

Child Notice Afghanistan

2015



Child Notice Afghanistan 2015

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The project “Better information for durable solutions and protection”; generates child-specific country of origin information analysis (Child Notices) on countries of origin of children on the move to Europe. The Child Notices describe the situation of children in the countries of origin providing legal and practical information on education, health care, child protection, armed conflict, juvenile justice, trafficking etc. The Child Notices have been developed based on this Methodology Guidance on Child Notice.

The countries of origin have been chosen based on migration flows of children (with and without families), return figures, EU and national priorities.

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LIST OF ACRONYMS

AGE	Anti-Governmental Elements
AIHRC	Afghanistan Independent Human Rights Commission
ALP	Afghan Local Police
ANDS	Afghanistan National Development Strategy
ANSF	Afghan National Security Forces
AVRR	Afghan Volunteer Return and Reintegration
AREU	Afghanistan Research and Evaluation Unit
CIc	Children in Crisis
CPAN	Child Protection Action Network
CSO	Central Statistics Organisation
CRC	Convention on the Rights of the Child
GBV	Gender based violence
GIRoA	Government of the Islamic Republic of Afghanistan
HDI	Human Development Index
HRW	Human Rights Watch
IED	Improvised Explosive Device
IDP	Internally Displaced Person
IGA	Income Generating Activities
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
MOE	Ministry of Education
MOF	Ministry of Finance
MoI	Ministry of Interior
MoLSAMD	Ministry of Labour, Social Affairs, Martyrs & Disabled
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
NPP	National Priority Programme
NRVA	National Risk and Vulnerability Assessment
NSDP	National Skills Development Programme
SGBV	Sexual and Gender Based Violence
SWC	Street Working Children
TdH	Terre des Hommes
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

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) which is annexed to this report. 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 August 2015. 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 organisation 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, UNICEF Belgium and UNICEF Sweden have 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: <http://www.ecoi.net/blog/2013/10/new-accord-training-manual-on-researching-country-of-origin-information-published/?lang=en>.

² 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 involved.

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



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 Child Notice has been developed and published by UNICEF The Netherlands, UNICEF Belgium and UNICEF Sweden 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 on Afghanistan has been developed in the following period: July 2014-August 2015.

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 county 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 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).

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).

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, behaviors 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 oversight 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 factor.
- 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

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-Document E/ICEF/2008/5* (2008).

genital mutilation/cutting (FGM/C) and child marriage; lack of access to justice; and unnecessary institutionalization among others'¹⁰.

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.

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

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.

Afghan population projections range from 28.1 million to 32 million total population, with 50 per cent of the population 17 years old and under, and an estimated 12.2 million under fifteen years old. Afghanistan is making small improvements in the 2014 Human Development indicators, but is still ranked 169th out of 187 countries overall.

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 UNICEF 2014 situational analysis stated that human and economic development in Afghanistan is hindered by widespread deprivation. 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 2013 under-five mortality rate is 97 out of 1000 children, higher than any of the six neighboring countries. There are high rates of vitamin A deficiencies, anemia, and moderate to severe stunting, which correlate to risks in physical and mental development of children.

Afghanistan is among the poorest performers in providing sufficient education to its population. The latest statistics estimate about 8.8 million students of whom about 3.4 millions were girls. Access to education is hindered by residence, gender, and increased armed conflict.

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 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. A large proportion of girls are prosecuted and imprisoned for 'home escape' (running away from home) even though it is not a crime according to the Juvenile Code.

Boys in Afghanistan are more at risk of child trafficking for sexual exploitation and forced labour, than girls. 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 early 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.

Children in Afghanistan continue to face higher rates of casualties caused by armed conflict compared to the general population, with one in four civilian casualties of conflict being a child. In the first six months of 2015, UNAMA recorded 1,270 child casualties (320 deaths and 950 injuries), which was a 13 per cent increase over 2014.

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.

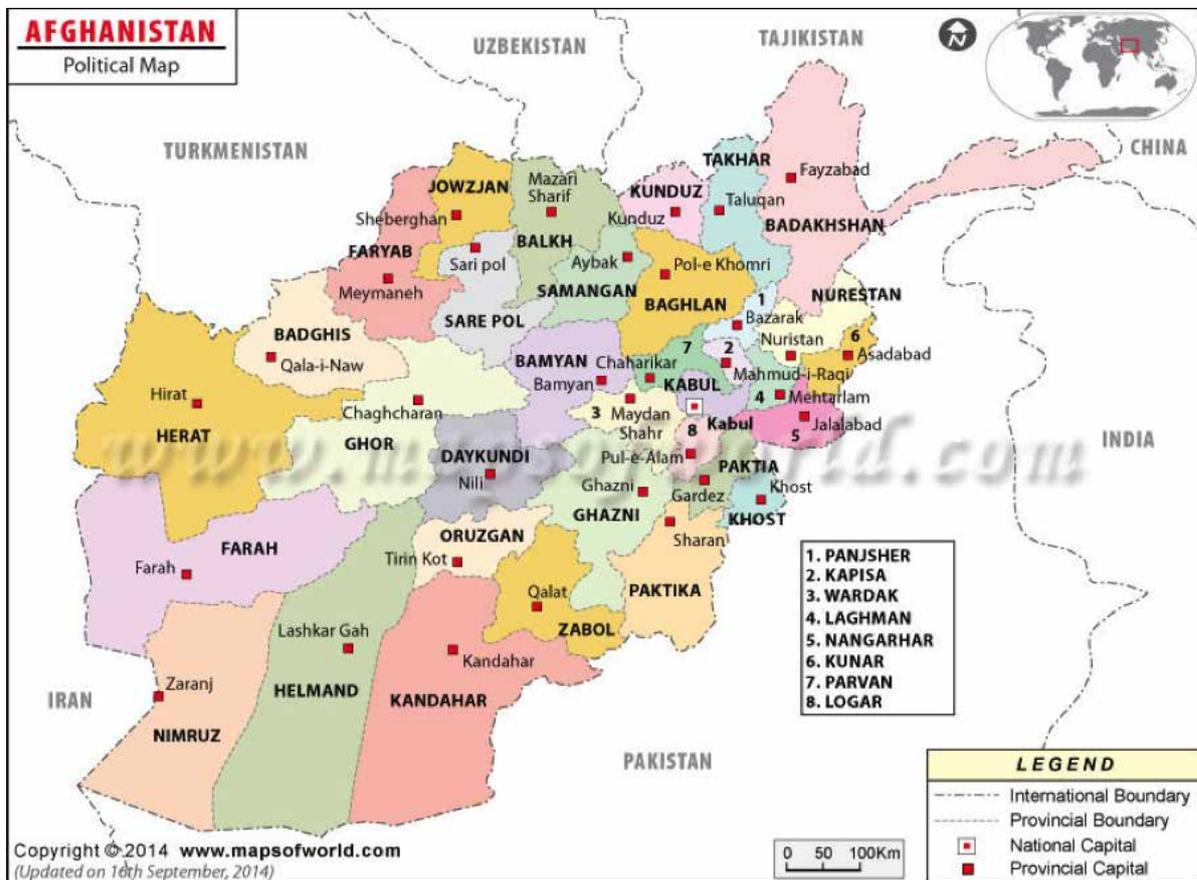
Since 2002, 5.8 million Afghans refugees have returned home, representing 20 per cent of the Afghan population. The 2015 National Risks and Vulnerability Assessment completed by the Afghanistan Central Statistics Organisation, showed that 16 per cent of Afghans live in a district different from their district of birth. Forty-one per cent of internal migrants are under 20 years old. 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.

UNHCR reported 805,409 Afghans were internally displaced by conflict by the end of December 2014, impacting 30 of the 34 Afghan provinces. UNHCR projects that 2015 will be the worst year for internal displacement yet.

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 activities¹³.
- 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 years¹⁴. It is implemented by the CSO of the Government of the Islamic Republic of Afghanistan (GIROA) with assistance from the German consulting group, ICON-Institute Public Sector GmbH¹⁵.

¹³ Central Statistics Organization *Statistics Law Article 2* (2013) available at <http://cso.gov.af/en/page/1489/10904> (Accessed 31 August 2015).

¹⁴ Central Statistics Organization *National Risk and Vulnerability Assessment: Afghanistan' Living Condition Survey 2011-2012* (2012) foreword (hereafter National Risk and Vulnerability Assessment).

¹⁵ Central Statistics Organization *National Risk and Vulnerability Assessment 2011-2012* (2012).

- The Afghanistan Multiple Indicator Cluster Survey (Afghan MICS) was implemented in 2010-2012 by the CSO and in collaboration with and support from UNICEF¹⁶. 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)¹⁷.
 - 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 questions¹⁸.
2. The Afghanistan statistical yearbook for 2014-2015, produced by the Afghanistan Central Statistic Organization (CSO), projects the total population for 2014-2015 at 28.1 million¹⁹. The 2015 Humanitarian Needs Overview for Afghanistan, prepared by the OCHA Humanitarian Country Team, echoed the CSO projections for 2014, at 28.1 million²⁰. Compared to outside sources, the Afghanistan CSO population projections for Afghanistan are conservative. The 2014 UNDP Human Development Index (HDI) estimates a total population of 30.55 million, based on a median fertility variant²¹. The International Labour Organization (ILO) projects 2015 population figures for Afghanistan at 32 million, based on the UN World Population Prospects²². The World Bank figures also projected 2014 population figures at 31.3 million²³.
 3. 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.
 4. Afghanistan has one of the youngest populations, within an estimated 13.2 million [age dependent], including 12.2 million less than 15 years old, according to the Afghanistan CSO²⁴. The 2014 HDI estimates the median age in Afghanistan at 17 years old, indicating 50 per cent of the population is age 17 and under²⁵.

¹⁶ Central Statistics Organisation and UNICEF *Afghanistan Multiple Indicator Cluster Survey 2010-2011: Final Report*. (2012) p11 (hereafter Afghan MICS).

¹⁷ Central Statistics Organisation and UNICEF *Afghan MICS* (2012) p11.

¹⁸ The Asia Foundation *Afghanistan in 2014: A survey of the Afghan people* (2014) p5 (hereafter *Afghanistan in 2014*).

¹⁹ Central Statistics Organization *Afghanistan Statistical Yearbook 2014-2015* (2015) available at <http://cso.gov.af/en/page/1500/4722/2014-2015> (Accessed 18 August 2015).

²⁰ UNOCHA. *Afghanistan HRP 2015 Humanitarian Needs Overview* (2014) available at <https://docs.unocha.org/sites/dms/Afghanistan/Afghanistan%20HRP%202015%20Humanitarian%20Needs%20Overview.pdf> (Accessed 18 August 2015).

²¹ UNDP *Human Development Index* (2014) available at <http://hdr.undp.org/en/countries/profiles/AFG> (Accessed 18 August 2015).

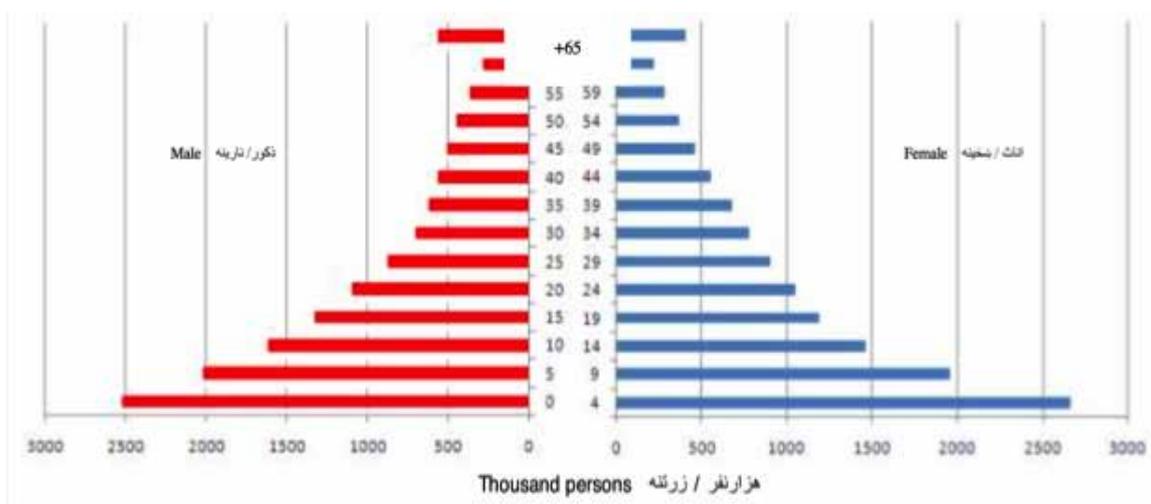
²² ILO ILOSTAT Database available at http://www.ilo.org/ilostat/faces/help_home/data_by_country/country-details/indicator-details?indicator=POP_2POP_SEX_AGE_NB&subject=POP&_afriLoop=998119863291005&datasetCode=YI&collectionCode=EAPEP&country=AFG&_adf.ctrl-state=91qcnpglt_37 (Accessed 18 August 2015).

²³ World Bank *World Bank Population Prospects Data* available at <http://data.worldbank.org/indicator/SP.POP.TOTL/countries/AF?display=graph> (Accessed 19 August 2015).

²⁴ Central Statistics Organization *Afghanistan Statistical Yearbook 2014-2015* (2015) available at <http://cso.gov.af/en/page/1500/4722/2014-2015> (Accessed 18 August 2015).

²⁵ UNDP *Human Development Index* (2014) available at <http://hdr.undp.org/en/countries/profiles/AFG> (Accessed 18 August 2015).

Figure 2: Population Pyramid²⁶



- 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 75 per cent, live in a rural setting²⁷.

Table 1: Number of settled children by urban/rural and male/female disaggregation²⁸

Total Settled Population	26,556,754			6,483,434			20,073,320		
	Total	M	F	Urban	M	F	Rural	M	F
0-4	5,183,390	2,522,393	2,660,997	1,220,264	607,176	613,088	3,963,126	1,915,217	2,047,909
5-9	3,980,763	2,022,225	1,958,538	991,519	505,318	486,201	2,989,244	1,516,907	1,472,337
10-14	3,082,100	1,621,326	1,460,774	804,765	415,949	388,816	2,277,335	1,205,377	1,071,958
15-19	2,519,132	1,329,986	1,189,146	664,429	340,035	324,394	1,854,703	989,951	864,752
Total 0-19	14,765,385	7,495,930	7,269,455	3,680,977	1,868,478	1,812,499	11,084,408	5,627,452	5,456,956

- 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.
- 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 population²⁹.

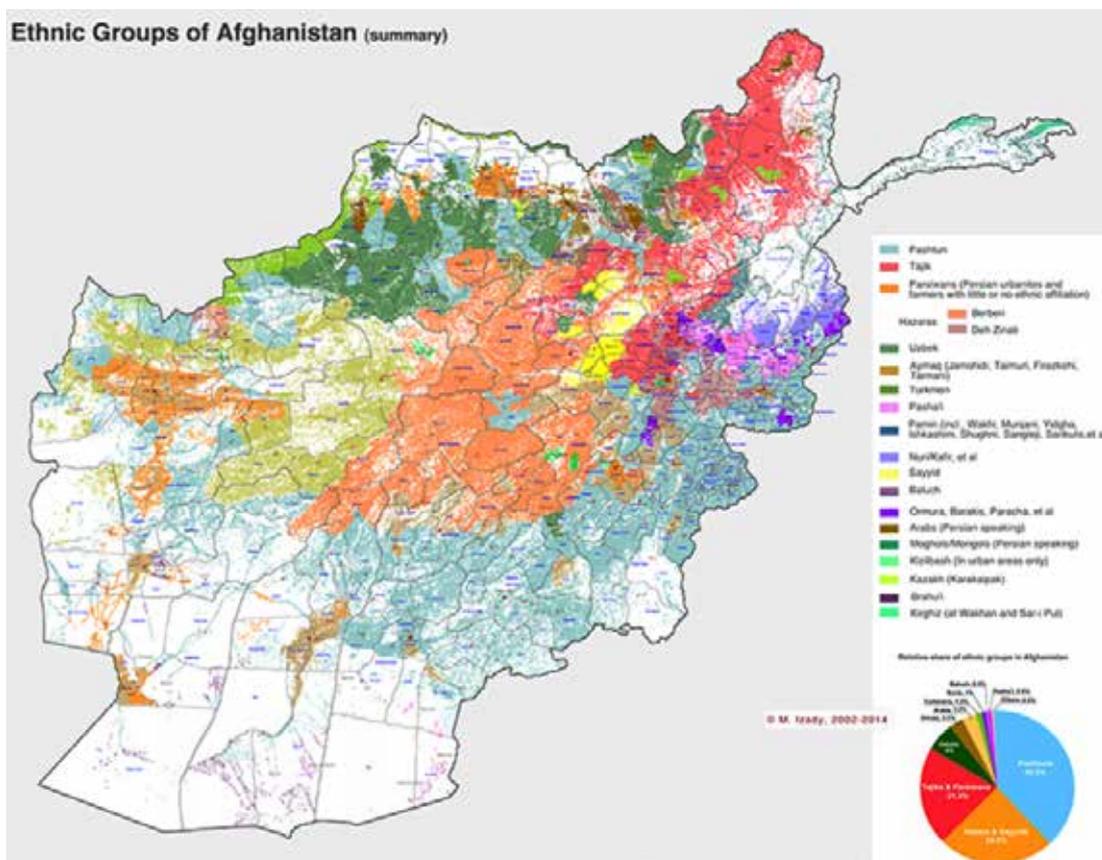
²⁶ Central Statistics Organization *Afghanistan Statistical Yearbook 2014-2015* (2015) available at <http://cso.gov.af/en/page/1500/4722/2014-2015> (Accessed 18 August 2015).

²⁷ Central Statistics Organization *Afghanistan Statistical Yearbook 2014-2015* (2015) available at <http://cso.gov.af/en/page/1500/4722/2014-2015> (Accessed 18 August 2015).

²⁸ Central Statistics Organization *Afghanistan Statistical Yearbook 2014-2015* (2015) available at <http://cso.gov.af/en/page/1500/4722/2014-2015> (Accessed 18 August 2015).

²⁹ The Asia Foundation *Afghanistan in 2014* (2014) p. 211.

Figure 3: Map of the ethnicities in Afghanistan, based on 2000 projections³⁰



8. 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 represented³¹. Turkmeni, Balochi, Pashayee, Nuristani, Shignee, Pamiri, Arabic, English and Urdu were also reported, although all were below 4 per cent³². The official government languages in Afghanistan are Dari and Pashto³³.
9. The majority of Afghans are Sunni Muslims (80 per cent), while Shia Muslims, including Ismaelitis, represent 19 per cent of the population³⁴. The remaining one per cent includes Sikh, Hindu, Bahai and Christian, as well as one known Jew³⁵. The Shia minority faces societal discrimination, while non-Muslim groups, specifically Hindus, Sikhs and Christians face persecution and discrimination³⁶ (see 3.1 Non-discrimination).

³⁰ Colombia University SIPA 'Gulf 2000 project' (2000) available at http://gulf2000.columbia.edu/images/maps/Afghanistan_Ethnic_summary_sm.png (Accessed 31 August 2015).

³¹ Many Afghans speak more than one language.

³² The Asia Foundation *Afghanistan in 2014* (2014) p. 210.

³³ Central Intelligence Agency *CIA Factbook Afghanistan* (2015) available at <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html> (Accessed 19 August 2015).

³⁴ US Department of State *Afghanistan 2013 International Religious Freedom Report* (2013) p. 2 available at <http://www.state.gov/documents/organization/222535.pdf> (Accessed 29 August 2015).

³⁵ US Department of State *Afghanistan 2013 International Religious Freedom Report* (2013) p. 2 available at <http://www.state.gov/documents/organization/222535.pdf> (Accessed 29 August 2015).

³⁶ US Department of State *Afghanistan 2013 International Religious Freedom Report* (2013) p. 1 available at <http://www.state.gov/documents/organization/222535.pdf> (Accessed 29 August 2015).

10. Internal and cross-border migration flows in Afghanistan are influenced greatly by the protracted refugee situations, a large volume of returnees, a large-scale internal displacement and the remaining nomadism. The most recent National Risks and Vulnerability Assessment (NRVA) completed by the Afghanistan CSO, showed that 16 per cent of Afghans live in a district different from their district of birth³⁷. Forty-one per cent of internal migrants are under 20 years old³⁸. Internal migrants typically migrate into more urban areas; yet remain within their province of birth. Marriage and employment are the primary reasons for migration. Internal displacement due to the armed conflict recorded a 44 per cent increase in the first six months of 2015, according to the Afghanistan Task Force on Internally Displaced Persons (IDPs), and UNAMA reported that as of 16 July 2015, the total number of IDPs in Afghanistan was estimated to exceed 945,600³⁹ (see 7.9 Children living and/or working in street situations).

1.2 Family Structure

11. Family structure follows a very traditional, patriarchal structure and is centred on notions of honour and shame, governed by tribal codes and interpretations of Islam⁴⁰. 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.
12. 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'⁴¹ (see 5.3 Education).
13. Female-headed households only account for 0.7 per cent of all households, according to the 2012 NRVA⁴². However, the absence of a male head of household can signify a highly vulnerable position in regards to income security and social protection.

³⁷ Central Statistics Organization *Afghanistan Statistical Yearbook 2014-2015* (2015) available at <http://cso.gov.af/en/page/1500/4722/2014-2015> (Accessed 18 August 2015).

³⁸ Central Statistics Organization *National Risk and Vulnerability Assessment 2011-2012* (2012) p. 24.

³⁹ UNAMA *Protection of Civilians in Armed Conflict Midyear Report 2015* (August 2015) p. 10.

⁴⁰ UNICEF *Children and Women in Afghanistan. A situational analysis 2014*. (November 2014) p. 31 (hereafter Children and Women in Afghanistan).

⁴¹ War Child UK *Juvenile Justice in Afghanistan* available at <http://www.warchild.org.uk/about/our-strategy> (Accessed November 8 2014).

⁴² Central Statistics Organization *National Risk and Vulnerability Assessment 2011-2012* (2012) p. 12.

14. 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'⁴³.

15. 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 assistance⁴⁴. However, the specific definition of 'necessary assistance' is not clarified.

1.3 Political Development

16. In September 2014 the National Unity Government agreement was officially signed. This agreement allows for a power sharing government in which Afghanistan has both 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 won't be legally defined until 2016 when the loya Jirga (national grand assembly) will meet to amend the Afghan Constitution⁴⁵.
17. The 2015 UK report on Afghanistan observed that although there are some positive messages and steps from the National Unity Government on women's rights, freedom of expression and access to information; overall progress is slow and the human rights situation remains a serious concern⁴⁶.
18. 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 floods⁴⁷.
19. According to the 2012 World Risk Report, Afghanistan ranks fourth globally in terms of vulnerability, and weakest in terms of coping and adaptive capacities⁴⁸.

⁴³ Government of the Islamic Republic of Afghanistan. *National Action Policy for the Women of Afghanistan 2007-2017* (2007) available at <http://www.svri.org/Afghanistanpolicy.pdf> (Accessed 31 August 2015) p. 9 (hereafter NAPWA).

⁴⁴ 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 August 2015).

⁴⁵ Jalali, Ali *Forging Afghanistan's National Unity Government* (January 2015) USIP.

⁴⁶ UK Foreign & Commonwealth Office *Afghanistan in a year update-Corporate report* (July 2015) available at <https://www.gov.uk/government/publications/afghanistan-in-year-update-july-2015/afghanistan-in-year-update-july-2015> (Accessed 4 September 2015).

⁴⁷ UNICEF *Children and Women in Afghanistan* (November 2014) p. 30.

⁴⁸ Alliance Development Works *World Risk Report: Environmental Degradation and Disaster* (2012).



2 Basic Legal Information

2.1 Conventions on children's and human rights

20. The Government of the Islamic Republic of Afghanistan (GIROA) ratified the United Nations Convention on the Rights of the Child (CRC) on 28 March 1994⁴⁹. 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 Conventions⁵⁰

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

⁴⁹ 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 20 August 2015).

⁵⁰ 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 20 August 2015).

21. Key reservations were made in regards to the International Convention on the Elimination of All Forms of Racial Discrimination, specifically in regards to art. 22⁵¹. 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

22. Article 7 of the new Afghan 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’⁵².

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

Table 4: Afghan laws and strategies relevant to children⁵³

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

⁵¹ 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 24 August 2015).

⁵² Ministry of Justice *Implementing the Convention on the Rights of the Child in Afghanistan* (2011) <http://moj.gov.af/en/news/1383> (Accessed 8 November 2014).

⁵³ UNICEF *Child Protection in Emergences (CPIE) Afghanistan Draft Desk Review* (2012).

Table 5: Afghan Institutions and Ministries relevant to child protection⁵⁴

Institutions and Ministries	Year est.
Ministry of Women Affairs	
Ministry of Justice	
Ministry of Interior	
Afghanistan Independent Human Rights Commission (AIHRC)	2002
Child Protection Action Network (CPAN-MoLSAMD)	2003
Inter-Ministerial Steering Committee on Children and Armed Conflict	2010

23. 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 exploitation⁵⁵.

24. 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.

25. The UN Committee on the Rights of the Child (CRC), after examining the 2011 report on how Afghanistan is implementing the provisions of 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 applicable⁵⁶.

26. 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 force⁵⁷ (see 2.7 Birth registration).

⁵⁴ 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 20 August 2015) (hereafter Concluding observations).

⁵⁵ UNICEF *Children and Women in Afghanistan* (November 2014) p. 44.

⁵⁶ 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 20 August 2015).

⁵⁷ 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 20 August 2015).

2.3 Budget

27. Afghanistan's national budget is funded through domestic revenue, international donor assistance and loans. International donors fund the majority of the national budget, with 70 per cent committed for the 2015-2016 fiscal year. Domestic revenue constitutes 29 per cent⁵⁸. 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 25.7 per cent of the overall total 2015-2016 budget⁵⁹. While activities within these sectors go beyond focusing specifically on children, specific outcomes within sectors include the following child related indicators:
- Increased child attendance in kindergartens.
 - Improved review of child cases/reviews that focus on the best interests of the child.
 - Increased retraining and integration of juveniles in conflict with the law.
 - Increased access to quality general and Islamic studies.
 - Increased access to health care⁶⁰.
28. In the budget review, a troubling lack of transparency and accountability was noted from provincial departments reportedly due to instruction from central ministries⁶¹. UNICEF's 2014 situational analysis on children and women also noted that existing development allocations highlight a poor national prioritization for children⁶².

2.4 Government child rights coordination

29. There is no unit or ministry responsible for coordinating the implementation of the CRC, and a proposed Child Protection Secretariat under the National Strategy for At-Risk Children has yet to be operational, although the Head of the Child Protection Secretariat position is being advertised as of 2015⁶³. The Children's Protection Secretariat is being established within the Ministry of Labour and Social Affairs, Martyrs and the Disabled (MoLSAMD). The Secretariat is tasked with the role of coordinator of implementing the child protection agenda in Afghanistan.
30. 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. It operates at both a provincial and national level. Centralized monthly meetings occur in Kabul and provincial and district levels report monthly to the national group. The national CPAN is based in Kabul, with 32 provincial offices and 67 district offices. Statistics on child protection issues are shared by CPAN on a monthly basis. Current members of CPAN include AIHRC, Medica

⁵⁸ 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 20 August 2015).

⁵⁹ Ministry of Finance *1394 budget* (2015-2016) available at http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1394/1394%20National%20Budget_English%20Version.pdf (Accessed 20 August 2015).

⁶⁰ Ministry of Finance *1394 budget* (2015-2016) available at http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1394/1394%20National%20Budget_English%20Version.pdf (Accessed 20 August 2015).

⁶¹ 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 20 August 2015).

⁶² UNICEF *Children and Women in Afghanistan* (November 2014) p. 44.

⁶³ CPAN Personal Communication 6 August 2015.

Afghanistan, Children In Crisis (CIC), Hagar International, UNICEF, UNHCR, UNODC, UNAMA, Parsa, Op Mercy Afghanistan, the Women for Afghan Women child protection section (approximately 50 organizations total)⁶⁴ (see 6.2 Protection of disadvantaged and vulnerable children).

31. CPAN works closely with the social work coaching program, which provides training to improve case planning and to support children and their families. UNICEF is a key supporter for CPAN in providing funding and professional support through its country office and field office locations⁶⁵ (see 6.2 Protection of disadvantaged and vulnerable children).

2.5 Independent national human rights institutions

32. 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 to deal with different aspects of child protection in the country. The Child Rights Desk 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 Afghanistan⁶⁶. 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.
33. Children are able to make independent requests for help and protection from AIHRC⁶⁷. 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/ for children, since child rights AIHRC representatives always facilitate meetings with children separately from the adults⁶⁸. 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 assistance⁶⁹. 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 protection⁷⁰.
34. 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'⁷¹.

⁶⁴ CPAN Personal Communication 30 August 2015.

⁶⁵ Development Consultants South and Central Asia *Child Protection Action Network* available at http://develop-csca.com/?page_id=59 (Accessed 9 June 2015).

⁶⁶ AIHRC *Human Rights Situation: Annual Report (2012)* p. 20 available at http://www.aihrc.org.af/home/research_report/1236 (Accessed 10 January 2015) (hereafter Human Rights Situation).

⁶⁷ AIHRC Personal Communication 30 August 2015.

⁶⁸ AIHRC Personal Communication 06 September 2015.

⁶⁹ AIHRC Personal Communication 06 September 2015.

⁷⁰ AIHRC Personal Communication 06 September 2015.

⁷¹ 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 20 August 2015).

2.6 Non-governmental and civil society organizations

35. An UN Protection Cluster in Afghanistan was established in 2008, including a Child Protection in Emergencies sub cluster, to strengthen coordination of humanitarian action⁷². Led by UNICEF, with support from Save the Children, various international and national NGOs, along with UN agencies, meet monthly to improve the efficiency and quality of response to various child protection humanitarian needs in Afghanistan.
36. 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: 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 access⁷³.

2.7 Justice for children

37. 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 rights⁷⁴.
38. 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 Court⁷⁵ (*see 7.1 Children in conflict with the law*).
39. 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 reintegration⁷⁶.

⁷² UNICEF *Children and Women in Afghanistan* (November 2014) p. 45.

⁷³ UNICEF Personal Communication 31 August 2015.

⁷⁴ War Child UK *Implementing alternatives to detention, 'community sanctions', for children in Afghanistan* (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 (hereafter *Implementing alternatives to detention*).

⁷⁵ 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.

⁷⁶ Government of the Islamic Republic of Afghanistan *Presidential decree of Islamic Republic of Afghanistan regarding approval of juvenile justice department rules* (2008).

The Juvenile Rehabilitation Centres Working Group meets on a monthly base to discuss issues and concerns in regards to the JRCs⁷⁷.

Informal justice system

There is varying adherence to codified (national) law, with courts often disregarding applicable statutory law in favor of sharia or local custom, according to the 2014 US Department of State Human Rights report⁷⁸, 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 offender⁷⁹.

There are two main structures within the informal justice system for deciding justice: jirgas and shuras⁸⁰. A jirga is a Pashtun tribal structure of elders to consult and solve a question or dispute, while 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 governance⁸¹.

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 statements⁸².

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'⁸³.

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 vulnerable⁸⁴.

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

⁷⁷ JSSP Personal Communication 24 August 2015.

⁷⁸ 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 23 August 2015) p. 13.

⁷⁹ UNODC *Implementing alternatives to imprisonment* (2008) p. 47.

⁸⁰ Khan, Hamid M. 'Islamic Law, Customary Law and the Afghan Informal Justice' USIP (2015) p. 5.

⁸¹ Khan, Hamid M. 'Islamic Law, Customary Law and the Afghan Informal Justice' USIP (2015) pp. 5-6.

⁸² The Asia Foundation *Afghanistan in 2014* (2014) p. 98.

⁸³ UNODC *Implementing alternatives to imprisonment* (2008) p. 47.

⁸⁴ UNODC *Implementing alternatives to imprisonment* (2008) p. 47.

legislations, which fail to meet international standards for child protection⁸⁵. 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 father, 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 ineffective⁸⁶ (see 4.3 Access to appropriate legal advice and 7.5 Underage and forced child marriage).

2.8 Birth registration

According to the Ministry of Interior 'birth of a child shall be reported by the child's legal guardian to the nearest civil registration office within six months after birth'⁸⁷. The government established a system of registration in 2003 and is working to register as many children at birth as possible.

According to the 2011 Afghanistan Multiple Indicator Cluster Survey (Afghan MICS), 37.4 per cent of children under 5 had a birth certificate, implying that 3 million under-five children are not registered as citizens of Afghanistan⁸⁸. Urban children were more than twice as likely to be registered as rural children (64 per cent compared to 29 per cent), and only 16 per cent of *Kuchi* (nomads) children were registered⁸⁹.

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	Not Applicable	Not applicable	See 7.5
Identity documents	0-17: with parents 18: Independently	Ministry of Interior	See 2.9
Compulsory education	6	Afghan constitution	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

⁸⁵ UNICEF *Children and Women in Afghanistan* (November 2014) p. 35.

⁸⁶ UNICEF *Children and Women in Afghanistan* (November 2014) pp. 38-39.

⁸⁷ Ministry of Interior *Newborn Registration system*. available at <http://moi.gov.af/en/page/7180> (Accessed 31 August 2015).

⁸⁸ Central Statistics Organization and UNICEF *Afghanistan MICS 2010-2011* (2012).

⁸⁹ Central Statistics Organization *National Risk and Vulnerability Assessment* (2014) p. 89.

Independent identity and travel documents

49. 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)⁹⁰. 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 nationality⁹¹ (see 8.3 *Settling after return*).

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⁹⁰ Ministry of Interior available at <http://moi.gov.af/fa/blog/how-to-get-a-new-tazkira> (Accessed 24 August 2015).

⁹¹ Ministry of Interior available at <http://moi.gov.af/fa/blog/how-to-get-a-new-tazkira> (Accessed 24 August 2015).



3 General principles

3.1 Non-discrimination

Legislation

50. 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’⁹².

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’.

51. 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

⁹² 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 24 August 2015).

the Afghanistan National Development Strategy (ANDS) 2008-2013 framework) were drafted with human right principles and CRC provisions⁹³.

52. In spite of constitutionally accepted rights and policies, the GIROA does not view the CRC as legally binding⁹⁴. 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

53. 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 age⁹⁵ (*see 2.9 Legal ages for children and 7.5 Underage and forced child marriage*).
54. Girls are less likely to be enrolled in schools. The Ministry of Education reported that overall general education enrollment for girls was 3,370,280 in 2014, compared to 5,213,426 boys⁹⁶ (*see 5.3 Education*).
55. Girls in Afghanistan face the risk of early pregnancy and gender based violence. One in three women in Afghanistan had started childbearing by the age of 19⁹⁷. This places them at a higher risk of maternal mortality as well. According to recent reports, an estimated 87.2 per cent of women have experience at least one form of physical, sexual and psychological violence or forced marriage in their life⁹⁸ (*see 7.5 Underage and forced child marriage*).

Access to school

56. 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 facilities⁹⁹. 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 education¹⁰⁰ (*see 5.3 Education*).

⁹³ UNICEF *Children and Women in Afghanistan* (November 2014) p. 22.

⁹⁴ UNICEF *Children and Women in Afghanistan* (November 2014) p. 22.

⁹⁵ Government of the Islamic Republic of Afghanistan *Afghan Civil Code Article 70* available at <http://www.asianlii.org/af/legis/laws/clotroacogn353p1977010513551015a650/> (Accessed 29 August 2015).

⁹⁶ Ministry of Education *Official website: Reports, EMIS Enrollment by Grade 1393*. (2014) available at http://moe.gov.af/en/page/1831/3_s031 (Accessed 4 September 2015).

⁹⁷ UNFPA *Afghanistan State of Youth Report 2014* (2014) p. 5.

⁹⁸ Global Rights *Living with Violence. A national report on domestic abuse in Afghanistan* (2008) p. 1.

⁹⁹ AIHRC *Human Rights Situation* (2012) available at http://www.aihrc.org.af/home/research_report/1236 (Accessed 10 January 2015)

¹⁰⁰ UNICEF *Children and Women in Afghanistan* (November 2014) p. 63.

57. 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, Turkamani, Pashaei, Noristani, Baluchi, Pamiri, etc) in addition to teaching Dari and Pashto, the facilities for teaching the third language will be provided¹⁰¹. The MoE is responsible to provide training, books and teachers to help meet this mandate.
58. 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 kilometers of a primary school¹⁰². The 2012 CSO report noted that the population in rural areas is at a severe disadvantage: the youth literacy rate there is only 39 percent, compared to 71 percent in urban areas, while overall net primary school attendance in rural areas is 54 per cent, while in urban areas it is 78 per cent¹⁰³. UNICEF states in its 2014 report that 78 per cent of urban households and 54 per cent of rural households live within an hours walking distance of a health facility¹⁰⁴ (see 5.3 Education).

Discrimination against minority groups

59. The constitution does not explicitly address equal rights based on race, disability, language, or social status¹⁰⁵.
60. 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 detention¹⁰⁶. 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 places¹⁰⁷. One such incident reported on 25 July 2014, insurgents stopped two minibuses in Ghor Province and ordered the passengers to disembark. They separated 14 Hazaras (including three women and one child) from the other passengers, bound their hands, and shot and killed them by the side of the road¹⁰⁸.

Children with disabilities

61. In 2011 ninety per cent of children with disabilities do not have access to education¹⁰⁹.
62. 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

¹⁰¹ Ministry of Education *Education Law* (farsi version) <http://moe.gov.af/fa/page/2522>, (Accessed 23 August 2015).

¹⁰² Central Statistics Organization *National Risk and Vulnerability Assessment 2011-2012* (2012).

¹⁰³ Central Statistics Organization *National Risk and Vulnerability Assessment 2011-2012* (2012).

¹⁰⁴ UNICEF *Children and Women in Afghanistan* (November 2014) p. 50.

¹⁰⁵ 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 23 August 2015) p. 37.

¹⁰⁶ 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 23 August 2015) p. 51.

¹⁰⁷ 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 23 August 2015) p. 51.

¹⁰⁸ 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 23 August 2015) p. 52.

¹⁰⁹ International Disability Alliance 'Disability –analysis of Reports CRC Committee 56th session' (17 January – 4 February 2011) p. 7.

and Jalalabad) for children with hearing impairments¹¹⁰. Currently there are 29 pilot general education schools in Kabul where children with and without disabilities are learning¹¹¹. All these programs are located in urban areas (see 5.3 Education).

LGBTI issues

63. The Afghan law does not prohibit discrimination or harassment on the basis of sexual orientation or gender identity¹¹².
64. 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 sex¹¹³. The Afghan penal code punishes those involved in homosexual acts with *Hodod*¹¹⁴, for the act of sodomy, and long-term imprisonment for those who were sodomized.
65. The 2014 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’¹¹⁵. Organizations devoted to protecting the freedom of LGBT persons remained underground because they could not be legally registered and members of the LGBT community reported they continued to face discrimination, assault, rape, and arrest.
66. An assessment conducted by UNODC in 2008 found that 14 per cent of boys in detention were charged with homosexual behavior, with some of them very young, one being only eleven years’ old and under the age of criminal responsibility¹¹⁶. 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 victims¹¹⁷.

3.2 Best interests of the child

67. In article 54 of the Afghanistan Constitution, special care for securing the best interests of the child has been recognized and included.
68. 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

¹¹⁰ UNFPA *Afghanistan State of Youth Report 2014* (2014) p. 74.

¹¹¹ UNFPA *Afghanistan State of Youth Report 2014* (2014) p. 74.

¹¹² 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 23 August 2015) p. 52.

¹¹³ Government of the Islamic Republic of Afghanistan *Afghan Civil Code Article 60* available at <http://www.asianlii.org/af/legis/laws/clotroacogn353p1977010513551015a650/> (Accessed 29 August 2015).

¹¹⁴ *Hodod* literally means “Limit” which is fixed by Sharia law and its punishment, stoning, capital punishment and whipping which are unchangeable ordained by God.

¹¹⁵ 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 23 August 2015) p. 52.

¹¹⁶ UNODC *Implementing alternatives to imprisonment* (2008) p. 37.

¹¹⁷ UNODC *Implementing alternatives to imprisonment* (2008) p. 38.

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'¹¹⁸.

69. The best interest of children is still unclear in Afghan laws, since it is a concept found in international instruments. The team lead for the Juvenile Justice Sector Support Program (JSSP) stated 'Per my experience it is not considered by juvenile justice actors such as polices, prosecutors and judges'¹¹⁹ (see 7.1 *Children in conflict with the law*).

3.3 Rights to life and development

Legislation

70. Article 23 of the Afghanistan Constitution recognizes the right to life¹²⁰. 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

71. Afghanistan's under-five mortality rate is 97 per 1000 live births, and the infant mortality rate is 70 per 1000 live births, according to the UNICEF State of the World's Children report for 2015¹²¹. The 2011- 2012 NRVA reported an under-five mortality rate of 91 per 1000 live births and an infant mortality rate of 48 per 1000 live births¹²². The 2014 UNDP Human Development Index reports an under-five mortality rate of 99 per 1000 live births and an infant mortality rate of 71 per 1000 live births¹²³ (see 5.2 *Health*).
72. Data on deaths of children is limited to children civilian casualties caused by the ongoing-armed conflict, based on the United Nations Assistance Mission in Afghanistan (UNAMA) mid-year and annual reports on civilian casualties in Afghanistan. The 2015 UNAMA report indicates that one in four civilian casualties of the armed conflict is a child¹²⁴. UNAMA also reported that while ground engagements for civilian casualties have decreased, for children there is a 17 per cent increase, with ground engagements accounting for half of the total child casualties¹²⁵ (see 7.3 *Children in armed conflict*).

Specific severe risks in childhood

73. 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 compared findings of the UNAMA reports for 2012, 2013 and 2014, highlight

¹¹⁸ Ministry of Finance Afghanistan. *1394 budget* (2015-216). http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1394/1394%20National%20Budget_English%20Version.pdf (Accessed 20 August 2015).

¹¹⁹ JSSP Personal Communication 24 August 2015.

¹²⁰ 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 24 August 2015).

¹²¹ UNICEF *State of the World's Children 2015* (2015) available at <http://sowc2015.unicef.org> (Accessed 4 September 2015) p. 36.

¹²² Central Statistics Organization *National Risk and Vulnerability Assessment 2011-2012* (2012) p. 15.

¹²³ UNDP *Human Development Index* (2014) table 7 available at <http://hdr.undp.org/en/countries/profiles/AFG> (Accessed 18 August 2015).

¹²⁴ UNAMA *Protection of Civilians in Armed Conflict Midyear Report 2015* (5 August 2015) p. 19.

¹²⁵ UNAMA *Protection of Civilians in Armed Conflict Midyear Report 2015* (5 August 2015) p. 19.

the rapid increase in number of children killed and injured in the conflict since 2009. According to the Director of Human Rights for UNAMA, Georgette Gagnon:

'It is the awful reality that most women and children were killed and injured in their daily lives – at home, on their way to school, working in the fields or traveling to a social event. This situation demands even greater commitment and further efforts by the parties to protect women and children from conflict-related violence'¹²⁶.

Along with casualties from the armed conflict, UNAMA noted that nutrition, disease, mortality rate are also significant challenges for the Afghan children that need to be seriously considered¹²⁷.

Harmful traditional practices

74. 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*¹²⁸ and *badal*¹²⁹ 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. The Afghan MICS in 2010/2011 reported that 15 per cent of women in Afghanistan were married before age 15¹³⁰ (see 7.5 *Underage and forced child marriage*).
75. 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 unreported¹³¹. 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)¹³². The AIHRC 2013 national inquiry reported that in 35 per cent of cases the victim knows the perpetrator¹³³ (see 7.6 *Local harmful traditional practices*).
76. 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 (see 7.2 *Victims of child trafficking*).

¹²⁶ UNAMA *Civilian Casualties in Afghan Conflict Rise by 14 Percent in 2013* (8 February 2014).

¹²⁷ UNAMA *Civilian Casualties in Armed Conflict 2013 report* (2014).

¹²⁸ "baad" refers to when a daughter is given to another party as a penalty or payment for an offense.

¹²⁹ "badal" is the exchange of girls between families for marriage.

¹³⁰ Central Statistics Organisation and UNICEF *Afghan MICS* (2012) p. XXII.

¹³¹ AIHRC *National Inquiry report on factors and causes of rape and honour killing in Afghanistan* (2013) p. 4.

¹³² AIHRC *National Inquiry report on factors and causes of rape and honour killing in Afghanistan* (2013) p. 4.

¹³³ 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

77. 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 censorship¹³⁴. According to the 2013 AIHRC annual report on the human rights situation, around 70 local and national TV stations, 170 governmental and private radio stations, 9 news agencies, 1500 newspapers and hundreds of websites are active in Afghanistan¹³⁵. There is media for children, but reports or records of said shows were not accessible.
78. Freedom House 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 2015 Freedom of Press index ranks Afghanistan 148 out of 199 countries globally, and 30 out of 40 countries in the East and South Asia region in freedom of press¹³⁶.
79. 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

¹³⁴ Freedom House *Freedom of Press 2013*. (2013) available at <https://freedomhouse.org/report/freedom-press/2013/afghanistan#.Venm77QxGRs> (Accessed 4 September 2015).

¹³⁵ AIHRC *Annual Report 1392* (2013) available at www.aihrc.org.af/home/research_report/2213 (Accessed 10 Jan 2015).

¹³⁶ Freedom House *Freedom of the Press 2015: Harsh laws and violence drive global decline* available at https://freedomhouse.org/sites/default/files/FreedomofthePress_2015_FINAL.pdf (Accessed 22 August 2015) p. 11.

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 them¹³⁷.

80. 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-laws¹³⁸ (see 3.1 *Non-discrimination and 1.2 Family structure*).
81. There is an established national youth body called the Union of Youth of Afghanistan and the government has set up youth federations in each province¹³⁹. 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 commanders¹⁴⁰'. 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 organization¹⁴¹.
82. 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 Islam¹⁴². 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* laws¹⁴³.

4.2 Access to adequate information

83. The Access to Information Law was signed into law by President Ashraf Ghani in December 2014¹⁴⁴. 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 information¹⁴⁵. Integrity Watch¹⁴⁶

¹³⁷ 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 22 August 2015).

¹³⁸ UNICEF *Children and Women in Afghanistan* (November 2014) p. 23.

¹³⁹ UNFPA *Afghan state of youth report* (2014) p. 97.

¹⁴⁰ UNFPA *Afghan state of youth report* (2014) p. 97.

¹⁴¹ Samuel Hall *Consulting Afghanistan's Future in Transition: A Participatory Assessment of the Afghan Youth* (2013).

¹⁴² AIHRC *Annual Report 1392* (2013) p. 88.

¹⁴³ Hamed Samay 'Afghanistan New media restrictions according to Sharia law' Freemuse. (2008) available at <http://freemuse.org/freemuseArchives/freerip/freemuse.org/sw26610.html> (Accessed 27 September 2014).

¹⁴⁴ '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 31 August 2015).

¹⁴⁵ 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 31 August 2015).

¹⁴⁶ Integrity Watch is an Afghan Civil Society Organisation, founded in 2006, that focuses on promoting integrity standards through partnerships and capacity building.

saw the new law as a positive step but also observed that the law needs further improvement, specifically in ensuring independence from the GIROA¹⁴⁷.

84. In 2014, the most widely used source for accessing information in Afghanistan was still reported to be the radio¹⁴⁸. However, 2014 saw an increase in access to the television and Internet as well, especially in urban areas. Rural areas still rely on radio for the majority of information. The most widely used sources for accessing information, based on a 2014 survey, are ranked below.

Table 7: Sources for accessing information 2014¹⁴⁹

Source	% of Afghans
Radio	77.4
Television	58.4
Mobile phones	48.1
Mosques	46.9
Community <i>shuras</i> (councils)	36.4
Internet	5.6

85. For Afghan youth, mobile phone coverage has increased in recent years, from around 40 per cent in 2007 to between 63 percent and 70 percent in 2014¹⁵⁰. Youth living in urban areas have an increased use of the Internet compared to youth in rural areas. In the same regards, male youth report higher usage and access to Internet, compared to their female counterparts.

4.3 Access to appropriate legal advice

86. 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 defense attorney¹⁵¹.
87. An assessment of Juvenile Justice in Afghanistan by Terre des Hommes (TdH) in 2010 reported that 91.9 per cent of the 250 juveniles interviewed had a defense attorney, however there were complaints about the quality of legal advice and advocacy of said defense attorneys, with many juveniles stating their attorneys did not talk in court, did not talk to them, and were generally unprepared¹⁵² (*see 7.1 Children in conflict with the law*).

¹⁴⁷ 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 17 September 2015).

¹⁴⁸ The Asia Foundation *Afghanistan in 2014* (2014) p. 118.

¹⁴⁹ The Asia Foundation *Afghanistan in 2014* (2014) p. 118.

¹⁵⁰ UNFPA *Afghan state of youth report*. (2014) p. 8.

¹⁵¹ Government of the Islamic Republic of Afghanistan. *Afghan Juvenile Code*. (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed 23 August 2015).

¹⁵² Motley, Kim *An assessment of juvenile justice in Afghanistan* (2010) p. 34.

88. 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 systems¹⁵³. 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*).

4.4 Independent Complaints Procedures

89. 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 representative¹⁵⁴.
90. Children are able to make independent requests for help and protection from AIHRC¹⁵⁵. 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 adults¹⁵⁶. 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 assistance¹⁵⁷. 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 protection¹⁵⁸.

4.5 Privacy

91. 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.
92. Afghan laws are silent about children privacy at home; neither thwarts intruders of privacy nor allowing that such incidents to occur.

¹⁵³ UNICEF *Children and Women in Afghanistan* (November 2014) p. 38.

¹⁵⁴ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code. Article 134* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed 23 August 2015).

¹⁵⁵ AIHRC Personal Communication 30 August 2015.

¹⁵⁶ AIHRC Personal Communication 6 September 2015.

¹⁵⁷ AIHRC Personal Communication 6 September 2015.

¹⁵⁸ AIHRC Personal Communication 6 September 2015.

4.6 Torture and other cruel and degrading treatment

93. 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.
94. The Committee on the Rights of Children noted 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 place¹⁵⁹.
95. UNAMA's child protection unit verified two of five reported cases of sexual violence against children by the security forces during the first six months of 2014. These cases included the rape of a seven-year-old girl in Maidan Wardak Province by a member of the Afghan Local Police (ALP) in April, and in May the sexual abuse of a 15- year-old boy in Kunduz Province by pro-government militia members¹⁶⁰.

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¹⁵⁹ 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 11 February 2015).

¹⁶⁰ 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 23 August 2015) p. 5.



5 Basic Rights

DRAFT

5.1 Food, water and housing

96. One in three children under five in Afghanistan are estimated to be moderately to severely stunted¹⁶¹. Children in the Southern region were more likely to be underweight and stunted, compared with peers in other regions, and boys appeared to be more underweight and stunted than girls. The NRVA 2011-2012 report noted that food insecurity in urban areas had increased to 34.4 per cent from a previous 28.3 per cent¹⁶².
97. According to the NRVA 2011-2012 report, 46 per cent of Afghans have access to improved drinking water sources. Due to the mobile nature of their lifestyle, denial of access to water sources is most likely to occur within the Kuchis (nomad) populations, where only 21 per cent have access to improved drinking water¹⁶³.
98. 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. Overall, in 2014 14 per cent of Afghans live in what would be defined as a durable dwelling, 45 per cent in urban areas and 5 per cent in rural areas¹⁶⁴. Eighty-seven per cent of urban dwellers (5.3 million people) live in slum-like conditions¹⁶⁵.

¹⁶¹ Central Statistics Organization and UNICEF *Afghan MICS (2012)* p. 49.

¹⁶² Central Statistics Organization *National Risk and Vulnerability Assessment (2014)* p. XIX.

¹⁶³ Central Statistics Organization *National Risk and Vulnerability Assessment (2014)* p. 99.

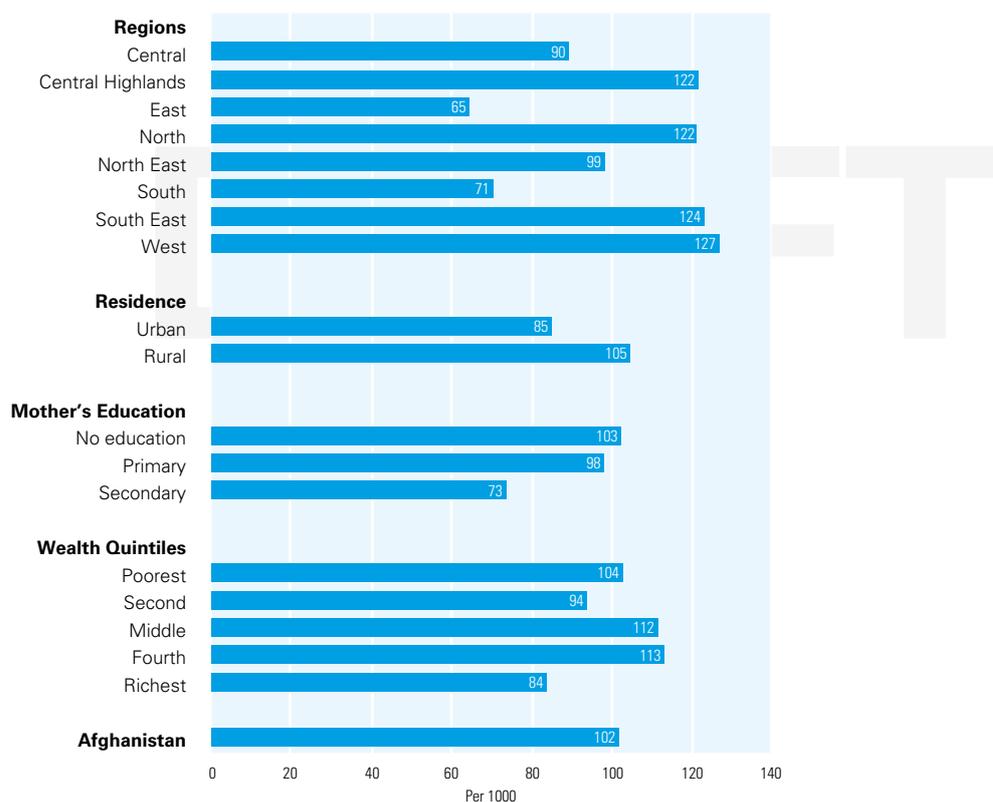
¹⁶⁴ Central Statistics Organization *National Risk and Vulnerability Assessment (2014)* p. 95.

¹⁶⁵ Central Statistics Organization *National Risk and Vulnerability Assessment (2014)* p. 95.

5.2 Health

99. The Afghanistan constitution entitles all Afghans to free and equal access to health services¹⁶⁶. The government of Afghanistan spent only USD 2.1 per capita in 2013 to health services, which is among the lowest in the world¹⁶⁷.
100. The Afghan Ministry of Public Health lists an estimated 2,321 health facilities in total nationwide in 2014¹⁶⁸. The 2011-2012 NRVA report stated that 85 per cent of Afghans live within two hours of a health facility. There is an average of three doctors, four medical helpers, nine pharmacists and five hospital beds per 10,000 Afghans¹⁶⁹.
101. Under-five mortality rates in Afghanistan were reported at 97 per 1,000 live births for 2013¹⁷⁰ (see 3.3 Rights to life and development).

Figure 4: Under-5 mortality rates by region, residence, education and wealth in 2012¹⁷¹



¹⁶⁶ 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 August 2015).

¹⁶⁷ Central Statistics Organization, *Afghanistan Statistical Yearbook 2014-2015* (2015) available at <http://cso.gov.af/en/page/1500/4722/2014-2015> (Accessed 18 August 2015).

¹⁶⁸ Ministry of Public Health *List of Active Health Facilities* (November 2014) available at <http://moph.gov.af/en/documents/category/hmis> (Accessed 22 August 2015).

¹⁶⁹ Central Statistics Organization *Afghanistan Statistical Yearbook 2014-2015* available at <http://cso.gov.af/en/page/1500/4722/2014-2015> (Accessed 18 August 2015).

¹⁷⁰ Central Statistics Organization *National Risk and Vulnerability Assessment 2011-2012* (2012) p. 14 and UNICEF *State of the World's Children 2015* (2015).

¹⁷¹ Central Statistics Organisation and UNICEF *Afghan MICS* (2012) p. 21.

Table 8: Under-5 mortality rates for bordering countries¹⁷²

Inhabitants living in:	Under-5 mortality rate per 1000
Pakistan	86
Tajikistan	48
Uzbekistan	43
Turkmenistan	55
Iran	17
China	13

102. Fifty-nine per cent of children under five in Afghanistan are moderately or severely stunted, due to child malnutrition¹⁷³.
103. Vitamin A deficiency is associated with prevalence of severe infectious diseases, blindness and mortality, and is seen as a major public health indicator¹⁷⁴. Sixty per cent of the children under five in Afghanistan were receiving vitamin A supplementation in 2011-2012¹⁷⁵.
104. Forty per cent of children under-five were reported to have had a fever in the last month before the NRVA 2011-2012 survey, and 55 per cent of those also had diarrhoea¹⁷⁶.
105. Iodine deficiency disorders are the leading cause of preventable mental retardation and impaired psychomotor development in young children; in Afghanistan 20 per cent of households were consuming adequate levels of iodized salt in 2012¹⁷⁷.
106. Thirty-four per cent of children, under-five, in Afghanistan have anaemia, according to the Afghan MICS 2010-2011¹⁷⁸.
107. Drug use is on the increase in Afghanistan¹⁷⁹. 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 cannabis¹⁸⁰. 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 uncommon¹⁸¹.
108. 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

¹⁷² UNICEF *State of the World's Children 2015*. (2015) available at <http://sowc2015.unicef.org> (Accessed 4 September 2015) pp. 36-40.

¹⁷³ UNDP Human Development Index (2014) available at <http://hdr.undp.org/en/countries/profiles/AFG> (Accessed 18 August 2015).

¹⁷⁴ Central Statistics Organization *National Risk and Vulnerability Assessment 2011-2012* (2012) p. 79.

¹⁷⁵ Central Statistics Organization *National Risk and Vulnerability Assessment* (2014) p. 90.

¹⁷⁶ Central Statistics Organization *National Risk and Vulnerability Assessment* (2014) p. 90.

¹⁷⁷ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 38.

¹⁷⁸ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 43.

¹⁷⁹ UNICEF *Children and Women in Afghanistan* (November 2014) p. 42.

¹⁸⁰ UNODC *Drug use in Afghanistan: 2009 Survey* (2009).

¹⁸¹ UNICEF *Children and Women in Afghanistan* (November 2014) p. 42.

Ministry of Public Health¹⁸². A survey of young people by Samuel Hall reported that more than half of all participants, out of 1,980 participants needed psychological or counseling support¹⁸³.

109. 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 that health facilities are inadequate, significantly underfunded as well as subject to attacks by insurgent groups, and occupation by the State party's armed forces¹⁸⁴. A lack of female health care providers in Afghanistan hinders access to health care for Afghan girls¹⁸⁵.
110. Increased conflict has limited the ability of rural populations to access health services and even caused damage to health facilities during fighting¹⁸⁶.

5.3 Education

111. 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 institutions¹⁸⁷.
112. The compulsory school age in Afghanistan is set between six and fourteen years old¹⁸⁸. The educational system in Afghanistan includes General Education (GE), Community Based Education (CBE), a parallel system of Islamic Education, Technical and Vocational Education (TVE) and Teacher Training (TTC)¹⁸⁹.
113. The current budget for education is 13 per cent of the entire national budget¹⁹⁰. Ninety per cent of the budgeted amount goes to salaries, with ten per cent left to cover teacher trainings, infrastructure, and learning materials¹⁹¹.

Enrolment rates disaggregated by gender, age and region

114. In 2014, the Ministry of Education (MoE) in Afghanistan reported there were 16,584 schools (primary and secondary) and about 8.8 million students of whom about 3.4 millions were girls¹⁹².

¹⁸² UNFPA *Afghanistan State of Youth Report 2014* (2014) p. 5.

¹⁸³ Hall, Samuel *Afghanistan's Future in Transition: A Participatory Assessment Of the Afghan Youth* (2013).

¹⁸⁴ 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 11 February 2015).

¹⁸⁵ UNICEF *Children and Women in Afghanistan* (November 2014) p. 52.

¹⁸⁶ OCHA *2015 Humanitarian Needs Review. Afghanistan* (November 2014) p. 8.

¹⁸⁷ 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 24 August 2015).

¹⁸⁸ AIHRC *Children's situation summary report* (December 2013) available at http://www.aihrc.org.af/home/research_report/2115 (Accessed October 24, 2014).

¹⁸⁹ Ministry of Education *Afghanistan National Education for All (EFA) Review Report* (2015) p. 15.

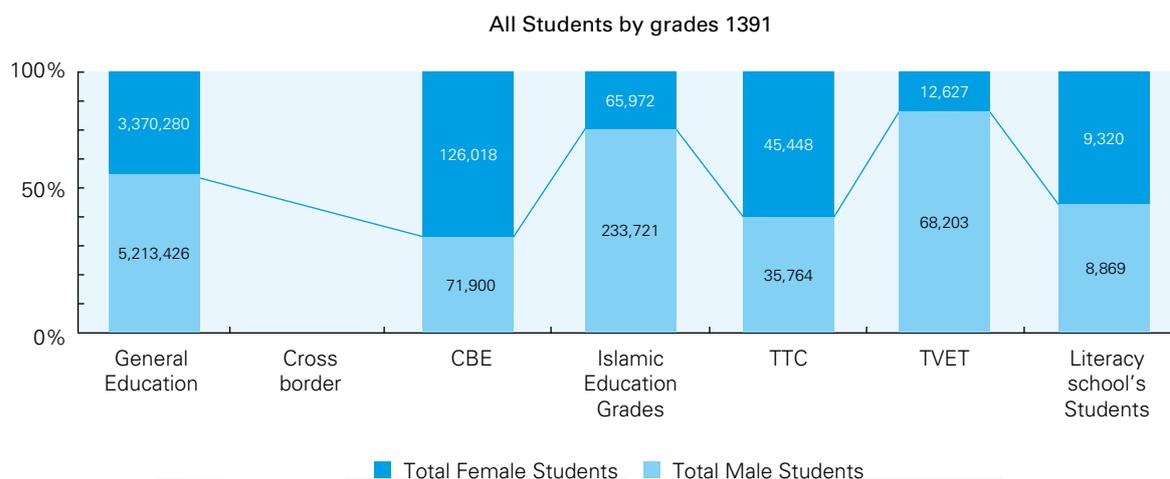
¹⁹⁰ Ministry of Finance *1394 Citizen Budget Dari* (2014) available at <http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1394/Dari%20Citizens%20Budget.pdf> (Accessed August 17 2015).

¹⁹¹ UNICEF *Children and Women in Afghanistan* (November 2014) p. 60.

¹⁹² Central Statistics Organization *Afghanistan Statistical Yearbook, 2013-2014*.

115. Afghanistan is among the poorest performers in providing sufficient education to its population¹⁹³. Enrolment rates show that male attendance is higher than female attendance, except for in community based education, where 126,013 girls are enrolled, compared to 71,900 boys according to MoE data from 1391 (2012)¹⁹⁴.

Figure 5: Attendance ratios by gender and programme, 2012 statistics¹⁹⁵



116. The Afghanistan 2015 Education For All report noted that overall primary (1-6) school attendance is higher in urban areas compared to rural areas, with 78 per cent and 54 per cent respectively¹⁹⁶.
117. According to the 2014 Human Development Index an estimated 20 per cent of Afghans have completed at least some portion of secondary education¹⁹⁷.

Educational facilities

118. Only 8,303 out of 16,584 or about 50% of schools were conducted in permanent buildings. 6,968 schools have no buildings¹⁹⁸. 425 buildings are under construction¹⁹⁹. Schools are understaffed and cannot provide quality education because there is a need of capacity building for teachers. There is lack of female teachers in rural areas, which has a negative impact on girl enrolment and retention rates. At least 30 per cent of the schools do not have proper sanitation facilities, access to safe drinking water, and boundary walls²⁰⁰.

¹⁹³ Central Statistics Organization *National Risk and Vulnerability Assessment 2011-2012* (2012) p. 71.

¹⁹⁴ Ministry of Education *Official website: EMIS Enrollment by grade 1393* (2014) available at <http://moe.gov.af/en/page/1831/3031> (Accessed 4 September 2015).

¹⁹⁵ Ministry of Education *Official website: EMIS Enrollment by grade 1393* (2014) available at <http://moe.gov.af/en/page/1831/3031> (Accessed 4 September 2015).

¹⁹⁶ Ministry of Education *Afghanistan National Education for All (EFA) Review Report* (2015) p.12.

¹⁹⁷ UNDP *Human Development Index* (2014) available at <http://hdr.undp.org/en/countries/profiles/AFG> (Accessed 18 August 2015).

¹⁹⁸ Ministry of Education *Official website: EMIS Building & Class Room Informations 1393* (2014) available at <http://moe.gov.af/en/page/1831/3031> (Accessed June 5, 2015).

¹⁹⁹ Ministry of Education *Official website: EMIS Building & Class Room Informations 1393* (2014) available at <http://moe.gov.af/en/page/1831/3031> (Accessed June 5, 2015).

²⁰⁰ UNICEF *Girls' education in Afghanistan* Generation@25 available at <http://generation25.org/2014/08/18/girls-education-the-infographic/> (Accessed 26 October 2014) (hereafter Girls' education in Afghanistan).



119. In 2014, the MoE reported 865 Islamic education schools, which operate parallel to public education²⁰¹.

120. Teachers' credentials are poor and there is a lack of qualified teachers. Only 32 per cent of the teachers meet minimum requirements of being qualified²⁰². The 2014 Human Development Index records a pupil/teacher ratio of 44 pupils to one teacher²⁰³.

Equal access to education

121. The national constitution states that all Afghans have an equal right to access free education; however in practice this is not evident.

122. A large number of boys and girls in 16 out of 34 provinces had no access to schools by 2013, due to insurgents' attacks and threats that lead to closure of the schools²⁰⁴. The Special Representative of the Secretary-General for Children in Armed Conflict reported in 2010 that due to insecurity, between 50 and 80 per cent of the schools has been closed in conflict-affected areas²⁰⁵.

²⁰¹ Ministry of Education *Official Website: Reports, EMIS Number of Schools by Programme* (2014) available at <http://moe.gov.af/en/page/1831/3031> (Accessed 31 August 2015).

²⁰² UNICEF *Girls' education in Afghanistan* <http://generation25.org/2014/08/18/girls-education-the-infographic/> (Accessed 26 October 2014).

²⁰³ UNDP *Human Development Index* (2014) available at <http://hdr.undp.org/en/countries/profiles/AFG> (Accessed 18 August 2015).

²⁰⁴ UNICEF *Girls' Education in Afghanistan* available at <http://generation25.org/2014/08/18/girls-education-the-infographic/> (Accessed October 26, 2014).

²⁰⁵ UN *Office of the Special Representative of the Secretary-General* (2010) p. 10.

According to Oxfam's policy adviser in Kabul, Elizabeth Cameron, as insecurity grows, more and more parents are reluctant to send their children to school and this is affecting girls' education²⁰⁶ (see 7.3 Children in armed conflict).

123. Attacks against schools violate the right of children to access quality education. The 2014 UNICEF situational analysis reported that based on records from the Ministry of Education (MoE) and the Monitoring and Reporting Mechanism (MRM) on Children and Armed Conflict; there have been approximately 1,500 attacks on schools between January 2009 and May 2013²⁰⁷.
124. The Taliban also continued to issue threats against girls' schools and other schools. For instance, in May 2014, local Taliban members in Nangarhar province issued a letter in which they threatened teachers and children at a girls' school with acid attacks if they continued to attend school²⁰⁸. Also in May 2013, in Zabul Province, the Taliban forced the closure of 40 schools in retaliation for Government action against the groups²⁰⁹.
125. Ninety per cent of children with disabilities do not have access to education in 2011²¹⁰.
126. 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.
127. Thirty-four per cent of orphans attend school in 2012, in comparison to 57 per cent of their non-orphan peers²¹¹.
128. 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. In 2015, there are a total of 35,506 children (17,526 girls and 17,980 boys) enrolled in these community-based schools and 14,111 children (9,129 girls and 4,982 boys) enrolled in the accelerated learning centres of UNICEF and Ministry of Education²¹².

²⁰⁶ Tran, Mark 'Afghanistan's gains at risk as it enters period of political uncertainty' *The Guardian* 29 January 2014.

²⁰⁷ UNICEF *Children and Women in Afghanistan* (November 2014) p. 29.

²⁰⁸ UN General Assembly *Promotion and protection of the rights of children, children in armed conflict, Report of the secretary General* (15 May 2014) p. 7.

²⁰⁹ UN General Assembly *Promotion and protection of the rights of children, children in armed conflict, Report of the secretary General* (15 May 2014) p. 7.

²¹⁰ International Disability Alliance 'Disability –analysis of Reports CRC Committee 56th session' (17 January – 4 February 2011) p. 7.

²¹¹ Central Statistics Organization (CSO) and UNICEF (2012). *Afghan MICS* (2012) p. VII.

²¹² UNICEF Personal Communication 31 August 2015.



6 Family environment and alternative care

6.1 Rights and responsibilities

129. 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.
130. Legally a child reaches an age of maturity at 18, according to the national constitution. 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 something starting from 13-18 years old²¹³.
131. The average household size in Afghanistan is 7.4 persons, averaging 3.6 (48 per cent) children under fifteen²¹⁴.
132. 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.

²¹³ Peace Training and Research Organization (PTRO) *Child Rights in Afghanistan* 2013.

²¹⁴ Central Statistics Organization *National Risk and Vulnerability Assessment 2011-2012* (2012) p. 8.

According to *Sharia* law the *zani* (doer of sexual intercourse – usually men) and *zaniah* (receiver usually women) are subjected 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.

6.2 Protection of disadvantaged and vulnerable children

133. MoLSAMD is the designated government ministry responsible for overarching child protection services. The National Strategy for Children At Risk promotes the rights of vulnerable children, disabled, orphans, street working children, children in conflict with the law and children with mothers in detention²¹⁵. It is based on article 53 and 54 of the GIRoA constitution, the Afghan Juvenile Code and the UN CRC²¹⁶.
134. 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 2005²¹⁷.
135. 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 children²¹⁸. 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.
 - **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 education²¹⁹.
136. The Child Protection Action Network (CPAN) is the primary child protection case management system. CPAN works in cooperation with MoLSAMD. The main activities of CPAN include

²¹⁵ Child Protection in Emergences (CPiE) *Afghanistan Draft Desk Review* (2012).

²¹⁶ CPAN Personal Communication 30 August 2015.

²¹⁷ Government of the Islamic Republic of Afghanistan. *Social Protection Five Year Strategy 2008-2013* (2009) available at <http://mfa.gov.af/Content/files/Volume%204%20ENG.pdf> (Accessed 05 September 2015) p. 30.

²¹⁸ Child Protection in Emergences (CPiE) *Afghanistan Draft Desk Review* (2012).

²¹⁹ Child Protection in Emergences (CPiE) *Afghanistan Draft Desk Review* (2012).

planning and reporting on all CPAN activities, 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 cases²²⁰. 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 trainings²²¹ (see 2.4 Government child rights coordination).

137. In an interview for this research the CPAN coordinator describes the general process of CPAN:

‘When a child is referred to CPAN, a committee, consisting of CPAN social workers, discusses the situation of the case. If the child needs urgent action the committee makes a decision within 24 hours, involving provincial CPANs as needed. In some cases CPAN brings the issue to the monthly member meeting to discuss it in the group to find a solution’²²².

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.

Protection from violence and abuse

138. There is no legal provision to define, criminalize and prohibit acts of domestic violence against children in Afghanistan. However, 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. A 2013 AIHRC reported that out of 4166 children interviewed, 28.2 per cent of the children encountered various types of violence²²³. According to the report, most of the perpetrators were close relatives or family members. Almost a quarter (24 per cent) of the children acknowledged the occurrence of many kinds of violence in their everyday lives. Twelve per cent of the girls said that being a girl has been the source of discrimination against them in the family²²⁴ (see 7.7 Domestic violence).

Adoption and Guardianship

139. 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

²²⁰ CPAN Personal Communication 30 August 2015.

²²¹ Development Consultants South and Central Asia *Child Protection Action Network* available at http://develop-csca.com/?page_id=59 (Accessed 30 August 2015).

²²² CPAN Personal Communication 30 August 2015.

²²³ AIHRC *Children’s situation summary report* (December 2013) available at http://www.aihrc.org.af/home/research_report/2115 (Accessed October 24, 2014).

²²⁴ AIHRC *Children’s situation summary report* (December 2013) available at http://www.aihrc.org.af/home/research_report/2115 (Accessed October 24, 2014).

possible, but only through the Afghan Family Court²²⁵. 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.

140. The Afghanistan parliament passed the Child Guardianship Law of Afghanistan in 2013. The Afghan Family Court is responsible for guardianship²²⁶. Based on the child guardianship law Afghanistan does not use the *kafalah* (Islamic guardianship model) system. There is no foster care policy²²⁷.

141. 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 environment²²⁸.

142. In the article 52 in chapter 6 the Afghan Juvenile code says:

'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'²²⁹.

143. 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 binding²³⁰. There is little direct reference to the rights of children in the Constitution, in policy and legislative frameworks or national level policy dialogues²³¹.

144. Child protection services 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 children²³². 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 CPAN²³³.

²²⁵ US Department of State, Bureau of Consular Affairs *Intercountry adoption: Afghanistan*. (2013) available at <http://travel.state.gov/content/adoptionsabroad/en/country-information/learn-about-a-country/afghanistan.html> (Accessed 05 September 2015).

²²⁶ Ministry of Justice Guardianship Law (2012) available (in farsi) at http://moj.gov.af/content/files/OfficialGazette/01101/OG_01130.pdf (Accessed 30 August 2015).

²²⁷ Ministry of Justice Personal Communication 30 August 2015.

²²⁸ 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 11 February 2015).

²²⁹ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 52* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed 23 August 2015).

²³⁰ 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 11 February 2015).

²³¹ UNICEF *Children and Women in Afghanistan* (November 2014) p. 21.

²³² UNICEF *Children and Women in Afghanistan* (November 2014) p. 45.

²³³ Hagar International Personal Communication 5 September 2015.

145. Social workers provided by MoLSAMD work in cooperation with CPAN²³⁴. In 2015, the CPAN coordinator stated that 41 social workers are working nationwide, nine based in Kabul and the others located in provincial offices²³⁵. UNICEF recorded 46 social workers nationwide, with 10 located in Kabul²³⁶. According to UNICEF, 124 social workers were trained by MoLSAMD from 2013-2104, with support of UNICEF in six provinces²³⁷. NGO's also employ social workers, but on project base. Their exact number is not available.
146. Afghanistan's economy relies heavily on foreign aid. The national budget for 2015 indicates that 70 per cent of the budget comes from international donor commitments²³⁸. According to UNICEF, one per cent of the national budget is focused on providing social protection services²³⁹. The government's failure to specifically identify child protection within the 22 National Priority Programmes means donor assistance for child protection will shrink further in the coming years²⁴⁰.
147. In 2015, cases of children in conflict with the law and children without family care are the most commonly reported by CPAN. 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 exploitation²⁴¹. 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.
148. From 2007-2014 a total of 18,304 cases have been reported and referred by CPAN: 500 in 2007, 1,459 in 2008; 2,164 in 2009; 2,421 in 2010; 2,486 in 2011; 3,447 in 2012; 2,804 in 2013; and 3,023 in 2014²⁴². 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)²⁴³.

²³⁴ UNICEF Personal Communication 6 September 2015.

²³⁵ CPAN Personal communication 16 August 2015.

²³⁶ CEF Personal Communication 6 September 2015.

²³⁷ UNICEF Personal Communication 3 September 2015.

²³⁸ Ministry of Finance 1394 *Citizen Budget Dari* (2014) available at <http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1394/Dari%20Citizens%20Budget.pdf> (Accessed August 20, 2015).

²³⁹ UNICEF Children and Women in Afghanistan (November 2014) p. 45.

²⁴⁰ UNICEF Children and Women in Afghanistan (November 2014) p. 45.

²⁴¹ UNICEF Child Protection in Emergences (CPiE) Afghanistan Draft Desk Review (2012).

²⁴² UNICEF Personal Communication 6 September 2015.

²⁴³ UNICEF Personal Communication 6 September 2015.

Table 9: Reported child protection cases of 31 provincial CPANs, January – June 2015²⁴⁴

Cases	Number of Children Affected		
	Boys	Girls	Total
Rape	19	9	28
Sexual Abuse (except for rape)	0	4	4
Physical Abuse	20	16	36
Trafficking	42	11	53
Smuggling	7	0	7
Abduction/ Kidnapping	21	4	25
Child Marriage/	5	22	27
Children in Conflict With The Law	1097	87	1184
Children Separated From Family	235	74	309
Drug Abused	119	50	169
Child labour	577	15	592
Disability	93	65	158
Injured (MRM)	161	23	184
Killed (MRM)	102	29	131
Rape (MRM)	3	0	3
Recruitment with armed forces and armed groups	28	0	28
Attack against school	3	0	3
Attack against health center	1	0	1
Self mutilation	2	14	16
Others	1230	636	1866
TOTAL	3765	1059	4824

149. 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 tracing²⁴⁵. MoLSAMD now has responsibility for this call centre. UNICEF confirms that it is still operational²⁴⁶.
150. 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 services²⁴⁷.

²⁴⁴ CPAN database, Child Protection section UNICEF Afghanistan 2015.

²⁴⁵ War Child UK Annual report 2012 (2012) available at <https://www.warchild.org.uk/sites/default/files/2012-War-Child-Annual-Report.pdf> (Accessed 24 August 2015) p. 9.

²⁴⁶ UNICEF Personal Communication 6 September 2015.

²⁴⁷ University of New York 'Development of National Occupational Skills Standards for social work with a focus on child protection' (2012).

151. 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 Afghanistan²⁴⁸. The mechanisms and systems necessary to successfully accomplish this mandate are weak.

6.3 Provision of alternative care for children

Alternative care centres

152. Not much is known about the position of orphans, unaccompanied minors and separated children in Afghanistan. A 2011 Children in Crisis report stated that there were 70 orphanages in Afghanistan, 12,000 children in orphanages and 80 per cent of orphans actually had one living parent²⁴⁹. The 2014 US Department of State reports:

'MoLSAMD oversaw 84 Child Protection Action Network centres 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 centres operated by NGOs by agreement with the ministry'.²⁵⁰

153. There is no report, either officially provided by child centres about qualification of those staff working in shelters, rehabilitation centres, orphanages or even in homes. Staff working in government run orphanages are recruited by MoLSAMD, specifically the Department of Orphanages. The AIHRC provides independent external monitoring of alternative care facilities²⁵¹.
154. 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 process²⁵².

Alternative care facilities and treatment of children

155. 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 etc²⁵³. 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 met. NGO's reported up to 80 percent of the children between ages four and 18 years in the orphanages were not orphans but were children whose families could not

²⁴⁸ MoLSAMD *Official website* available at <http://molsamd.gov.af/en/page/1611> (Accessed 14 October, 2014).

²⁴⁹ Children in Crisis *Official website* (2011) available at <http://www.childrenincrisis.org/news/project-pipeline-afghan-orphanages> (Accessed 24 August 2015).

²⁵⁰ US Department of State Afghanistan *Human Rights Report* (2014) p. 50 available at: <http://www.state.gov/j/drl/rls/hrrpt/2014/sca/236632.htm> (Accessed 16 September 2015).

²⁵¹ AIHRC *Annual Report 1392* (2013).

²⁵² Hagar International Personal Communication 24 August 2015.

²⁵³ AIHRC *Annual Report of Child rights protection 2014* (Farsi edit) available at <http://www.aihrc.org.af/home/child/2971> (Accessed 20 January 2015).

provide food, shelter, or schooling²⁵⁴. 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 education²⁵⁵.

156. The primary referral of a child to an orphanage is the family of the child, or in some cases police or other child protection partners²⁵⁶. 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.
157. 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 risk²⁵⁷.
158. In 2013 some cases of child abuses in Takhar, a northwestern province in Afghanistan, were publicized by daily and national news. The daily '8 Sobh', a well-known newspaper reported that around 4 to 5 cases of sexual harassment and physical violence happened in a state owned Takhar child shelter. According to the newspaper, though the shelter's manager accepted the illegal behavior, he denied the abuse and violence acts against children²⁵⁸.

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²⁵⁴ AIHRC *Annual Report of Child rights protection 2014* (Farsi edit) available at <http://www.aihrc.org.af/home/child/2971> (Accessed 20 January 2015).

²⁵⁵ 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 23 August 2015) p. 50.

²⁵⁶ CPAN Personal Communication 30 August 2015.

²⁵⁷ 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).

²⁵⁸ Iqbal 'Sexual abuse of children in Takhar's shelter' available at <http://8am.af/nursery-children-takhar/> (Accessed 19 January 2015).



7 Special protection measures

7.1 Children in conflict with the law

Criminal responsibility

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

- Non-discerning: under seven years old.
- Discerning: 7-12 years old.
- Juvenile: 13-18 years old²⁵⁹.

160. Children are generally separated in two categories: a) discerning²⁶⁰ 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 responsibility²⁶¹. 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)²⁶².

²⁵⁹ Government of the Islamic Republic of Afghanistan. *Afghan Juvenile Code Article 4* (2005) available at <http://www.asianlii.org/af/legis/laws/lcogn846p2005032313840103a495/> (Accessed 23 August 2015).

²⁶⁰ Discerning: aware of what he or she is doing.

²⁶¹ 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 30 August 2015) p. 197-198.

²⁶² Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 47* (2005) available at <http://www.asianlii.org/af/legis/laws/lcogn846p2005032313840103a495/> (Accessed 23 August 2015).

161. Age is based on the date the crime was committed and determined on the basis of the child's identity document²⁶³. If the child has no official ID and/or physical appearance indicates an age different from the ID card, the opinion of the forensic doctor will be requested²⁶⁴ (see 2.9 Legal ages of children).
162. Sentencing within the Afghan juvenile system is dependent on age. Children between 13-16 year old may not exceed more than 1/3 the adults sentence for a similar crime as stated in the Penal Code²⁶⁵. Children between the ages of 16-18 may not exceed more than half the adults sentence for a similar crime²⁶⁶. It is against the law to sentence a child to life imprisonment or death penalty.
163. It is estimated that only 10 per cent of the children in Afghanistan have official IDs²⁶⁷. In the majority of cases the juvenile justice system relies on the Forensic Medical Office to determine ages of children based on x-rays of bone and teeth²⁶⁸. An assessment in 2010 by Terre des Hommes (TdH) reported:

'During the data collections it was admitted that the age determination is not an exact science and that there are many errors. In fact, the exact age is difficult to measure so usually a range of 2 years is determined'²⁶⁹.

Reports in the 2010 TdH assessment highlighted the impact that a 'misdiagnosis' can have on juveniles. Some juveniles reported spending time in the adult prison before being 'diagnosed' as a child, and others received longer sentences after being declared older than they were, and still others were sentenced as children when they were in fact over 18 years old²⁷⁰ (see 2.8 Birth registration).

Juvenile justice system

164. 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 child²⁷¹. The 2005 Juvenile Code mandates the safeguarding and protection of the rights of Afghan children.

²⁶³ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 6* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcofn846p2005032313840103a495/> (Accessed 23 August 2015).

²⁶⁴ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 6* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcofn846p2005032313840103a495/> (Accessed 23 August 2015).

²⁶⁵ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 39* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcofn846p2005032313840103a495/> (Accessed 23 August 2015).

²⁶⁶ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 39* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcofn846p2005032313840103a495/> (Accessed 23 August 2015).

²⁶⁷ 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 25 August 2015) p. 19.

²⁶⁸ 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 25 August 2015) p. 19.

²⁶⁹ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 52.

²⁷⁰ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 52.

²⁷¹ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 1* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcofn846p2005032313840103a495/> (Accessed 23 August 2015).

Emphasis is on rehabilitation as the priority, with prosecution and incarceration as a last resort²⁷². 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 risk²⁷³.

165. 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 where the crime was committed or where the child was residing or arrested and/or in detention²⁷⁴. The 2014 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)²⁷⁵. 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 Court²⁷⁶.
166. 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 days²⁷⁷. In implementation however the duration of detention appear to be longer. A 2008 United Nations Office on Drugs and Crime indicated that many cases have been under investigation or under trial for many months²⁷⁸. A TdH 2010 assessment of the Afghan juvenile system also reported that out of the 250 children in conflict with the law that were interviewed nationwide, girls averaged 42-54 days in detention before going to court²⁷⁹. Boys had been detained for an average of 75 days²⁸⁰.
167. 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'²⁸¹. When confinement occurs the Ministry of Justice requires children suspected, accused, or sentenced to be detained only in Juvenile Rehabilitation Centres (JRC)²⁸². The 2005 Juvenile Code speaks of juvenile rehabilitation and social service

²⁷² 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 25 August 2015) p. 19.

²⁷³ 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 23 August 2015).

²⁷⁴ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 28* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed 23 August 2015).

²⁷⁵ 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 23 August 2015) p. 11-12.

²⁷⁶ 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 23 August 2015).

²⁷⁷ UNICEF and AIHRC *Justice for Children: The situation for children in conflict with the law in Afghanistan* (2008).

²⁷⁸ UNODC *Implementing alternatives to imprisonment* (2008) p. 35.

²⁷⁹ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 35.

²⁸⁰ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 35.

²⁸¹ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 8* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed 23 August 2015).

²⁸² UNDP *Afghanistan Human Development Report* (2007) p. 59.

institutions in article 35, and article 10.4 mandates that children be kept separately from adults²⁸³. Article 12 of the Juvenile Code also states that there should be range of specialist and appropriate health, social and educational services for detained children²⁸⁴. 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 JRCs²⁸⁵. The monitoring visits focus on identifying needs of detainees and violations of human rights.

Children's legal advice services

168. 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 counsel²⁸⁶. However, article 22 of the Juvenile Code also says that absence of the child's legal representative during investigation cannot stop the investigation process²⁸⁷. The TdH 2010 assessment reported that out of the 246 juvenile offenders who were specifically asked whether or not they had a defense 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 defense attorney²⁸⁸. 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 trial²⁸⁹.
169. 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 convictions²⁹⁰:

'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'.²⁹¹

²⁸³ UNODC *Implementing alternatives to imprisonment* (2008) p. 61.

²⁸⁴ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 12* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed 23 August 2015).

²⁸⁵ 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 23 August 2015) p. 9.

²⁸⁶ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 22* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed 23 August 2015).

²⁸⁷ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 22* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed 23 August 2015).

²⁸⁸ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 34.

²⁸⁹ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 34.

²⁹⁰ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 37.

²⁹¹ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 37.

Number of children in detention and reasons

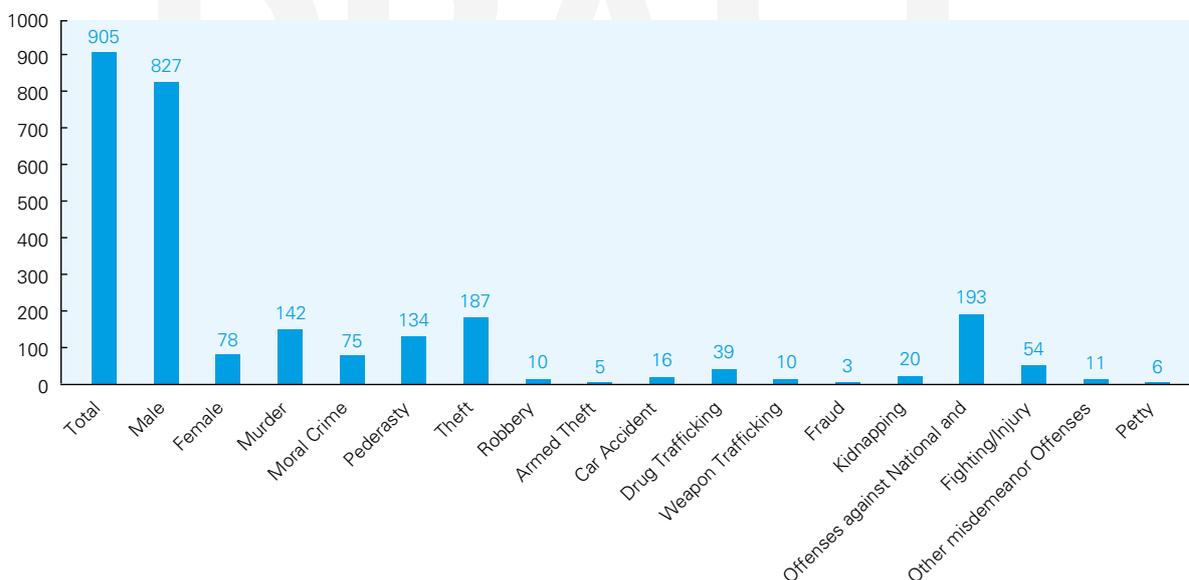
170. Figures on the number of JRCs nationwide vary. The US Department of State 2014 report on human rights stated there were 33 JRCs in Afghanistan²⁹². The UNODC 2012-2014 country program for Afghanistan reported that youth were held in 31 provincial JRCs across Afghanistan²⁹³. The UNODC report goes on to say that:

‘Twenty-nine of these JRC facilities are located in rented properties which were not designed to house juveniles and do not have the physical accommodations for them to engage in recreational and other activities typically associated with children and youth’²⁹⁴.

171. 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 2013²⁹⁵. 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’²⁹⁶.

Figure 6: Countrywide juvenile statistics according to crime and gender (May 2015)²⁹⁷



²⁹² 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 23 August 2015) p. 6.

²⁹³ UNODC *Country Program for Afghanistan* (2012-2014) pp. 22-23.

²⁹⁴ UNODC *Country Program for Afghanistan* (2012-2014) pp. 22-23.

²⁹⁵ 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.

²⁹⁶ 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.

²⁹⁷ Ministry of Justice *Juvenile Rehabilitation Statistics* (May 2015) accessed through JSSP Personal Communication 30 August 2015.

172. In the month of May 2015, there were a total of 905 juvenile offenders charged with crimes in Afghanistan, 827 boys and 78 girls²⁹⁸.
173. The reasons for detention in the JRCs are varied. The May 2015 juvenile statistics listed 15 different categories for detention, with Offenses against national security, theft, murder and pederasty (homosexual act with man/boy) most common²⁹⁹ (see figure 6).
174. There is an increase in the numbers of children held on charges against national security. In 2014, the US Department of State human rights report observed that, according to the Ministry of Justice, authorities detained 176 children on national security-related charges in juvenile rehabilitation centres³⁰⁰. While the May 2015 report on juvenile statistics by the Ministry of Justice recorded 193 children charged with offenses against national security (see figure 6).

Reports on detention

175. 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 2010 TdH assessment stated that all of the JRCs visited (Kabul, Mazar, Herat and Jalalabad) lacked appropriate social, educational, vocational, psychological and health services for juveniles³⁰¹.
176. 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 families³⁰².
177. TdH observed:
- ‘In one region there were three rooms for the twenty-six boys, which were used for recreation, sleeping, and educational training. The girls in Jalalabad and Mazar were all housed in one small room together where they slept, spent their recreation time, and received their education’³⁰³.
178. 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 JRC’³⁰⁴.
179. 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

²⁹⁸ Ministry of Justice *Countrywide Juvenile Statistics* (May 2015).

²⁹⁹ Ministry of Justice *Countrywide Juvenile Statistics* (May 2015).

³⁰⁰ 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 23 August 2015) p. 11.

³⁰¹ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 42.

³⁰² UNODC *Country Program for Afghanistan 2012-2014* (2012) pp. 22-23.

³⁰³ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 42.

³⁰⁴ UNODC *Country Program for Afghanistan, 2012-2014* pp. 22-23.

'home escape' (running away from home) even though it is not a crime pursuant to the Juvenile Code³⁰⁵ (see 7.7 Domestic violence).

180. 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 protection³⁰⁶. 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'³⁰⁷.

181. The more recent 2014 US Human Rights Report also stated that some of the children in the criminal justice system were victims rather than perpetrators of crime and some victims were perceived as in need of punishment because they brought shame on the family by reporting an abuse³⁰⁸.

182. The 2014 US Human Rights report noted:

'In June 2013 the JRCs in Kabul, Paktiya, Balkh, Nangarhar, Kunduz, and Herat admitted to facilitating virginity tests on female detainees and prisoners. The tests, conducted at hospitals by the Ministry of Public Health, involved a gynaecological examination to detect the presence of the hymen. Police, prosecutors, and courts often ordered the tests, which could be used as evidence of moral crimes if authorities desired'³⁰⁹.

Alternatives to detention

183. 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 arrest³¹⁰. Article 8 of the Juvenile Code mandates that confinement of a child should be a last resort for rehabilitation and re-education of the child.³¹¹ 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'³¹². 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 cases³¹³.

³⁰⁵ UNODC *Country Program for Afghanistan, 2012-2014* pp. 22-23.

³⁰⁶ UNODC *Implementing alternatives to imprisonment* (2008) p. 34.

³⁰⁷ UNODC *Implementing alternatives to imprisonment* (2008) p. 37.

³⁰⁸ 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 23 August 2015) pp. 11-12.

³⁰⁹ 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 23 August 2015) p. 41.

³¹⁰ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 12* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed 23 August 2015).

³¹¹ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 8* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed 23 August 2015).

³¹² United Nations *Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules* (1985).

³¹³ Motley, Kim *An assessment of the juvenile justice system* (2010) p. 58.



184. 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 confinement³¹⁴.

³¹⁴ Government of the Islamic Republic of Afghanistan. *Afghan Juvenile Code Article 35* (2005) available at <http://www.asianlii.org/af/legis/laws/lcogn846p2005032313840103a495/> (Accessed 23 August 2015).

185. Based on data received in Kabul in December 2007, 57 per cent of the juveniles held in Afghanistan's prisons, whose sentences have been confirmed either by the Appeals Court or the Supreme Court, were eligible for alternative sanctions, including suspension of sentences, but instead were placed in the JRC's³¹⁵.

186. 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'³¹⁶.

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 Afghanistan³¹⁷.

187. There are no specialized juvenile mental healthcare facilities in Afghanistan, the one State-run mental health hospital is in Kabul. Other provinces only have mental wards within the local hospital³¹⁸.

Rehabilitation and discrimination after detention

188. Information on rehabilitation and discrimination after detention is limited. Out of the ten national and international organizations currently working within the juvenile justice sector, two (TdH and Children in Crisis) are providing reintegration services for juvenile offenders, and only in Kabul and Nangarhar³¹⁹. Children in Crisis (CiC) have a reintegration project to target 180 children, boys and girls, in providing reintegration assistance by assigning caseworkers to provide mediation and support for children and their families, and follow up on the child post-reintegration³²⁰.

189. The foundation of social norms in Afghanistan is based on upholding honour within the family and the community³²¹. 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 discrimination³²².

³¹⁵ UNODC *Implementing alternatives to imprisonment* (2008) p. 33.

³¹⁶ 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.

³¹⁷ 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.

³¹⁸ Tabish (Afghan NGO working within the psychosocial sector) Personal Communication 31 August 2015.

³¹⁹ Juvenile Justice Working Group *Juvenile Justice Services Provided and Places* (August 2015).

³²⁰ Children in Crisis (CiC) Personal communication 27 August 2015.

³²¹ UNICEF *Children and Women in Afghanistan* (November 2014) p. 31.

³²² UNODC *Implementing alternatives to imprisonment* (2008) p. 61.

7.2 Victims of child trafficking

Legislative and institutional arrangements

190. The Afghan Law on Combating Abduction and Human Trafficking was signed by President Karzai in 2008, with the following mandate:
- Prevent crimes of abduction and trafficking in persons.
 - Support victims of crimes of abduction and trafficking in persons (especially women and children).
 - Ensure mutual international cooperation in combatting crimes of abduction and trafficking in persons.
 - Preserving the UN protocols on human trafficking crimes.
 - Punish perpetrators of crimes of abduction and trafficking in persons³²³.
191. Article 516 of the Penal Code also prohibits forms of human trafficking, however both article 516 and the 2008 Law Combatting Abduction and Human Trafficking fail to prohibit all forms of trafficking, such as sex trafficking of a child which is only prohibited if coercion is used³²⁴. The 2009 Elimination of Violence Against Women law also includes penalties for most forms of trafficking³²⁵. In August 2014, Afghanistan acceded to the UN Trafficking in Persons Protocol³²⁶.
192. The 2008 Law on Combatting Abduction and Human Trafficking established a High Commission for Combatting Crimes of Abduction and Trafficking in Persons in order to help coordinate activities, studies and evaluations on the crimes of abduction and trafficking in persons³²⁷. Representatives from 11 different government ministries, along with representatives from the AIHRC, Kabul municipality and two civil society organisations participate on the High Commission.
193. 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.
 - 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 unit³²⁸.
194. However, the 2015 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

³²³ Government of the Islamic Republic of Afghanistan *Law Combating Abduction and Human Trafficking* (2008).

³²⁴ US Department of State *Trafficking in Persons report* (2015) p. 64.

³²⁵ US Department of State *Trafficking in Persons report* (2015) p. 64.

³²⁶ US Department of State *Trafficking in Persons report* (2015) p. 65.

³²⁷ Government of the Islamic Republic of Afghanistan *Law Combating Abduction and Human Trafficking Article 4 and 5* (2008).

³²⁸ UNICEF *Child Protection in Emergences (CPIE) Afghanistan Draft Desk Review* (2012).

trafficking and human smuggling³²⁹. Official complicity remained a serious problem and political will to combat the crime was low, while victims of trafficking were routinely prosecuted and convicted as criminals for moral crimes, the government failed to hold the vast majority of traffickers criminally accountable for their offenses³³⁰.

Reports on child trafficking

195. The US Department of State Trafficking in Persons report for 2015 lists Afghanistan as a source, transit and destination country for men, women and child victims of forced labour and sex trafficking³³¹. 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 driving³³².
196. Numbers on child trafficking are difficult to estimate, due to limited data collection. In 2014, International Organisation for Migration (IOM) assisted 168 victims of trafficking in Afghanistan, out of child victims, 124 were boys, and 22 were girls³³³. From 2005 to present, IOM has assisted 1,341 victims of trafficking, 929 male victims and 412 females³³⁴. While numbers are not disaggregated by age, 788 cases involved forced labour, 237 involved sexual exploitation, 15 involved forced marriage and 301 were at risk of trafficking³³⁵. These numbers do not represent the total numbers of victims of trafficking, only those identified and assisted. The most recent 2015 CPAN record of child protection cases recorded 20 cases of trafficking in Afghanistan, all boys³³⁶.
197. 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 trafficking³³⁷. 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 labour³³⁸.
198. 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 exploitation³³⁹. The report highlighted that *bacha bazi* is a form of trafficking in persons that impacts boys in Afghanistan between 13-18 years old³⁴⁰. The report stated that 89 per cent of the perpetrators interviewed said they had not been prosecuted³⁴¹.

³²⁹ US Department of State *Trafficking in Persons report* (2015) p. 64.

³³⁰ US Department of State *Trafficking in Persons report* (2015) p. 64.

³³¹ US Department of State *Trafficking in Persons report* (2015) p. 64.

³³² US Department of State *Trafficking in Persons report* (2015) p. 64.

³³³ IOM. 'Numbers of Victims of Trafficking Assisted in 2014' IOM (2014). available at http://greece.iom.int/sites/default/files/30_03_2015_victims_of_trafficking.pdf Accessed 1 September 2015).

³³⁴ IOM Personal Communication 1 September 2015.

³³⁵ IOM Personal Communication 1 September 2015.

³³⁶ CPAN Personal Communication 30 August 2015.

³³⁷ Thorson, Jane E. *Forgotten No More: Male child trafficking in Afghanistan* (2013) available at <http://hagar.org.au/files/Forgotten-No-More.pdf> (Accessed 27 August 2015) p. 65 (hereafter *Forgotten No More*).

³³⁸ Thorson, Jane E. *Forgotten No More* (2013) available at <http://hagar.org.au/files/Forgotten-No-More.pdf> (Accessed 27 August 2015) p. 7.

³³⁹ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed 5 September 2015).

³⁴⁰ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed 5 September 2015).

³⁴¹ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed 5 September 2015).

Patterns of child trafficking

199. Afghanistan is a transit, source and destination country for trafficking in persons³⁴². However the US 2015 TIP report says that internal trafficking is more prevalent than transnational trafficking³⁴³. 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 borders³⁴⁴. According to both the 2013 Hagar Afghanistan report and the US 2015 TIP 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.
200. Types of exploitation of child trafficking are primarily focused on forced labour, in carpet making and brick factories, domestic servitude, begging, and assistant truck driving, as well as commercial sexual exploitation and transnational drug smuggling³⁴⁵. The 2015 USTIP report also reported that Afghan boys are subjected to forced labour in Iran within the construction and agricultural sectors³⁴⁶. Afghan families are also knowingly selling boys into prostitution, including *bacha bazi*³⁴⁷. The majority of Afghan victims of trafficking in Pakistan are women and girls for commercial sexual exploitation, including through forced marriages³⁴⁸.
201. 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 families³⁴⁹. 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’³⁵⁰.

Identification and referral of child trafficking

202. 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 process³⁵¹. The investigation of identified cases is the responsibility of the TIP unit with the Ministry of Interior (MoI), 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

³⁴² US Department of State *Trafficking in Persons report* (2015) p. 64.

³⁴³ US Department of State *Trafficking in Persons report* (2015) p. 64.

³⁴⁴ Thorson, Jane E. *Forgotten No More* (2013) available at <http://hagar.org.au/files/Forgotten-No-More.pdf> (Accessed 27 August 2015) p. 28.

³⁴⁵ US Department of State *Trafficking in Persons report* (2015) p. 64.

³⁴⁶ US Department of State *Trafficking in Persons report* (2015) p. 64.

³⁴⁷ US Department of State *Trafficking in Persons report* (2015) p. 64.

³⁴⁸ US Department of State *Trafficking in Persons report* (2015) p. 64.

³⁴⁹ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed 5 September 2015).

³⁵⁰ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed 5 September 2015).

³⁵¹ Thorson, Jane E. *Forgotten No More* (2013) available at <http://hagar.org.au/files/Forgotten-No-More.pdf> (Accessed 27 August 2015) p. 51.

within the Ministry of Justice³⁵². In 2014 there were 23 convictions under the trafficking statute³⁵³. However, the US 2015 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 victims³⁵⁴.

203. As of 2014, the government of Afghanistan has not developed or employed a systematic procedure for identifying and referring victims to protective services³⁵⁵. Separate government ministries and departments, specifically MoI 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 public³⁵⁶. Referrals of victims of trafficking are mainly facilitated by CPAN and AIHRC. Girl victims will be referred to one of the 28 MoWA women shelters; for boys, as of 2015, there is only one recovery centre designed for male child survivors of trafficking in Afghanistan, located in Kabul, with the capacity to provide residential based services to 12 male child survivors of trafficking at one time³⁵⁷.

Preventing child trafficking

204. The High Commission on Combatting Abduction and Human Trafficking meets quarterly to coordinate prevention activities, and established 32 provincial anti-trafficking commissions³⁵⁸.
205. The Ministry of Education requested that all schools spend the first five minutes of the day raising awareness on human trafficking and smuggling, but there has been no information confirming that it was actually implemented³⁵⁹.
206. With support from international organizations, MoLSAMD sponsored television spots warning again trafficking in 2014³⁶⁰.

7.3 Children in armed conflict

207. The 2015 UNAMA mid year report on the protection of civilians in armed conflict reported the highest number of total civilian casualties (deaths and injuries) compared to previous years³⁶¹. According to the 2015 mid-year UNAMA report, 70 per cent of civilian casualties were due to Anti-government elements (AGE) and 16 per cent to Pro-government forces (including Afghan national army, Afghan local police)³⁶².

³⁵² Thorson, Jane E. *Forgotten No More* (2013) available at <http://hagar.org.au/files/Forgotten-No-More.pdf> (Accessed 27 August 2015) p. 51.

³⁵³ US Department of State *Trafficking in Persons report* (2015) p. 64.

³⁵⁴ US Department of State *Trafficking in Persons report* (2015) p. 65.

³⁵⁵ US Department of State *Trafficking in Persons report* (2015) p. 64.

³⁵⁶ Hagar International Personal Communication 5 September 2015.

³⁵⁷ Hagar International Personal Communication 5 September 2015.

³⁵⁸ US Department of State *Trafficking in Persons report* (2015) p. 65.

³⁵⁹ US Department of State *Trafficking in Persons report* (2015) p. 65.

³⁶⁰ US Department of State *Trafficking in Persons report* (2015) p. 65.

³⁶¹ UNAMA *Protection of Civilians in Armed Conflict Midyear Report 2015* (August 2015) p. 1.

³⁶² UNAMA *Protection of Civilians in Armed Conflict Midyear Report 2015* (August 2015) p. 2.

208. Children continue to face higher rates of casualties caused by armed conflict compared to the general population, with one in four civilian casualties of conflict being a child³⁶³. In the first six months of 2015 UNAMA recorded 1,270 child casualties (320 deaths and 950 injuries), which was a 13 per cent increase over 2014³⁶⁴.
209. Child casualties of armed conflict in the first six months of 2015 were due to the following:
- Ground engagements (637 casualties).
 - Improvised Explosive Devices (IEDs) (251 casualties).
 - Explosive Remnants of War (ERW) (173 casualties).
 - Suicide and complex attacks (96 casualties)³⁶⁵.
210. Boys in Afghanistan are recruited and used by armed forces and armed groups as instruments in the conflict³⁶⁶. The Afghan Task Force on Monitoring and Reporting reported and documented more than 400 cases of recruitment and use of children by parties to the conflict between 2009 and 2012³⁶⁷. 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 spying³⁶⁸.
211. The Afghan national policy states that 18 is the minimum age for enlistment in the Afghan National Security Forces (ANSF), 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 recruitment³⁶⁹.
212. Attacks against schools and hospitals and their personnel violate the right of children to access quality education and health services. The 2014 UNICEF situational analysis reported that based on records from the Ministry of Education (MoE) and the Monitoring and Reporting Mechanism (MRM) on Children and Armed Conflict, there have been approximately 1,500 attacks on schools between January 2009 and May 2013³⁷⁰ (*see 5.3 Education*).
213. The 2014 Report of the Secretary-General to the Security Council reports that schools continue to be attacked by parties to conflict or indirectly damaged in clashes. In at least in 2014 73 incidents, schools were attacked, resulting in the killing of at least 11 children and in injury to 46 others³⁷¹. Schools were also damaged by IEDs inside school premises and nearby suicide and IED attacks targeting public areas or Government and international military forces³⁷² (*see 5.3 Education*).

³⁶³ UNAMA *Protection of Civilians in Armed Conflict Midyear Report 2015* (August 2015) p. 19.

³⁶⁴ UNAMA *Protection of Civilians in Armed Conflict Midyear Report 2015* (August 2015) pp. 5-6.

³⁶⁵ UNAMA *Protection of Civilians in Armed Conflict Midyear Report 2015* (August 2015) p. 20.

³⁶⁶ UNICEF *Children and Women in Afghanistan* (November 2014) p. 29.

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

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

³⁶⁹ UNICEF *Children and Women in Afghanistan* (November 2014) p. 29.

³⁷⁰ UNICEF *Children and Women in Afghanistan* (November 2014) p. 29.

³⁷¹ United Nations *The Report of the Secretary-General to the Security Council (A/68/878-S/2014/339)* issued on May 15, 2014 available at <https://childrenandarmedconflict.un.org/countries/afghanistan/> (Accessed October 15, 2014).

³⁷² UN General Assembly *Promotion and protection of the rights of children, children in armed conflict, Report of the secretary General* (15 May 2014) p. 7.

214. The Taliban also continued to issue threats against girls' schools and other schools. For instance, in May 2014, local Taliban members in Nangarhar province issued a letter in which they threatened teachers and children at a girls' school with acid attacks if they continued to attend school³⁷³. Also in May 2013, in Zabul Province, the Taliban forced the closure of 40 schools in retaliation for Government action against the groups³⁷⁴.

215. The 2014 UNICEF situational analysis also stated that the conflict has also had a profound impact on the psychosocial wellbeing of children in Afghanistan:

'The country's capacity to protect children and respond to their needs, including their psycho-social health, is severely lacking, and needs concentrated attention in the years to come'³⁷⁵.

7.4 Female Genital Mutilation

216. FGM is not a culturally accepted practice in Afghanistan and there are no reports of it being practiced. The law does not specifically address FGM³⁷⁶.

7.5 Underage and forced child marriage

Legislation

217. 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. 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 capacity³⁷⁷.

218. Afghanistan signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1980 and ratified it in 2003³⁷⁸. 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'³⁷⁹.

³⁷³ UN General Assembly *Promotion and protection of the rights of children, children in armed conflict, Report of the secretary General* (15 May 2014) p. 7.

³⁷⁴ UN General Assembly *Promotion and protection of the rights of children, children in armed conflict, Report of the secretary General* (15 May 2014) p. 7.

³⁷⁵ UNICEF *Children and Women in Afghanistan* (November 2014) p. 29.

³⁷⁶ 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 23 August 2015) p. 42.

³⁷⁷ Rastin-Tehrani, Kabeh and Nadjma Yassari *Max Planck Manual on Family Law in Afghanistan: Amended 2nd edition* (July 2012) p. 33.

³⁷⁸ 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 27 August 2015).

³⁷⁹ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 134.

219. Afghanistan is a member of the Organization of Islamic Cooperation (OIC), which in 2008 adopted the Plan of Action for the Advancement of Women³⁸⁰. 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 means³⁸¹.
220. The Shiite Personal Status law, signed into law in 2009, specifically affects Shia families living in Afghanistan, recognizes marriages for boys and girls 'at puberty' but it also refers to marriage as permissible 'prior to the mentioned ages' by a guardian before the court³⁸².
221. The UNAMA 2013 report on the Elimination of Violence Against Women (EVAW) law stated concern that in May 2013, a Parliamentary debate on the EVAW law was reopened with sections of the law criminalizing forced and child marriage and other provisions deemed 'un-Islamic' by some Members of Parliament who proposed removing these provisions from the law³⁸³.
222. Child marriage is widely prevalent in Afghanistan, but there are no known cases where parents have been prosecuted for marrying off their under-age daughters³⁸⁴.

Age of sexual consent

223. There is no law specifying age of consent since all sexual activity outside of marriage is illegal³⁸⁵.

Reports of forced and underage child marriage

224. Data on child marriage in Afghanistan are scarce and controversial because of the absence of reliable civil registration data, specifically since only 37.4 per cent of children under-five are registered³⁸⁶ (see 2.8 Birth registration). 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'³⁸⁷.
225. International and local observers continued to report widespread early marriage. A 2010 survey by the Ministry of Public Health that sampled 24,032 households in all 34 provinces, showed 53 per cent of all women ages 25-49 married by age 18 and 21 percent by age 15³⁸⁸.
226. 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 puberty³⁸⁹. Reports indicated, however, this delay was rarely observed and young girls were sexually violated

³⁸⁰ Human Rights Watch *Ending Child Marriage and domestic violence: Afghanistan Brochure* (2013) p. 9.

³⁸¹ Human Rights Watch *Ending Child Marriage and domestic violence: Afghanistan Brochure* (2013) p. 9.

³⁸² UNICEF *Children and Women in Afghanistan* (November 2014) pp. 38-39.

³⁸³ UNAMA *A Way to Go: An update on implementation of the law on elimination of violence against women in Afghanistan*. (2013) p. 5.

³⁸⁴ UNICEF *Children and Women in Afghanistan* (November 2014) pp. 38-39.

³⁸⁵ Government of the Islamic Republic of Afghanistan *Afghan Penal Code. Article 427 and 29* (1976).

³⁸⁶ UNFPA *Afghanistan State of Youth Report 2014* (2014) p. 107.

³⁸⁷ UNFPA *Afghanistan State of Youth Report 2014* (2014) p. 107.

³⁸⁸ Ministry of Public Health *Afghanistan Mortality Survey: Key findings* (2010) available at <https://www.usaid.gov/sites/default/files/documents/1871/Afghanistan%20Mortality%20Survey%20Key%20Findings.pdf> (Accessed 31 August 2015).

³⁸⁹ 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 23 August 2015) p. 48.

by the groom or by older men in the family, particularly if the groom was also a child³⁹⁰.

227. 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 marriage³⁹¹. 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 dignity³⁹².
228. *Baad* is another tradition that still exists in the country, which leads to the practice of child marriage³⁹³. 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 families³⁹⁴. A late 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 Kabul³⁹⁵. 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 practice³⁹⁶.
229. The 2014 UNFPA report on the state of Afghan youth 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"³⁹⁷.

Impact of child marriage

230. Forced or under aged marriages have many negative impacts for the life condition, particularly health of children who are forced into a marriage. The risk of domestic violence is particularly heightened in cases of child marriage. The case of Sahar Gul, an Afghan girl forcibly married in 2011 at age 13 or 14, received global attention when her in-laws were convicted for beating and torturing her after she resisted being forced into prostitution³⁹⁸. The case returned to the news when a court threw out their 10-year sentence after just one year³⁹⁹.
231. 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

³⁹⁰ 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 23 August 2015) p. 49.

³⁹¹ 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).

³⁹² WCLRF *Early marriage in Afghanistan* (2008) p. 16.

³⁹³ WCLRF *Early marriage in Afghanistan* (2008) p. 17.

³⁹⁴ WCLRF *Early marriage in Afghanistan* (2008) p. 17.

³⁹⁵ 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 September 2015).

³⁹⁶ 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 1 September 2015) p. 24.

³⁹⁷ UNFPA *Afghanistan State of Youth Report 2014* (2014) p. 110.

³⁹⁸ 'Sahar Gul: The fears of a tortured Afghan child bride' (15 July 2013) BBC available at <http://www.bbc.com/news/world-asia-23311414> Accessed 31 August 2015.

³⁹⁹ Rastin-Tehrani, Kabeh and Nadjima Yassari. 'Max Planck Manual on Family Law in Afghanistan: Amended 2nd edition' (July 2012) p. 11.

in 2010⁴⁰⁰. 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 communities⁴⁰¹.

7.6 Local harmful traditional practices

Honour killings and other harmful practice

232. 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 younger⁴⁰². The 2014 US Human Rights report observed that girls less than age 18 continued to be at risk for honour killings for perceived sexual relations outside of marriage, 'running away,' not accepting a forced marriage, or being a victim of sexual assault. In July 2014 the media reported family members of a 10-year-old rape victim openly spoke about killing her⁴⁰³.
233. *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).
234. *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 2014⁴⁰⁴. 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 old⁴⁰⁵. Based on the national inquiry, AIHRC recommended additional legislation criminalizing the *bacha bazi*, providing mental health recovery services to child victims and fighting a culture of impunity in regards to *bacha bazi*⁴⁰⁶. Since the launch of the 2014 findings by AIHRC, there have been on more reports on action taken by government officials (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

235. Article 7 in the Afghanistan Constitution obliges the government to observe the international

⁴⁰⁰ Ministry of Public Health *Afghanistan Mortality Survey: Key findings* (2010) p14 available at <https://www.usaid.gov/sites/default/files/documents/1871/Afghanistan%20Mortality%20Survey%20Key%20Findings.pdf> (Accessed 31 August 2015).

⁴⁰¹ UNFPA *Marrying Too Young: End child marriage* (2012) p. 11.

⁴⁰² 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 15 January 2015).

⁴⁰³ 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 23 August 2015) p. 49.

⁴⁰⁴ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed 5 September 2015).

⁴⁰⁵ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed 5 September 2015).

⁴⁰⁶ AIHRC *Causes and consequences of Bacha Bazi in Afghanistan* (2014) available at <http://www.aihrc.org.af/home/press-release/3319> (Accessed 5 September 2015).

instruments and commitments, which it has signed or ratified⁴⁰⁷. 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 Rights⁴⁰⁸.

236. 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 allowed⁴⁰⁹. Laws related to sexual exploitation are not fully developed and do not cover marital rape⁴¹⁰. Pornography is criminalized in article 7 of the 2008 Law on Combatting Abduction and Human Trafficking⁴¹¹.
237. Corporal punishment is prohibited in schools, but not in the homes, penal systems and institutions⁴¹².
238. In article 54 (1) of the Penal Code (1976) confirms the right of punishment of sons, by the father in the context of childrearing, within the limits of religious and other laws⁴¹³.
239. The Law on the Elimination of Violence against Women (2009) is not interpreted as prohibiting corporal punishment⁴¹⁴.
240. The Juvenile Code (2005) prohibits 'contemptuous and harsh punishment even if for correction and rehabilitation purposes'⁴¹⁵.

Domestic violence against children

241. 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 surveyed⁴¹⁶. The study went on to explain:

'Domestic violence in the form of violent punishment is more often used to instill fear. Parents and

⁴⁰⁷ 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 24 August 2015). AIHRC *Children's situation summary report* (December 2013) available at http://www.aihrc.org.af/home/research_report/2115 (Accessed October 24, 2014).

⁴⁰⁸ AIHRC *Violence against Women in Afghanistan* (1392/2012) available at <http://www.aihrc.org.af/media/files/PDF/Violence%20against%20women%20Eng.pdf> (Accessed 24 August 2015).

⁴⁰⁹ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 7* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed 23 August 2015).

⁴¹⁰ Human Rights Watch *Ending Child Marriage and domestic violence: Afghanistan Brochure* (2013) p. 9.

⁴¹¹ Government of the Islamic Republic of Afghanistan *Law Combatting Abduction and Human Trafficking* (2008).

⁴¹² SAIEVAC *Agenda and Action: Ending Corporal Punishment in South Asia* (September 2011).

⁴¹³ Government of the Islamic Republic of Afghanistan *Afghan Penal Code*. (1976) available at https://www.unodc.org/tldb/pdf/afghanistan_penal_code.pdf (Accessed 05 September 2015).

⁴¹⁴ UNICEF *Child Protection in Emergences (CPIE) Afghanistan Draft Desk Review* (2012).

⁴¹⁵ Government of the Islamic Republic of Afghanistan *Afghan Juvenile Code Article 7* (2005) available at <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/> (Accessed 23 August 2015).

⁴¹⁶ Smith, Deborah J. *Fear, Love and Discipline: Everyday Violence to Children in Afghan Families Afghan Research and Evaluation Unit (AREU)* February 2008.

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 norms⁴¹⁷.

242. Sexual abuse of children and violence towards young brides is a major child rights concern across the country⁴¹⁸. 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 child⁴¹⁹. Of these cases, 52 per cent involved girls and 48 per cent boys⁴²⁰.
243. In 2012 74.4 per cent of children in different age groups experience either psychological and/or physical abuse as a way to discipline them⁴²¹. 38 per cent of the children faced severe physical punishment⁴²². 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 discipline⁴²³.
244. 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 children⁴²⁴.
245. 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 husbands⁴²⁵. 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 food⁴²⁶.

7.8 Child labour and other forms of exploitation

Legislation and policy to protect children

246. According to article 49 of the Afghan Constitution, forced labour of children shall not be allowed⁴²⁷.
247. 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 sites⁴²⁸.

⁴¹⁷ Smith, Deborah J. *Fear, Love and Discipline: Everyday Violence to Children in Afghan Families* Afghan Research and Evaluation Unit (AREU) February 2008.

⁴¹⁸ UNICEF *Children and Women in Afghanistan* (November 2014) p. 41.

⁴¹⁹ Sayed Abdul Shami Hashemi *Provincial Child Protection Action Network: CPAN Report* (2012) MoLSAMD.

⁴²⁰ Sayed Abdul Shami Hashemi *Provincial Child Protection Action Network: CPAN Report* (2012) MoLSAMD.

⁴²¹ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 130.

⁴²² Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 130.

⁴²³ UNICEF *Hidden in plain sight: A statistical analysis of violence Against Children* (2014) p. 99.

⁴²⁴ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 130.

⁴²⁵ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 140.

⁴²⁶ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 140.

⁴²⁷ 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 24 August 2015).

⁴²⁸ 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 November 9 2014).



248. Based on the Afghan law, the legal age for work in Afghanistan is 15 years⁴²⁹. Furthermore, 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 2010⁴³⁰.
249. 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 the Protection of 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 sustainable⁴³¹.

⁴²⁹ US Department of State *Findings on the Worst Forms of Child Labour* (2013) available at <http://www.dol.gov/ilab/reports/child-labour/afghanistan.htm> (Accessed 9 November 2014).

⁴³⁰ MoLSAMD *National Labour Policy* (2012) p. 25.

⁴³¹ 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 November 9 2014).



- 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 dropouts⁴³².

250. 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 war⁴³³.

251. The 2014 US Human Rights report states that the Afghan government lacked a specific policy on implementing the law's provisions on child labour⁴³⁴. The report went on to say:

'Generally poor institutional capacity was a serious impediment to effective enforcement of the labour law, including inadequate resources, inspections, remediation, and penalties for violations, and the government made minimal efforts to prevent child labour or remove children from exploitative labour conditions'⁴³⁵.

⁴³² MoLSAMD *National Labour Policy* (2012) p. 27.

⁴³³ 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 23 August 2015) p. 54.

⁴³⁴ US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* Afghanistan (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed 23 August 2015) p. 54.

⁴³⁵ US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* Afghanistan (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed 23 August 2015) p. 54.

252. According to the 2013 US report on worst forms of child labour, the Afghan government does not have a coordinating mechanism to address child labour, sufficient inspectors to enforce child labour laws, or programs to eliminate child labour in sectors where it is prevalent⁴³⁶.

Reports on child labour and slavery

253. 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 Burundi⁴³⁷.
254. Child labour is a systemic, countrywide problem according to the 2014 UNICEF situational analysis. The 2014 Afghan MICS reported the total prevalence of child labour among children ages 5-14 years at 25 per cent⁴³⁸. 27 per cent of children aged 5 to 11 years and 22 per cent aged 12 to 14 years were engaged in child labour activities⁴³⁹. 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 labour⁴⁴⁰.
255. 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 sector⁴⁴¹. The ministry also estimated three million children were 'at risk,' since they did not attend school and often faced exploitation⁴⁴².
256. 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'⁴⁴³.
257. 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 etc⁴⁴⁴. In many instances, children below 14 years of age are found to be working as bonded labour especially in the brick kiln sector⁴⁴⁵. Migrants, women, children, and minorities are particularly

⁴³⁶ US Department of State *Findings on the Worst Forms of Child Labour* (2013) available at <http://www.dol.gov/ilab/reports/child-labour/afghanistan.htm> (Accessed 5 June, 2015).

⁴³⁷ Verisk Maplecroft. *Child Labour Index 2014* (2014) available at <http://maplecroft.com/portfolio/new-analysis/2013/10/15/child-labour-risks-increase-china-and-russia-most-progress-shown-south-america-maplecroft-index/> Accessed 31 August 2015.

⁴³⁸ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 127.

⁴³⁹ Central Statistics Organization and UNICEF *Afghan MICS* (2012) p. 127.

⁴⁴⁰ UNICEF *Children and Women in Afghanistan* (November 2014) p. 42.

⁴⁴¹ 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 23 August 2015) p. 55.

⁴⁴² US Department of State *Country Reports on Human Rights Practices for 2014: Afghanistan* Afghanistan (2014) available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Accessed 23 August 2015) p. 55.

⁴⁴³ 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 23 August 2015) p. 55.

⁴⁴⁴ MoLSAMD *National Labour Policy* (2012) p. 27.

⁴⁴⁵ MoLSAMD *National Labour Policy* (2012) p. 27.

vulnerable to bonded labour in Afghanistan⁴⁴⁶.

258. 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 years⁴⁴⁷.

Impact on children's lives

259. 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 education⁴⁴⁸. 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’⁴⁴⁹.

260. 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 landmines⁴⁵⁰.

7.9 Children living and/or working in street situations

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

261. The 2004 National Strategy for Children at Risk includes a focus on street working children⁴⁵¹. However, a proposed Child Protection Secretariat has yet to be established⁴⁵².
262. 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 2010⁴⁵³. Actual implementation and impact of the specific provisions are not known.
263. 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

⁴⁴⁶ MoLSAMD *National Labour Policy* (2012) p. 27.

⁴⁴⁷ 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 November 9, 2014).

⁴⁴⁸ AIHRC *Summary of AIHRC report on Children's Situation* (2013) available at http://www.aihrc.org.af/home/research_report/2115 (Accessed 24 August 2015) p. 36.

⁴⁴⁹ AIHRC *Summary of AIHRC report on Children's Situation* (2013) available at http://www.aihrc.org.af/home/research_report/2115 (Accessed 24 August 2015) p. 36.

⁴⁵⁰ 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 23 August 2015) p. 55.

⁴⁵¹ 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 November 9, 2014) p. 6.

⁴⁵² UNICEF *Children and Women in Afghanistan* (November 2014) p. 42.

⁴⁵³ Government of the Islamic Republic of Afghanistan *Afghanistan National Development Strategy (ANDS) Social Protection Strategy for 2008-2013* (January 2008) p. 26.

working children in the future⁴⁵⁴. Actual implementation and impact of the national strategy are not known. Components of the national strategy were comprehensive and included psychosocial support (via MoPH), healthcare, 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 children⁴⁵⁵.

Harassment and ill-treatment

264. 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 facilities⁴⁵⁶.
265. 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 living⁴⁵⁷.
266. Children working in the streets are more likely to be exposed to intravenous drug users, the group most at risk of HIV infection⁴⁵⁸.
267. Street children have little or no access to government services, although several NGOs provide access to basic needs, such as shelter and food⁴⁵⁹.

7.10 Children of refugees and internally displaced people

Numbers of child refugees and IDPs

268. UNHCR reported that as of December 2014, 805,409 Afghans were internally displaced by conflict, impacting 30 of the 34 Afghan provinces⁴⁶⁰.
269. In the UNHCR monthly update for June 2015, it reported 31,737 individuals displaced by conflict, with 57 per cent being children⁴⁶¹.
270. Estimates forecast that the total year IDP numbers by the end of 2015 may exceed 324,000 individuals, making 2015 one of the worst years for conflict-induced displacement in Afghanistan⁴⁶².

⁴⁵⁴ MoLSAMD *National Strategy for Street Working Children* (2011).

⁴⁵⁵ MoLSAMD *National Strategy for Street Working Children* (2011).

⁴⁵⁶ Nussrat Hussain, 'Situation of Street Working Children, under Street Child Labourers' AIHRC (October, 2011).

⁴⁵⁷ Nussrat Hussain, 'Situation of Street Working Children, under Street Child Labourers' AIHRC (October, 2011).

⁴⁵⁸ UNICEF *Children and Women in Afghanistan* (November 2014) p. 42.

⁴⁵⁹ 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 23 August 2015) p. 50.

⁴⁶⁰ UNHCR *2015 Afghanistan country operations profile* (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed 27 August 2015).

⁴⁶¹ UNHCR *IDP monthly update* (June 2015) available at <https://www.humanitarianresponse.info/en/operations/afghanistan/document/unhcr-monthly-idp-update-june-2015> (Accessed 31 August 2015).

⁴⁶² UNHCR *IDP monthly update* (June 2015) available at <https://www.humanitarianresponse.info/en/operations/afghanistan/document/unhcr-monthly-idp-update-june-2015> (Accessed 31 August 2015).

271. Since 2002, more than 5.8 million Afghan refugees have returned home, representing 20 per cent of the Afghan population⁴⁶³.

Basic services offered

272. The government of Afghanistan does not have any national asylum and refugee legislation in Afghanistan, so UNHCR conducts refugee status determination (RSD)⁴⁶⁴. UNHCR has assisted the Afghan government in preparing a draft national refugee and asylum law, and it is waiting for inclusion in the 2015 legislation agenda⁴⁶⁵.

273. 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)⁴⁶⁶.

274. 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 products⁴⁶⁷.

Internally displaced people

275. According to a 2011 research study on IDPs in urban settings, 50 per cent of all IDPs are located in urban and semi-urban locations, living in groups⁴⁶⁸.

276. A survey conducted by Samuel Hall Consulting in 2014 found that internally displaced girls are under serious forced marriage threat⁴⁶⁹. The report states that a high level of debt often lead families to sell their daughters in marriage, although this was not reported by the IDP populations themselves, only indicated by development practitioners⁴⁷⁰ (see 7.5 Underage and forced child marriage).

277. Additionally, the 2014 Samuel Hall report highlighted that the lack of education for children IDPs is linked directly to instances of paid or unpaid child labour. In all the IDP camps visited in Helmand, for instance, children above the age of seven are involved in different jobs – from street vending, to the collection of waste and garbage removal⁴⁷¹.

⁴⁶³ UNHCR 2015 Afghanistan country operations profile (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed 27 August 2015).

⁴⁶⁴ UNHCR 2015 Afghanistan country operations profile (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed 27 August 2015).

⁴⁶⁵ UNHCR 2015 Afghanistan country operations profile (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed 27 August 2015).

⁴⁶⁶ UNHCR 2015 Afghanistan country operations profile (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed 27 August 2015).

⁴⁶⁷ UNHCR IDP monthly update (June 2015) available at <https://www.humanitarianresponse.info/en/operations/afghanistan/document/unhcr-monthly-idp-update-june-2015> (Accessed 31 August 2015).

⁴⁶⁸ UNHCR and the World Bank *Research Study on IDPs in urban settings – Afghanistan Kabul* (May 2011) p. 14.

⁴⁶⁹ Samuel Hall *Consulting Displacement Dynamics-Summary:IDP Movement Tracking Needs and Vulnerability Analysis, Heart and Helmand* (2014).

⁴⁷⁰ Samuel Hall *Consulting Displacement Dynamics-Summary:IDP Movement Tracking Needs and Vulnerability Analysis, Heart and Helmand* (2014).

⁴⁷¹ Samuel Hall *Consulting Displacement Dynamics-Summary:IDP Movement Tracking Needs and Vulnerability Analysis, Heart and Helmand* (2014).



8 Returning separated or unaccompanied children and families

8.1 Return

278. A 2013 ILO paper observed that return migration can be one of the important contributions of migration to development because of the financial, human, and social capital brought back by returnees⁴⁷². However, in Afghanistan the process of return migration is complicated by the multiple groups of returnees arriving into the country:

- Diaspora and their families returning to Afghanistan for good or for shorter periods.
- Temporary migrants with regular status returning after employment abroad.
- Temporary migrants and families with informal and irregular status returning spontaneously.
- Citizens and registered refugees returning under voluntary repatriation schemes from neighbouring and other countries.
- Assisted voluntary return and reintegration (AVRR) of Afghans abroad with irregular status (IOM managed programme).
- Citizens deported or removed from neighbouring and other countries because of irregular status or failed asylum claims; and
- Skilled diaspora on temporary or long-term assignments under return programmes⁴⁷³.

⁴⁷² Piyasiri Wickramasekara and Nilim Baruah; ILO Regional Office for Asia and the Pacific *Labour migration for decent work in Afghanistan: issues and challenges* (2013)(iii)(49) p. 28.

⁴⁷³ Piyasiri Wickramasekara and Nilim Baruah; ILO Regional Office for Asia and the Pacific *Labour migration for decent work in Afghanistan: issues and challenges* (2013)(iii)(49) pp. 28-29.

279. Return migration is further complicated by the increased internal displacement due to conflict within the country.

280. 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 centres where economic and social opportunities, as well as protection and assistance provision, were perceived to be greater’⁴⁷⁴.

281. As mentioned in section 7.10 UNHCR reported 805,409 Afghans were internally displaced by conflict, impacting 30 of the 34 Afghan provinces by the end of December 2014, with 2015 projected to be the worst year for internal displacement yet⁴⁷⁵. In addition to internal displacement, 5.8 million Afghans refugees have returned home since 2002, representing 20 per cent of the Afghan population⁴⁷⁶.

8.2 Responsibility for and information on unaccompanied children

282. 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 children⁴⁷⁷. 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 countries⁴⁷⁸.

Responsibilities for Afghan unaccompanied children

283. 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’⁴⁷⁹.

284. From its experience working with returnees, Afghanistan Migrants Advice and Support Organisation noted:

⁴⁷⁴ Jepsen, Christian ‘Refugee Returnees: the realities of return’ NRC (2012) available at <http://www.nrc.no/?did=9139975#.VeAAsbQxGRs> (Accessed 28 August 2015).

⁴⁷⁵ UNHCR 2015 Afghanistan country operations profile (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed 27 August 2015).

⁴⁷⁶ UNHCR 2015 Afghanistan country operations profile (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed 27 August 2015).

⁴⁷⁷ Ministry of Refugees and Repatriation Personal Communication 1 September 2015.

⁴⁷⁸ Ministry of Refugees and Repatriation Personal Communication 1 September 2015.

⁴⁷⁹ Personal communication by email with Abdul Ghafoor, Director of Afghanistan Migrants Advice and Support Organisation, 26 August 2015.

'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'⁴⁸⁰.

285. 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 provides targeted reintegration support for unaccompanied minors through family tracing, referral to external shelters if needed and special transportation arrangements⁴⁸¹.

Profiles and numbers of Afghan unaccompanied children

286. The 2014 UNHCR Global Trends report states that 2.59 million Afghan refugees have fled Afghanistan and are living elsewhere⁴⁸².
287. The majority of unaccompanied children from Afghanistan are in Pakistan and Iran but an increasing number of them are now also found in other parts of the world especially in Europe⁴⁸³.
288. Afghans constitute one of the main groups of unaccompanied children who are currently making their way to Europe⁴⁸⁴. Of the 625,920 individual asylum application claims submitted in 2014, around 23,075 were for 'unaccompanied or separated' children⁴⁸⁵, most from Afghanistan (3,310), Somalia (1,580), Syria (1,010), and Eritrea (715)⁴⁸⁶.
289. According to an IOM report on undocumented Afghan returns from Iran & Pakistan from January to June 2015, a total of 683 unaccompanied minors were assisted at the borders with Iran (Islam Qala and Milak) and Pakistan (Torkham) between January and June of 2015⁴⁸⁷.
290. 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 rape⁴⁸⁸. Unaccompanied children experience significantly

⁴⁸⁰ Afghanistan Migrants Advice and Support Organisation (focused on support for Afghan returnees from the EU) Personal Communication 26 August 2015.

⁴⁸¹ IOM *Undocumented Afghan returns from January to June 2015* (2015) available at http://afghanistan.iom.int/sites/default/files/Reports/undocumented_afghan_returns_from_iran_and_pakistan_jan-jun_2015.pdf (Accessed 28 August 2015).

⁴⁸² UNHCR *Global trends 2014* (2014) available at <http://www.unhcr.org/556725e69.html> (Accessed 5 September 2015) p. 3.

⁴⁸³ Radio Australia 'Afghan boys: silent victims of human trafficking' (2013) available at <http://www.radioaustralia.net.au/international/radio/program/connect-asia/afghan-boys-silent-victims-of-human-trafficking/1162032> (Accessed 14 November 2014).

⁴⁸⁴ UNHCR *A study of unaccompanied Afghan children in Europe* (2010) available at <http://www.unhcr.org/4c1229669.pdf> (Accessed 14 November 2014) p. 4.

⁴⁸⁵ EUROSTAT Country of Origin Asylum Seekers (2014) available at <http://appsso.eurostat.ec.europa.eu/nui/show.do> (Accessed 5 September 2015).

⁴⁸⁶ European Union 5th Annual Report on Immigration and Asylum 2013 (2014) available at [http://www.europarl.europa.eu/meet-docs/2014_2019/documents/com/com_com\(2014\)0288_/com_com\(2014\)0288_en.pdf](http://www.europarl.europa.eu/meet-docs/2014_2019/documents/com/com_com(2014)0288_/com_com(2014)0288_en.pdf) (Accessed 5 September 2015) p. 4.

⁴⁸⁷ IOM *Undocumented Afghan returns from January to June 2015* (2015) available at http://afghanistan.iom.int/sites/default/files/Reports/undocumented_afghan_returns_from_iran_and_pakistan_jan-jun_2015.pdf (Accessed 28 August 2015).

⁴⁸⁸ 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 October 13 2014).

greater symptoms of PTSD and depression compared to accompanied asylum-seeking children⁴⁸⁹.

8.3 Settling after return

291. 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 SSAR⁴⁹⁰.
292. 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 time⁴⁹¹. 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 authorities⁴⁹².
293. 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 based violence (SGBV)⁴⁹³. In order to prove that they are Afghan, Afghan returned 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 succeed⁴⁹⁴ (*see 2.9 Legal ages for children*).
294. The Afghanistan Migrants Advice and Support Organisation has been implementing interviews with newly returned Afghan youth, in these interviews, the returnees have stated difficulties in obtaining required national ID for admission into education programmes⁴⁹⁵:

'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'⁴⁹⁶.

⁴⁸⁹ 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 October 13 2014).

⁴⁹⁰ UNHCR 2015 Afghanistan country operations profile (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed 27 August 2015).

⁴⁹¹ Agency coordinating body for Afghan Relief and Development (ACBAR), The First Coordination Workshop , Afghan refugees/Returnees: Challenges and Opportunities (21 August 2014) available at <http://www.acbar.org/files/downloads/ref.pdf> (Accessed 28 August 2015).

⁴⁹² Agency coordinating body for Afghan Relief and Development (ACBAR), The First Coordination Workshop , Afghan refugees/Returnees: Challenges and Opportunities (21 August 2014) available at <http://www.acbar.org/files/downloads/ref.pdf> (Accessed 28 August 2015).

⁴⁹³ UNHCR 2015 Afghanistan country operations profile (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed 27 August 2015).

⁴⁹⁴ Afghanistan Migrants Advice and Support Organisation Personal Communication 26 August 2015.

⁴⁹⁵ Afghanistan Migrants Advice and Support Organisation Personal Communication 26 August 2015.

⁴⁹⁶ Afghanistan Migrants Advice and Support Organisation Personal Communication 26 August 2015.

295. According to the UNHCR country operations profile for Afghanistan, shelter is the biggest need for returnees, IDPs and those in refugee like situations. The limited resources and infrastructure also impact the employment opportunities of Afghan returnees⁴⁹⁷.
296. Every year, about 400,000 youth enter the labour market, mostly in urban centres, with limited skills. The current demand for labour, and shortage of employment opportunities form a strong pull factor, which means many are opting to leave if they can, while those who stay behind can potentially act as a destabilizing force – instead of contributing to a positive development process⁴⁹⁸.

8.4 Detention, insecurity or discrimination after return

297. Insecurity, disputes, intimidation and extortions, mines and unexploded ordnances (UXOs) are among the key factors affecting the physical safety and well-being of returnees' children⁴⁹⁹.
298. 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 children⁵⁰⁰. 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 again⁵⁰¹.
299. 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 them⁵⁰².
300. Returnees normally are free to enter the country and enjoy the freedom of movement and other activities post return. However, Ghafour 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'⁵⁰³.

⁴⁹⁷ UNHCR 2015 Afghanistan country operations profile (2015) available at <http://www.unhcr.org/pages/49e486eb6.html> (Accessed 27 August 2015).

⁴⁹⁸ Agency coordinating body for Afghan Relief and Development (ACBAR), The First Coordination Workshop , Afghan refugees/ Returnees: Challenges and Opportunities (21 August 2014) available at <http://www.acbar.org/files/downloads/ref.pdf> (Accessed 28 August 2015).

⁴⁹⁹ Agency coordinating body for Afghan Relief and Development (ACBAR), The First Coordination Workshop , Afghan refugees/ Returnees: Challenges and Opportunities (21 August 2014) available at <http://www.acbar.org/files/downloads/ref.pdf> (Accessed 28 August 2015).

⁵⁰⁰ 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 October 13 2014).

⁵⁰¹ Afghanistan Migrants Advice and Support Organization Personal Communication 26 August 2015.

⁵⁰² Afghanistan Migrants Advice and Support Organization Personal Communication 26 August 2015.

⁵⁰³ Afghanistan Migrants Advice and Support Organization Personal Communication 26 August 2015.



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8.5 Reintegration for children and their families

301. 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 insurgency⁵⁰⁴.
302. There is not much done by the state in providing reintegration packages post return. UNHCR confirmed that they have some small packages in shape of ration that is provided to returnees, mainly families and adults, from neighbouring countries⁵⁰⁵. 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 from’⁵⁰⁶.
303. There is no government monitoring mechanism in relation to Afghan returnees⁵⁰⁷.

⁵⁰⁴ Afghanistan Migrants Advice and Support Organization Personal Communication 26 August 2015.

⁵⁰⁵ UNHCR Personal Communication 07 September 2015.

⁵⁰⁶ Afghanistan Migrants Advice and Support Organisation Personal Communication 26 August 2015.

⁵⁰⁷ 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/texis/vtx/page?page=49e486eb6&submit=GO>

The Concluding Observations for Afghanistan's Periodic Reports can be found at:

https://www.crin.org/en/library/custom-search-un?search_api_views_fulltext=&field_un_subtype=855&created%5Bdate%5D=&created_1%5Bdate%5D=&field_organisation=All&field_themes=All&field_crc=All&field_country_1=All&field_country=700&search_api_language=All

Demographic Information/Statistical data on children	Numbers	Source
Total Population (Millions)	30.55	UNDP Human Development Index 2014
Population under 18 (Thousands)	16317	UNICEF Afghanistan 2012
Population under 5 (Thousands)	4964.4	UNICEF Afghanistan 2012
Under-5 mortality rate (2013)	973	UN Interagency Group for Child Mortality 2013
Under-5 mortality rate in neighbour countries (2014)		UN Interagency Group for Child Mortality 2013
	Pakistan	85.5
	Iran	16.8
	Turkmenistan	55.2
	Tajikistan	47.7
	Uzbekistan	42.5
	China	12.7

UN Interagency Group for Child Mortality Estimation

<http://www.childmortality.org/index.php?r=site/compare>

Last checked on 31 August 2015.

UNICEF Afghanistan

<http://www.unicef.org/infobycountry/afghanistan.html>

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