.info/en/operations/afghanistan/document/unhcr-monthly-idp-update-june-2015> (Accessed December 2018).

⁴⁸¹ Amnesty International *Broken promises to Internally Displaced Persons* (2016) p. 42 available at <https://www.amnesty.org/download/Documents/ASA1140172016ENGLISH.PDF> (Accessed 27 February 2018).

⁴⁸² IDMC, Norwegian Refugee Council and Samuel Hall *Escaping War: Where to Next? A Research Study on The Challenges of IDP Protection in Afghanistan* (2018) p 11 available at <http://www.internal-displacement.org/sites/default/files/publications/documents/20180124-NRC-IDMC-SamuelHall-escaping-war-where-to-next.pdf> (Accessed 5 March 2018).

332. The report went on to say:

'Afghanistan is struggling to absorb increasingly large numbers of refugees and migrants – many of whom have been compelled to return in recent years following pressures in neighbouring Iran and Pakistan and also due to reducing asylum acceptance rates for Afghans internationally. The implication has been an increase in 'returnee-IDPs' – IDPs we surveyed for this study who reported becoming secondarily displaced after returning to Afghanistan. We found that three quarters of the returnee-IDP respondents were unable to go back to their original home because of insecurity. 72 per cent reported their families having been displaced twice and almost a third were displaced three times. These returnee-IDPs face the same challenges as other IDPs in accessing their rights and securing durable solutions'⁴⁸³.

333. According to a research conducted by REACH in 2017 among the IDPs population of Afghanistan 23 per cent of all displaced children are not enrolled in school at the time of the research⁴⁸⁴. Violence and insecurity were found to be the most significant barriers to education for displaced girls (24 per cent of households) while long distance to schools was considered the main barrier for displaced boys (24 per cent of households).

334. The REACH report went on to say:

'Early marriage and child labour were coping strategies found to be used by displaced populations, especially in the South region and amongst refugee households. Overall, 15 per cent of school-aged children were reportedly earning an income outside of the home. In addition, 4 per cent of displaced children were found to be married. Boys were significantly more likely to engage in child labour (17 per cent) than girls (12 per cent), with the proportion of working boys rising to 32 per cent in the South and to 29 per cent amongst refugee households. Whilst the proportion of girls earning an income was lower overall than that of boys, it also rose in the South (33 per cent) and among refugee households (32 per cent), indicating significant vulnerabilities'⁴⁸⁵.

335. Overall, conflict and violence were the main reasons for displacement, reported by 60 per cent of households, with this proportion rising to 78 per cent in the East. Following this, fear for safety (23 per cent), government pressure (10 per cent), and natural disaster and destruction of home (both 3 per cent) were the other main reasons forcing households to leave their homes, across Afghanistan⁴⁸⁶.

⁴⁸³ IDMC, Norwegian Refugee Council and Samuel Hall *Escaping War: Where to Next? A Research Study on The Challenges of IDP Protection in Afghanistan* (2018) p 11 available at <http://www.internal-displacement.org/sites/default/files/publications/documents/20180124-NRC-IDMC-SamuelHall-escaping-war-where-to-next.pdf> (Accessed 5 March 2018).

⁴⁸⁴ REACH *Joint Education and Child Protection Needs Assessment* (2017) p. 4 available at https://reliefweb.int/sites/reliefweb.int/files/resources/reach_afg_report_education_and_child_protection_joint_needs_assessment_november2017.pdf (Accessed 10 October 2018).

⁴⁸⁵ REACH *Joint Education and Child Protection Needs Assessment* (2017) p. 4 available at https://reliefweb.int/sites/reliefweb.int/files/resources/reach_afg_report_education_and_child_protection_joint_needs_assessment_november2017.pdf (Accessed 10 October 2018).

⁴⁸⁶ REACH *Joint Education and Child Protection Needs Assessment* (2017) p. 4 available at https://reliefweb.int/sites/reliefweb.int/files/resources/reach_afg_report_education_and_child_protection_joint_needs_assessment_november2017.pdf (Accessed 10 October 2018).



8 Returning separated or unaccompanied children and families

8.1 Numbers

336. Since the beginning of 2015, more than two million Afghans have returned⁴⁸⁷. People are being returned from Iran, Pakistan and Europe. Returnees from Europe account for 0.6 per cent (14,943) of the total (2,316,558). The exact number of children returned to Afghanistan is unknown.
337. In 2017 over 610,000 Afghans returned from the Islamic Republics of Iran and Pakistan. This includes 60,000 registered refugees that returned from Pakistan, 100,000 undocumented returnees from Pakistan, and over 450,000 undocumented returnees from the Islamic Republic of Iran. IOM and UNHCR report in 2018 that:
- ‘Following the arrival of more than 1 million documented and undocumented Afghan returnees that returned in 2016, the existing capacity to absorb new arrivals in country is under significant strain and negative coping mechanisms such as remigration are increasingly prevalent’⁴⁸⁸.
338. A 2018 research done by Oxfam concluded that huge numbers of people are being returned to Afghanistan while the country is still highly fragile, with ongoing fighting and internal displacement

⁴⁸⁷ Oxfam *Return to Fragility; Exploring the link between Conflict and Returnees in Afghanistan* (31 January 2018) p. 2 available at <https://oxfamlibrary.openrepository.com/handle/10546/620399> (Accessed 17 October 2018).

⁴⁸⁸ IOM, UNHCR *Returns to Afghanistan in 2017* (28 February 2018) available at <https://data2.unhcr.org/en/documents/download/63077> (Accessed 19 October 2018).

in many areas and high levels of poverty⁴⁸⁹. Return migration is further complicated by the increased internal displacement due to conflict within the country.

339. In 2017 some 300 unaccompanied minors were deported from Saudi Arabia and Turkey. Those children were received by the Ministry of Refugees and Repatriation which provided them with shelter and the Ministry of Labour, Social Affairs, Martyrs and Disabled (MoLSAMD)⁴⁹⁰. Most of the children were either smuggled by human traffickers or travelled with their families to Saudi Arabia and Turkey. The ones who were smuggled by the traffickers were forced to work in hazardous situation and experienced different forms of abuses and for this reason they were happy to return back to Afghanistan. There were also children who travelled with their families. They were arrested by the immigration enforcement or police due to their legal status and lack of visa or permit. Upon arrest, they were afraid to say that they lived with their families because they did not want their families to get arrested and deported. Once these children were back to Afghanistan it was difficult to find their families since the family is not in the country. MoLSAMD faced a lot of challenges to gain their trust and find the family for reunification. Sometimes the children are too scared to go back to their families fearing of any reprisal specially if they had left the family without permission and consent⁴⁹¹.

340. Officially the Afghanistan government needs to be informed of the forced return of unaccompanied minors. MoLSAMD reports the following official data on the return of unaccompanied children⁴⁹²:

2015: total deported children: 35. Nine from Turkey, 26 from Saudi Arabia.

2016: total deported children: 9. Two children from Turkey, 7 from Saudi Arabia.

2017: total deported children: 24. One child from Iran, 23 from Saudi Arabia

2018: total deported children: 21. Three children from Turkey, 18 from Saudi Arabia.

341. A study by Afghanistan Research and Evaluation Unit (AREU) and UNHCR in 2014 into the reasons for children to undertake unaccompanied journeys found that the children engaging in unaccompanied travel were generally males between the ages of 13 and 17⁴⁹³. Children were motivated to engage in unaccompanied journeys due to a combination of frequently inter-related factors, including poverty, insecurity, inadequate opportunities for education and employment, and family and peer expectations. In high-sending areas, the decision for children to travel unaccompanied outside Afghanistan was often shared by the heads of the family and the children, with families pooling resources, borrowing money or mortgaging property to cover the cost of the journey. In low-sending areas, children themselves commonly initiated the decision and sought the support of families for the unaccompanied journey.

The desire for “bright and good future” and a “better life” arose from the majority of interviews as a key aspect of the motivation for children to undertake unaccompanied journeys abroad.

⁴⁸⁹ Oxfam Return to Fragility; *Exploring the link between Conflict and Returnees in Afghanistan* (31 January 2018) available at <https://oxfamlibrary.openrepository.com/handle/10546/620399> (Accessed 17 October 2018).

⁴⁹⁰ Interview with UNICEF Afghanistan Child Protection Unit, January 14 2018.

⁴⁹¹ Interview with Maryam Zurmati Director of Social Protection of the MoLSAMD 21 January 2018 Kabul- Afghanistan.

⁴⁹² Data received from MoLSAMD 9 November 2018.

⁴⁹³ AREU and UNHCR *Why Do Children Undertake the Unaccompanied Journey?* (2014) available at <https://areu.org.af/wp-content/uploads/2016/02/1424EWhy-do-children-undertake-the-unaccompanied-journey.pdf> (Accessed 1 April 2018).

8.2 Return agreements

342. Return agreements had been signed with six European countries: Norway, France, UK, Denmark, Finland, Netherlands, and Australia. These Memorandums of Understanding (MoUs) focus solely on returning refugees and do not include unaccompanied children⁴⁹⁴. According to the Head of Legal Protection with the Ministry of Refugees and Repatriations (MoRR), the MoRR has not seen ‘unaccompanied children’ deported from these countries⁴⁹⁵. However, Save the Children, in their 2018 report on the experiences of child returnees from Europe to Afghanistan, spoke to 11 unaccompanied minors that were returned by Austria, Germany, Norway and Sweden⁴⁹⁶.
343. In October 2016 the Afghan government and European Union signed *The EU-Afghanistan Joint Way Forward* on migration issues between Afghanistan and the EU⁴⁹⁷. The document aims to facilitate the return of Afghan nationals from all European Member States to Afghanistan.
344. Amnesty International concluded in its report *Forced back to Danger* that notwithstanding the Joint Way Forward’s rhetoric of solidarity and cooperation, in fact the agreement puts pressure on Afghanistan to accept large numbers of returns⁴⁹⁸.

8.3 Settling in after return

345. The Solutions Strategy for Afghan Refugees (SSAR) is the main policy framework for sustainable reintegration of returning refugees, and the National Steering Committee was established in 2014 in order to facilitate the implementation and monitoring of the SSAR⁴⁹⁹.
346. Although all Afghan returnees are, by law, entitled to have access to all rights and privileges, in practice, it is very difficult for them to prove their identities as Afghan and retrieve their identity and legal documentation, in part because they have been out of the country for a long time⁵⁰⁰. The case for child returnees, particularly girls, is worse because they are much less similar – from a cultural point of view – to local population and have less connections and personal relations with authorities⁵⁰¹.
347. The process to obtain identity cards in Afghanistan is complicated. Returning women and girls faced increased challenges in attending school, accessing ID cards, participating in local decision-making structures and a lack of psychological and social support for survivors of sexual and gender

⁴⁹⁴ Ministry of Refugees and Repatriation Personal Communication 1 September 2015.

⁴⁹⁵ Ministry of Refugees and Repatriation Personal Communication 1 September 2015.

⁴⁹⁶ Save the Children *From Europe to Afghanistan; Experiences of Child Returnees* (October 2018), p. 17.

⁴⁹⁷ *EU-Afghanistan Joint Way Forward on migration issues between Afghanistan and the EU* (October 2016) available at https://eeas.europa.eu/sites/eeas/files/eu_afghanistan_joint_way_forward_on_migration_issues.pdf (Accessed 17 October 2018).

⁴⁹⁸ Amnesty International *Afghanistan: Forced Back to Danger: Asylum-Seekers Returned From Europe to Afghanistan* (2017), Index number: ASA 11/6866/2017 available at <https://www.amnesty.org/en/documents/asa11/6866/2017/en/> (Accessed 5 March 2018).

⁴⁹⁹ UNHCR *2015 Afghanistan country operations profile* (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed December 2018).

⁵⁰⁰ Agency coordinating body for Afghan Relief and Development (ACBAR), *The First Coordination Workshop, Afghan refugees/ Returnees: Challenges and Opportunities* (21 August 2014).

⁵⁰¹ Agency coordinating body for Afghan Relief and Development (ACBAR), *The First Coordination Workshop, Afghan refugees/ Returnees: Challenges and Opportunities* (21 August 2014).

based violence (SGBV)⁵⁰². In order to prove that they are Afghan, Afghan returnees need to be recognized by at least three persons including some elders from his/her own community. Especially when they have been out of the country, as a refugee, it can be difficult for them to succeed⁵⁰³ (see 2.9 *Legal ages for children*).

348. The Afghanistan Migrants Advice and Support Organisation has interviewed newly returned Afghan youth. In these interviews, the returnees have stated difficulties in obtaining required national ID for admission into education programmes:

‘According to the rules, whoever wants to return to Afghanistan and continue their studies first have to attest their documents with the Afghan Embassies in the country they are residing, the Embassy then will forward it to the foreign ministry, the foreign ministry will then send it to the MoE and the returnee can get their documents from the MoE post return. In some cases they lose the documents of the returnees and there is no option for the returnees but to go back to the country they have returned from and start from zero again’⁵⁰⁴.

349. In 2012, the Norwegian Refugee Council (NRC), described that:

‘For many Afghan refugees, the reality of return was one of hardship, often followed by secondary displacement upon arrival. Faced with lacking or insufficient livelihood opportunities, disputed land and property claims, insecurity, weak infrastructure and limited basic service provision in places of origin, large numbers of returning Afghans were forced to seek out new lives in new locations – the majority heading to urban centers where economic and social opportunities, as well as protection and assistance provision, were perceived to be greater’⁵⁰⁵.

350. According to UNHCR, in 2017, 27 per cent of refugee returnees reported skipping a meal in the last week. 31 per cent of the refugee returnees reported that they are unable to access healthcare. 16 per cent of the refugee returnees in 2017 and 18 per cent of the refugee returnees in 2016 reported having a child under 14 years old working to support the family in times of need compared to the 37 per cent among the general population⁵⁰⁶.

351. In October 2018 Save the Children, in cooperation with Samuel Hall, published a report on the experiences of child returnees from Europe to Afghanistan⁵⁰⁷. The report assesses the impact on children of being returned from Europe to Afghanistan and describes the situation of 57 children that were interviewed for the report. The main findings are as follows:

‘.nearly three-quarters of the children interviewed did not feel safe during the returns process. Over half reported instances of violence and coercion and nearly half arrived in Afghanistan alone or were escorted by police. On arrival, the children received little or no support, and only three had a specific reintegration plan. While 45 children had attended school in Europe, only 16 were attending

⁵⁰² UNHCR 2015 *Afghanistan country operations profile* (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed December 2018).

⁵⁰³ Afghanistan Migrants Advice and Support Organisation Personal Communication 26 August 2015

⁵⁰⁴ Afghanistan Migrants Advice and Support Organisation Personal Communication 26 August 2015

⁵⁰⁵ Jepsen, Christian ‘Refugee Returnees: the realities of return’ NRC (2012).

⁵⁰⁶ IOM-UNHCR *Returns to Afghanistan in 2017* (2018) available at <https://data2.unhcr.org/en/documents/download/63077> (Accessed December 2018).

⁵⁰⁷ Save the Children *From Europe to Afghanistan; Experiences of Child Returnees* (October 2018).

school in Afghanistan. Ten children said attempts had been made to recruit them to commit violent acts, while many others spoke of discrimination, insecurity and sadness. Of the 53 children who completed questionnaires, only ten neither wish nor expect to re-migrate in the next year. Clearly, the processes and support necessary to ensure sustainable returns for children are not in place.'

352. The Save the Children report concludes:

'..given the current Afghan security context, return cannot be considered a durable solution for a child. Even in zones deemed safe for internal flight alternatives by returning governments, the security context is worsening. Best interests procedures are inconsistently applied. Children are returning to an environment that does not enable them to fully access rights guaranteed in the UNCRC, including the right to protection, education and healthcare. Based on interviews with European government agencies, perceived legal responsibility by returning countries ends when children arrive in Afghanistan. Benefits provided to voluntary returnees (such as in-kind support) are often given at the family level, not necessarily benefiting children, and their type and scope depend on the returning country. Finally, there is limited communication between actors involved in returns, such as migration agencies, embassies, Afghan authorities and non-governmental organisations (NGOs) in Afghanistan'⁵⁰⁸.

Reintegration of returned Afghan unaccompanied children

353. From its experience working with returnees, Afghanistan Migrants Advice and Support Organisation noted:

'There are a large number of returnees who fled Afghanistan as minors and have been returned to Afghanistan now. Most of the boys interviewed by the organisation have been searching for their families for years and years, when they did not find any clues they give up. They are living alone now'⁵⁰⁹.

354. Abdul Ghafoor, director of the Afghanistan Migrants Advice and Support Organisation states that:

'There are no specific reintegration programs designed for returning unaccompanied minors to Afghanistan. Due to the vast numbers of returnees the governmental and nongovernmental supporting bodies mainly focus on providing the returnees with some basic assistance such as shelter, food, and transport'⁵¹⁰.

355. The 2018 Save the Children report reaffirms that support and reintegration programs in Afghanistan for returned children are lacking:

'Existing support to child returnees in Afghanistan is fragmented and inconsistent. There are no guidelines or dedicated support to integrate them as part of other child-specific interventions'⁵¹¹.

⁵⁰⁸ Save the Children *From Europe to Afghanistan; Experiences of Child Returnees* (October 2018) p. 11.

⁵⁰⁹ Afghanistan Migrants Advice and Support Organisation (focused on support for Afghan returnees from the EU) Personal Communication 26 August 2015.

⁵¹⁰ Personal Communication by email with Abdul Ghafoor, Director of Afghanistan Migrants Advice and Support Organisation, 26 August 2015.

⁵¹¹ Save the Children *From Europe to Afghanistan; Experiences of Child Returnees* (October 2018) p. 48.

Only three children interviewed for the report received a specific reintegration plan.

356. The Save the Children report mentions:

‘Children are currently being returned to Afghanistan [from Europe] without their protection being assured and without services to afford them the rights accorded in the UNCRC⁵¹².

Children report lacking access to education, access to mental health care and a very limited social network.

357. The director of the Afghanistan Migrants Advice and Support Organisation stated:

‘IOM supports with some financial assistance after the return too. The support and package IOM provides varies from country to country. In the case of European countries, IOM has support packages for the returnees which comes in shape of starting a new business, sharing a business with somebody who already has an established business, support in shape of salary if the returnee wants to work in a company or NGO, IOM will provide the salary of the person for one year. Again the packages and the amount of packages vary based on the country the person is returned from⁵¹³.

358. The International Office of Migration (IOM) has provided assistance for unaccompanied minors since 2009. In Herat, Nimroz and Nangarhar borders, where large numbers of unaccompanied minors return from neighboring countries, IOM and UNICEF provide targeted reintegration support for unaccompanied minors through family tracing, referral to external shelters if needed and special transportation arrangements⁵¹⁴.

“I was a baby when my family and I had to flee the Taliban and go to Iran. I grew up in Iran, I know nothing about Afghanistan and I don’t have any close family members living here. Life was very hard in Iran, we were five siblings and none of us were able to go to school there. We were facing a lot of discrimination and hardship in Iran. I went to Europe in 2015, I was 16 years old at the time. My asylum application was rejected and I was deported back to Afghanistan in mid 2017. I was deported to Kabul as soon as I reached 18 years of age. In Kabul, I know no one and I am scared going out. There are bombs everywhere and I don’t feel safe. Because I don’t have an Afghan Tazkira I cannot obtain a passport and I cannot go to Iran to join my family. I have an auntie who lives in Kabul. But she has young daughters at home, so her husband wouldn’t let me stay with them because culturally and religiously this is not acceptable.”

– Mustafa, a pseudonym for a young Afghan refugee returned from Europe.
Interviewed January 16, 2018.

⁵¹² Save the Children *From Europe to Afghanistan; Experiences of Child Returnees* (October 2018) p. 46.

⁵¹³ Afghanistan Migrants Advice and Support Organisation Personal Communication 26 August 2015.

⁵¹⁴ IOM *Afghanistan Quarterly Update* (2016) available at https://afghanistan.iom.int/sites/default/files/Reports/iom_afghanistan_quarterly_report_q1_on_unaccompanied_migrant_children_and_single_female_covering_jan-mar_2016.pdf (Accessed 19 October 2018).

359. War Child UK assists unaccompanied children returning from Iran in Islam Qala and Milak borders. During 18 months (July 2016- December 2017) alone War Child assisted 4855 unaccompanied minors returned from Iran⁵¹⁵. According to the organization children as young as 6 or 7 years old are also returned from Iran. These children migrated to the country for different reasons including labour and economic purposes.

"I was born in Iran, my parents fled to Iran during the Russian invasion, I grew up and I married a cousin and have two children but never seen Afghanistan and only heard about the country and the security situation from relatives or in Iranian media. All I knew was that there was war, insecurity and killings. While I grew up in Iran, me and the other Afghan children faced a lot of discrimination in school and in the streets. I was among the lucky ones who were allowed to go to school by the authorities. We were called by our teachers and students Barbary/ Barbarian, a common name Iranian call Afghan people mainly the Hazaras. No Iranian child would play with Afghans. When I married and had children unfortunately they were not allowed to go to school and they were facing the same type of discrimination and social exclusion as I was. Afghanistan is a country I have never seen before my deportation from Europe. Afghanistan was too unsafe to return to with my children. We decided to go to Europe; mainly to allow my children to live in a society where they are accepted and where they can go to school and get education and not face the same level of discrimination and exclusion as we did. Unfortunately we were deported to Afghanistan in spring 2017. I was and am a stranger as any other foreigner would be in this land. Since we returned I am too scared to go out or allow my children to go out as well. We are in some kind of home arrest."

- Shafia, a pseudonym for a woman interviewed on January 16, 2018 in Kabul. She and her family returned from Europe in spring 2017.
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8.4 Detention, insecurity or discrimination after return

360. Insecurity, disputes, intimidation and extortions, mines and unexploded ordinances (UXOs) are among the key factors affecting the physical safety and well-being of returnees' children⁵¹⁶.
361. Unaccompanied Afghan asylum-seeking adolescents living in many countries are a high-risk group for post-traumatic stress disorder (PTSD), with many having been exposed to extreme violence, physical and sexual abuse, and rape, these children experience significantly greater symptoms of PTSD and depression compared to accompanied asylum-seeking children⁵¹⁷. According to Abdul Ghafoor, director of the Afghanistan Migrants Advice and Support Organisation, many returning Afghan child migrants and refugees face the risk of rejection by their families, kidnapping threats, beatings and exploitation, often resulting in them trying to escape the country again⁵¹⁸.

⁵¹⁵ Interview with Billy Abimbilla War Child UK Afghanistan Country Director (21 January 2018).

⁵¹⁶ Agency coordinating body for Afghan Relief and Development (ACBAR), The First Coordination Workshop, Afghan refugees/ Returnees: Challenges and Opportunities (21 August 2014).

⁵¹⁷ Bronstein, Israel and Paul Montgomery 'Sleeping Patterns of Afghan Unaccompanied Asylum-Seeking Adolescents: A Large Observational Study' (January 2013) PLoS ONE 8(2): e56156 available at <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0056156> (Accessed December 2018).

⁵¹⁸ Afghanistan Migrants Advice and Support Organization Personal Communication 26 August 2015.

"I was deported from Europe a few days before the deadly attack near German Embassy in May 2017. The attack was very near where I was staying. I was sleeping and suddenly a big explosion shook the building and glasses shattered and fell on me. I was paralyzed from the horror of the attack and for a few minutes my ear couldn't hear anything and my legs felt jelly. It took a few minutes before I was able to open my door and sneak to the corridor of the hotel where I was staying. In the corridor there were other people including some of the returnees and everyone was looking extremely terrified and scared. Some people were injured by the shattered glasses and debris. Since then I am so scared of going out and I am so scared of walking on the streets and whenever I go out I think a bomb will go off by my ear.

I am not able to go to my own province due to the security issues I have and I don't have any work to do in Kabul. Wherever I go people don't give me a job because I don't know anyone and people do not trust to hire me, specially not in the local shops and businesses. I had a lot of difficulty renting a place for myself. As a young man, people do not trust to rent their homes to me. They are always scared because of insurgents and Taliban and this is why they only rent their property to families not to single men. At the moment I have rented a shop where I live in. Life is very difficult and I really don't know for how long I will be able to stay in this way. Sometimes I think that I should join the National Army or Police; at least then I will get a place to live and a salary to survive."

– Ahmad, the pseudonym for a 19 years old refugee returned from Norway in May 2017.
Interview on January 23, 2018.

362. There is no exact report on whether children have been direct victims of security incidents upon return, however, there have been many cases, discussed in interviews (completed by Afghanistan Migrants Advice and Support Organisation) with children (age 6-11), newly returned with their families, where the children have been traumatized due to the blast and gunfire that has happened around them⁵¹⁹.
363. The 2018 Save the Children report states that children face a real threat to their physical wellbeing on return. Children nor parents felt safe when outside. Ten out of the 53 returned children who completed questionnaires stated that 'someone had attempted to recruit them to fight in combat, commit acts of violence, or otherwise engage with armed groups'⁵²⁰.
364. Returnees normally are free to enter the country and enjoy the freedom of movement and other activities post return. However, Ghafoor stated 'A returnee from Sweden was detained in Kabul International Airport after return due to the allegations that the person returned had converted to Christianity while in exile. There are no exact reports on how long the person was detained, but his detention post return was confirmed by the relatives of the person while he was in detention'⁵²¹.

⁵¹⁹ Afghanistan Migrants Advice and Support Organization Personal Communication 26 August 2015.

⁵²⁰ Afghanistan Migrants Advice and Support Organization Personal Communication 26 August 2015.

⁵²¹ Save the Children *From Europe to Afghanistan; Experiences of Child Returnees* (October 2018) p. 10.

“My father was killed by the Taliban, he was the commander of a Local Police Unit in the North and both me and my brother fled the province given the level of pressure from the Taliban in our district to hire me and my younger brother. We fled to Europe, my brother went to another country and I went to another to claim asylum within Europe. My brother’s asylum was accepted and he was granted refugee status but my claim was rejected. They didn’t believe that I was 16 years old at the time of asylum and nearly nine months after my claim they took me to a medical facility where the doctors took the X-ray of my hand and teeth. Six months later the result came and the test result said that I was not 16 but I was 18.

Since I am returned I haven’t been able to go to my village to visit my mother and out of fear from the Taliban I am staying in the provincial centre. I work for a local restaurant where they allow me to sleep on the floor in the evenings and the owner locks the door from outside when he goes home. One night there was a gas leak in the restaurant and I was near to die but luckily I managed to scroll and reached one of the windows and opened it, it was very cold but I escaped death by gas.”

- A young deportee from Europe in 2017 interviewed in the context of this research in Kabul January 16 2018 (name has been changed for security reasons).
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8.5 Reintegration for children and their families

365. Children and their families are allowed to settle where they would like upon return. Most of the families/children who choose to return prefer to settle in relatively secure provinces like Kabul, Mazar, Herat or some other provinces with lower risk of militant attacks and insurgency⁵²².
366. War Child UK works on the reunification of unaccompanied minor refugees’ returnees in Afghanistan. War Child has reunified some 4,855 individuals between July 2016- December 2017, only from Iran. Most children were sent to Iran by their families for reasons of poverty, dowry payment, poor health or the death of a family member, insecurity, difficult home life and lack of access to education⁵²³. Some of the children after being returned to Afghanistan do not want to go back to their own families.
367. There is no government monitoring mechanism in relation to Afghan returnees⁵²⁴.

⁵²² Afghanistan Migrants Advice and Support Organization Personal Communication 26 August 2015.

⁵²³ Interview with Billy Abimbilla War Child UK Country Director Afghanistan (21 January 2018) Kabul Afghanistan.

⁵²⁴ Afghanistan Migrants Advice and Support Organisation Personal Communication 26 August 2015.

STATISTICS

The country report on Afghanistan can be found at :

<http://www.unhcr.org/cgi-bin/tehis/vtx/page?page=49e486eb6&submit=GO>

The Concluding Observations for Afghanistan's Periodic Reports can be found at:

https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=AFG&Lang=EN

Demographic Information/Statistical data on children	Numbers	Source
Total Population (Millions 2016)	34.6	UNICEF State of the World's Children 2017
Population under 18 (Thousands 2016)	17,744	UNICEF State of the World's Children 2017
Population under 5 (Thousands 2016)	5,233	UNICEF State of the World's Children 2017
Under-5 mortality rate (2016)	70	UNICEF State of the World's Children 2017
Under-5 mortality rate in neighbour countries (2016)		UNICEF State of the World's Children 2017
Pakistan	79	
Iran	15	
Turkmenistan	51	
Tajikistan	43	
Uzbekistan	24	
China	10	

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LIST OF CONTACT ORGANISATIONS/PERSONS

Government

1.	Ministry of Labour and Social Affairs, Martyrs and Disabled	Najib Aklaqui <i>Director Child Protection Secretariat</i>	nkbamyam@gmail.com
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International and NGOs

1.	UNHCR	Jeffrey Savage <i>Senior Protection Officer</i>	savagej@unhcr.org
2.	UNICEF	Dr. Tatjana Colin <i>Chief Child protection</i>	tcolin@unicef.org
3.	Tabish Organisation (psychosocial)	Dr. Wais Aria <i>Executive Director</i>	Aria_popal@yahoo.com
4.	Afghanistan Migrants Advice and Support Organisation	Abdul Ghafoor <i>Executive Director</i>	aghafoor@refugeesupportnetwork.org
5.	Hagar International	Anna Kryszylowicz <i>Executive Director</i>	Anna.Kryszylowicz@hagarinternational.org
6.	Terre des Hommes	Dr. Erhard Bauer <i>Country Representative</i>	Erhard.bauer@tdh.ch
7.	IOM	Nicholas Bishop <i>Emergency Response Officer</i>	nbishop@iom.int
8.	AIHRC	Dr. Soraya Sobhrang <i>Commissioner</i>	aihrc@aihrc.org.af
9.	War Child UK	Anish Damk <i>Country Director</i>	ashishd@warchild.org.uk
10.	Save the Children Afghanistan	Onno van Manen <i>Country Director</i>	Onno.VanManen@savethechildren.org
11.	Human Resource Development Agency (HRDA)	Sayed Abdul Hai <i>Country Director</i>	m.director@hrda.af

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For further information, please contact:
Majorie Kaandorp
Children's Rights Advocacy Officer
UNICEF The Netherlands
Email: mkaandorp@unicef.nl

UNICEF The Netherlands
UNICEF Afghanistan

