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An Assessment of Juvenile Justice in Afghanistan

Prepared by Kimberley Cy. Motley, Esq. Terre des hommes Juvenile Justice Consultant, January 2010

Founded in 1960, Terre des hommes is a Swiss organization which helps to build a better future for disadvantaged children and their communities, with an innovative approach and practical, sustainable solutions. Active in more than 30 countries, Tdh develops and implements field projects to allow a better daily life for over one million children and their close relatives, particularly in the domains of health care and protection. This engagement is financed by individual and institutional support, of which 85% flows directly into the programs of Tdh.



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Foreword

Afghanistan is a very poor country, placed 174th out of 178 in the Human Development Index¹. The literacy level is 50% for men and 20% for women and the average life expectancy is below 45 for both men and women². The country has suffered and continues to suffer from many years of war. This is a very challenging environment where introducing a formal, state-wide justice system based on written texts, record-keeping databases (and a regular supply of electricity) and all the appropriate protections for the rights of suspects, defendants and prisoners that accompany such systems in the West is difficult³.

It hoped that this study will continue to offer valuable information as it relates to children in conflict with the law in Afghanistan. The research in this study was collected in such a meticulous manner with the understanding that children have a right to survival and development, to be protected from violence, to be protected against exploitation and abuse, and that their best interests should be of utmost importance to all citizens. The findings will suggest that enhancements to the juvenile justice system are moving at a snail's pace and something more needs to be done.

¹ Brown, G. (2007). *Statement by the Prime Minister on Britain's future strategy in Afghanistan*, 7 December 2007.

² *Id.*

³ *Alternatives to Imprisonment in Afghanistan: A Report by the International Centre for Prison Studies*, Kings College London, International Centre for Prison Studies, February 2009, p.10.

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From Terre des hommes Afghanistan

The present publication has been realized in the frame of the project Child Right Consortium III (CRC III), funded by the European Commission in Afghanistan. It is run by four NGO (LKRO, ASCHIANA, Save the Children UK and Terre des hommes that plays the leading role), in 5 important areas of the country (Kabul, Mazar-e-Sharif, Herat, Kandahar, and Jalalabad/Torkham). It is a four year project, and the Juvenile Justice, in which the publication is fitted, is one of the four pillars of the project, while the others are: A) support to Street and working children (including IDP children, children belonging to minorities, and returnees children), B) support to Extremely Vulnerable Individuals (EVIs), disable children and children victims of abuses, C) Advocacy.

In October 2009, Terre des hommes has organized the first national workshop for judges and prosecutors, working with Minors in Conflict with the Law, in Afghanistan on “alternative to detention”, which was followed by an assessment, always at national level, on the situation of detention of minors in conflict with the law.

The present book is then trying to summarize the main points which came out from the workshop and the assessment. It is the first of a series of workshops and publications that Terres des hommes, as CRC III, will carry out in the coming three years. In our intention, it has the ambition to put some order in this big and sensitive matter and, at the same time, to facilitate and support in their job all those who are directly involved with minors in conflict with the law, to improve the condition in the JRCs and the application of the law.

Terre des hommes would also like to say thank to Kimberly Motley, for her dedication, and to all those who have contributed in the good and useful realization of the workshop and assessment: Ministries, EC Delegation in Afghanistan, Swiss Cooperation in Afghanistan (SDC), Italian Cooperation, children in the JRCs, JRCs directors, judges and prosecutor, UNICEF, UNAMA, national and international NGO, and all translators who have facilitated the communications.

A special thank to the Ministry of Justice, to the General Director of the JRC and to the General Attorney Office for their strong support and collaboration.

Acknowledgements

From author

First and foremost, I would like to thank all the juveniles who allowed for us to come in and interview them for the purposes of this study. Many of the children were in extraordinary difficult situations and it is hoped that people will take heed to this and other research in order to improve the situation of children in conflict in the law within the juvenile justice system. The research in this study was collected in such a meticulous manner with the understanding that children have a right to survival and development, to be protected from violence, to be protected against exploitation and abuse, and that their best interests should be of utmost importance to all citizens.

This assessment could not have been done without the financial and technical support of Terre des hommes. Specifically, I would like to thank Salvatore Grungo, Paola Retaggi, Juan Carlos Morales, and several national staff who have asked not to be named for your professional and financial support. The technical support and morale support was invaluable and I personally learned a tremendous amount from you all.

I would like to also thank Mohammad Seddiq, and Abdullah Moqubel. Both were extraordinarily helpful to this research and have worked diligently in protecting the rights of children in conflict with the law.

I would like to thank all of the other juvenile justice professionals that gave me their time to interview them and educate me on some of the issues within the juvenile justice system. It is hoped that the findings in this report will be used to develop and sustain programs as a means to better run the juvenile justice system.

I would like to thank my three beautiful children and my wonderful husband for giving me the opportunity to be in Afghanistan to conduct this assessment. My family has and continues to be my inspiration in the work that I have done. My family helps me in more ways than they can imagine to do what needed to be done in this endeavor.

The opinions that are expressed in this research are mine alone. I hope they will prove useful to all of you who are involved in supporting efforts to protect children in conflict with the law.

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Introduction

November 20, 2009 marked the 20th anniversary of the United Nations General Assemblies' Adoption of the Convention on the Rights of a Child (CRC). The overriding principle of creating and ratifying such a monumental piece of legislation was simple to protect the world's most valuable asset – our children. The 193 countries including Afghanistan, who signed onto this legislation did so with the understanding that, “the child, by reason of his physical and mental immaturity, needs special safeguards and care including appropriate legal protection, before as well as after birth⁴.” Overall, the countries that signed onto the CRC also agreed to try and uphold its principles in dealing with children in conflict with the law in their respective countries.

As of December 2009 there were 600 children in conflict with the law in Afghanistan, representing eighty girls and 520 boys⁵. This number represents nearly a 30% increase from the 455 juveniles who were reported as being detained in January 2008⁶. This assessment represents qualitative research created, gathered, and analyzed from September 2009 through December 2009. In particular, the information included in this research is a result of information received from personal interviews conducted by the author with the use of translators of three hundred and forty-eight persons working or detained within the juvenile justice system from twenty-eight provinces⁷. The comprehensive information that will be offered was obtained in a meticulous manner with the hopes that there will be an actual coordination of efforts between international and national partners of tangible projects with the aims to achieve positive results for children in conflict with the law in Afghanistan.

⁴ UN Convention on the Rights of the Child Preamble, November 20, 2009.

⁵ Interview, Mohammad Seddiq, Head of Juvenile Justice Department Ministry of Justice, 13 December 2009.

⁶ Information provided by contributor to ICPC roundtable on Afghanistan who recently carried out a large research study in Afghanistan, 21 February 2008.

⁷ Provinces represented in this study include, Jalalabad, Mazar-e-Sharif, Kabul, Ghazni, Herat, Ghore, Paktia, Samigan, Farah, Nangarhar, Kapisa, Laghman, Josjan, Kandahar, Zarghona, Badakshan, Kunduz, Poli Khumri, Balkh, Baghlan, Gardez, Maiden Wardak, Logar, Panshir, Parwan, Khost, Tahar, and Konar.



A blue-tinted photograph of a person working on a bicycle wheel. The person is in the foreground, leaning over the wheel. Another person is visible in the background, also working on a bicycle. The image has a soft, slightly blurred quality.

1

Methodology

The goal of this study was to provide an overall assessment of what if any obstacles children in conflict with the law face while in the juvenile justice system. Other objectives of this study were to:

- Conduct continued research for children in conflict with the law and offer disaggregated data on what if any disparities and developments have occurred within the juvenile justice system.
- To identify what if any issues professionals have to face in working with children in conflict with the law.
- To identify the greatest needs for improvement particularly within the juvenile justice legal system.
- And lastly, to investigate what if any alternatives to detention are being utilized.

Questionnaires were created for interviewing children and also Afghan professionals working within the juvenile justice system in Afghanistan by the author with technical assistance from Terre des hommes. Information consisted of self-reported data collections from interviews with juveniles, judges, prosecutors, defense attorneys, medical professionals, social workers, police officers, and other professionals working within the juvenile justice system. A total of 348 interviews were conducted representing twenty-eight provinces from September 2009 through December 2009⁸. Ninety-eight interviews were taken of various professionals currently working within the juvenile justice system. The remaining 250 interviews were taken from children in conflict with the law from the Kabul (Central), Mazar-e-Sharif (North), Jalalabad (East) and Herat (West) juvenile rehabilitation centers (JRC).

All interviews taken with juveniles and professionals were formulated through the use of questionnaires developed by the author. All interviews were given orally by the author with the invaluable assistance of national interpreters. The data was collected in person

orally by the author and interpreters. All interviews were strictly voluntary and juveniles were verbally interviewed while housed at the closed JRC's in the North, West, East, and Central Regions. Due to security issues, the author was not able to travel as originally planned to the Southern Regions of Afghanistan; however, several questionnaires were completed with adults working with children in conflict with the law in the southern provincial regions.

a) Limitations of the Study

There were several limitations to this study. The questions for the juveniles were conducted at four JRC's. Due to unforeseen security issues, only two interviews could be conducted with professionals working with juveniles in the southern regions which are not statistically significant.

The author attempted to conduct the questionnaires privately but due to the security protocol of the JRC's this proved to be difficult. As much as was possible and with the assistance of several JRC directors and staff most of the interviews with children in the juvenile justice system were conducted privately. Where confidentiality was compromised the author opted not to ask questions that could potentially affect the child's situation while at the JRC's.

Data collections were limited to children detained in the JRC's in the Eastern, Western, Central, and Northern regions. Unsuccessful attempts were made to conduct interviews with juveniles housed at police stations and at adult detention facilities. Also, those juveniles housed in adult facilities are not included in this study. Part of the difficulty is that while juveniles are housed in adult facilities, often their files reflect that they are eighteen years of age or older. We were able, however, to interview several juveniles who had been housed in adult facilities and then moved to the JRC.

⁸ Brown, G. (2007). *Statement by the Prime Minister on Britain's future strategy in Afghanistan*, 7 December 2007.





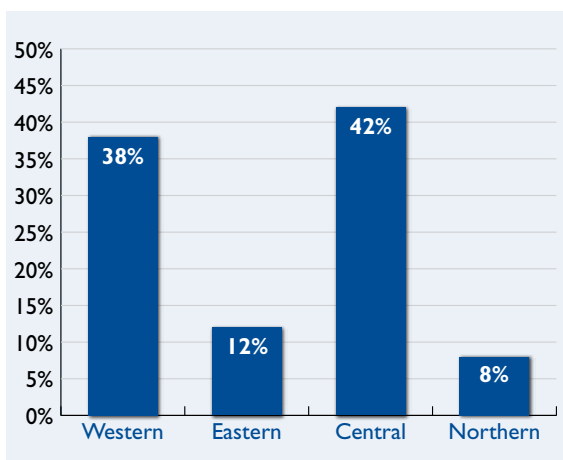
2

Logistics

a) Provincial Breakdowns

Qualitative and Quantitative Data were taken from the North, West, Central, and Eastern Regions of Afghanistan. The author identified the Eastern Provincial Regions as children and professionals from Ghazni, Khowst, Paktika, Paktya, Nangarhar, and Wardak. The Northern Region consisted of children and professionals from Badakshan, Baghlan, Balkh, Faryab, Jawzjan, Kunduz, Samangan, Sar-i-pol, and Takhar. For the Central Region the author is referring children and professionals from Bamiyan, Kabul, Kapisa, Konar, Laghman, Nuristan, Panshir and Parwan. And lastly, the Western Regions consists of children and professionals from Herat, Farah, Ghor, Day Kundi, and Badghis. Juveniles, judges, defense attorneys, prosecutors, medical professionals, police, social workers, juvenile rehabilitation directors, and juvenile rehabilitation workers are among those interviewed for the purposes of this research.

Juveniles Regional Representations



b) Gender

There were two hundred and fifty (250) juveniles interviewed for this research. The population represented in this study consists solely of detained juveniles which represents 42% of the total number of detained Afghan children in Afghanistan who are in conflict with the law⁹. As of December 13, 2009, there were 600 children in conflict with the law detained at various juvenile rehabilitation centers throughout Afghanistan¹⁰. This number represents nearly a 30% increase to the 455 who were reportedly detained in January 2008¹¹.

The majority of the juveniles questioned were males representing 210 boys or 84% of the overall sample size. The 210 boys questioned represents approximately 40% of juvenile males currently detained in Afghanistan¹². 40 girls were also interviewed in this report representing 16% of the total sample size and 50% of girls who are detained in Afghanistan as children in conflict with the law¹³.

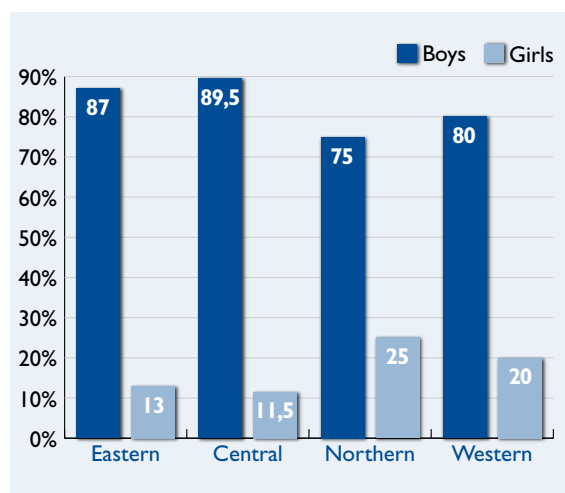
Overall, this study and other like studies show that males are detained at much greater rates than females. Some attribute this disparity due to the increased public exposure that males have in the society as opposed to females. Despite this fact, this study and studies also conducted by UNICEF, AIHRC, and UNODC reveal that girls are more likely to be detained for moral crimes such as running away, adultery, and often kidnapping charges where the purported victim is often themselves¹⁴. When questioning twenty-two judges who have presided over cases involving children in conflict with the law, Article 130 was the jurisprudence cited in the criminalization of moral crimes. Article 130 of the Islamic Republic of Afghanistan Constitution states that,

In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.

Another rationale which may explain why the boy to girl ratio is 13:1 is that often girls are housed at women's prisons due to the limited lack of facilities within the JRC's for females¹⁵. So while the official number of detained female children in conflict with the law may be 80, this number does not necessarily reflect those girls who are detained in Women's Prisons throughout the country.

Still another reason why the gender disparity may be so great is that often situations of girls violating the law are handled with the elder males of the family or villages. In interviewing judges who have presided over female cases some admitted to sending girls home more readily than boys to their families to deal with their situation as opposed to locking them up as an alternative to detention. One judge reported that she presided over a case of a 15 year old girl running away from home due to the fact that she did not want to marry a 22 year old man. After being charged with running away from home by the police, the girl was brought before the court. The judge communicated that she convinced the girl to marry the man, sent her home to her family, and therefore did not send detain her at the JRC.

Provincial Gender Representations

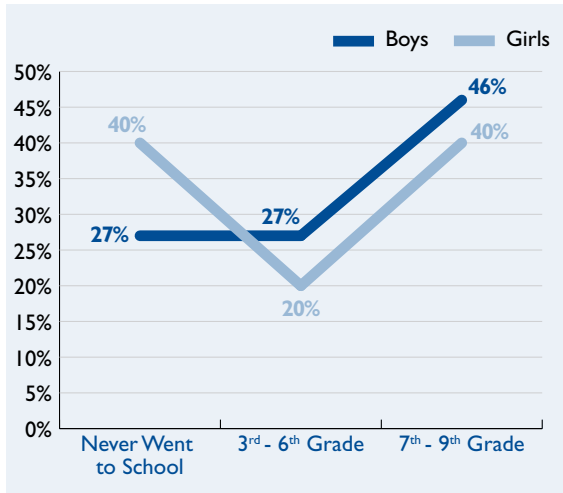


c) Educational and Literacy Levels

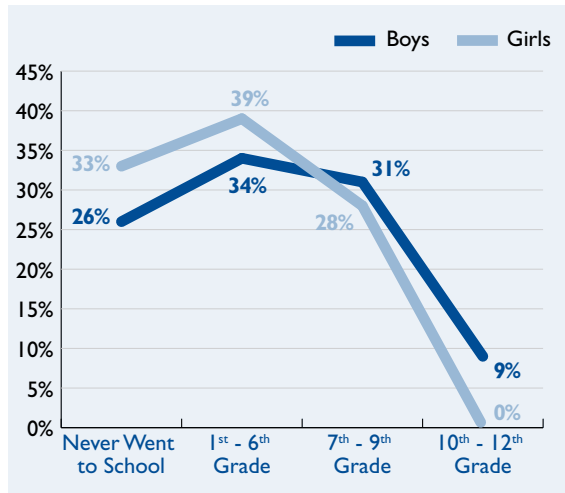
Juveniles were questioned about their educational and literary levels. Overwhelmingly and not surprisingly girls reported having less educational experiences than boys. In addition to this, the data reflected that girls were more likely to be illiterate and had higher levels of illiteracy as compared to boys. For those juveniles who were unsure about their literacy, the author presented documents in Dari and Pashto for the juveniles to read voluntarily to indicate their literacy levels. Such measurements were given to five male children in the Central and Eastern provinces who were all illiterate in reading but reported that they could write.

Boys in the North reported as having the most educational experiences for those in the 7th–9th grade with 46,6% reporting. Boys in the Central region reported having the most educational experiences as compared to juveniles in the other provinces reporting in at 13,04% of those interviewed. For almost 1/3 of the boys, they reported being students prior to their arrest. In fact, some of the boys reported being arrested while they were going to school. One 18 year boy in the West described his experience after being charged with robbery. He stated that he was in school in the 10th grade at the time of the offense. After going to court, with a neighbor present, no evidence was presented, no witnesses testified against him, and being denied his right to testify, he was sentenced to five years. The same neighbor who witnessed the trial was visiting him at the JRC at the time of this research proclaimed the 18 year old's innocence to us. He communicated that he went to court on behalf of the family and told the judges that the boy was in school at the time of the offense. The family, afraid that they may be arrested if they went to court with him or visited him at the JRC sent the neighbor on their behalf. The neighbor indicated that the judges did not care that the boy was a good kid, in school at the time of the offense, and refused to listen to him in court. The boy communicated to the author in the interview that he missed school and he hope to be released one day so that he could continue his education. In court, the juvenile received a five year sentence which was subsequently upheld by the Appellate Court.

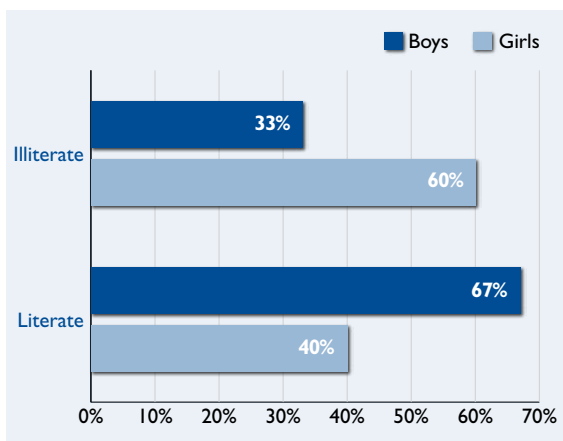
Northern Region Juvenile Formal Education Levels



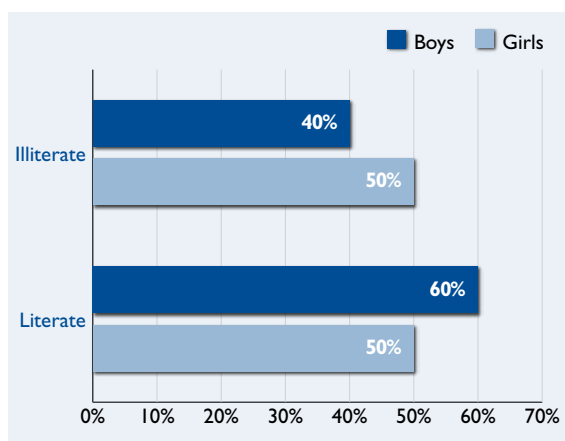
Western Region Juvenile Formal Education Levels



Northern Region Juvenile Literacy Levels



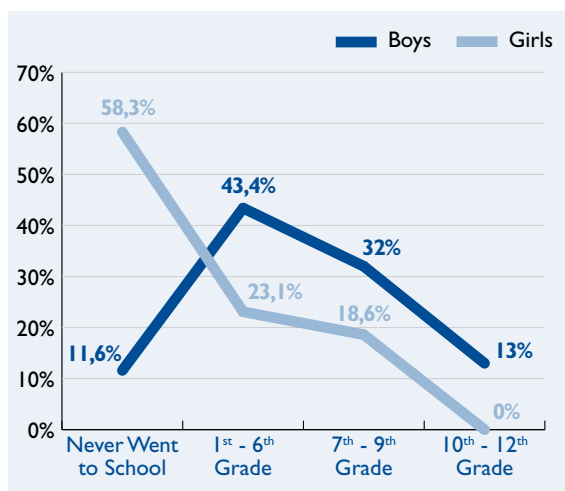
Western Region Juvenile Literacy Levels



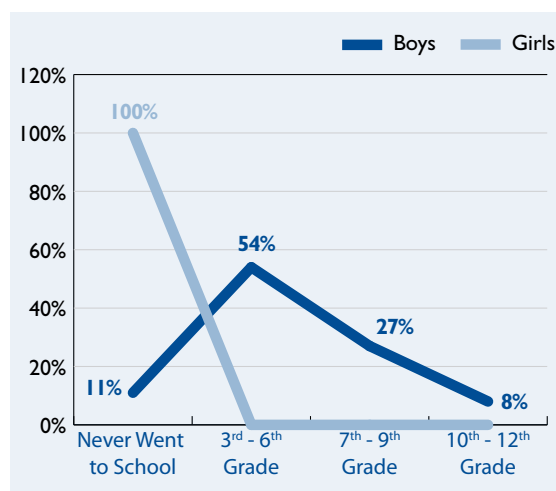
Girls in the West reported having the highest educational levels with 67% reporting as having had some formal education from the 1st–9th grade. Unfortunately, the highest educational level reported for girls ended in the 9th grade. The North represented the girls who had the most educational experiences with 40% reporting that they had some formal education between the 7th–9th grade.

Interestingly, enough the literacy rates did not necessarily track with the educational experiences reported. For example, while the Central region reflected juvenile boys who had the most educational experiences, meaning having gone to school, the central region reflected the region with the second highest illiteracy rate for boys reporting in at 48.7%.

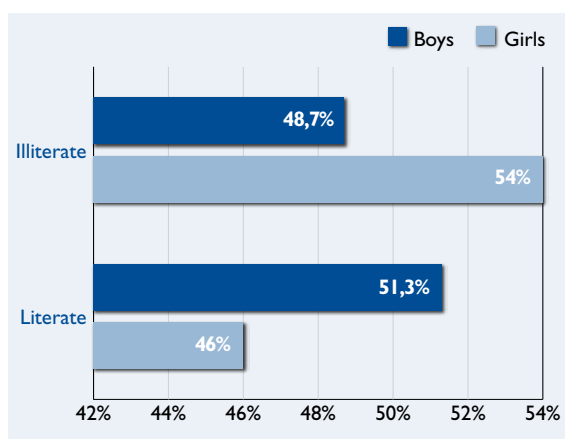
Central Region Juvenile Formal Education Levels



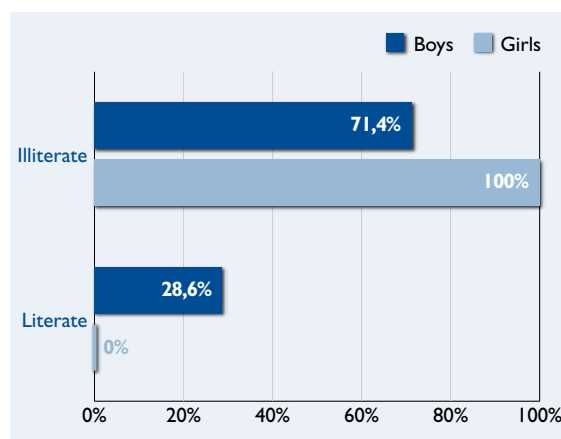
Eastern Region Juvenile Formal Education Levels



Central Region Juvenile Literacy Levels



Eastern Region Juvenile Literacy Levels



In the Eastern Provincial regions, 100% of the girls reported having never gone to school and also 100% reported being illiterate. Subsequently, juvenile boys in the East reported at a 71,4% illiteracy rate which was the highest illiteracy rate reported as compared to boys in the other three provincial regions. One girl reported that she was happy to be in the JRC as this may be her first and only opportunity to receive some formal education.

d) Juvenile Experiences Prior to Arrest

Juveniles were asked about their experiences prior to their arrest and stay at the JRC. These questions were asked in order to extrapolate information on their family backgrounds. The questions were also asked to retrieve information as to the types of vocational or educational programs that could be offered to juveniles while at the JRC's.

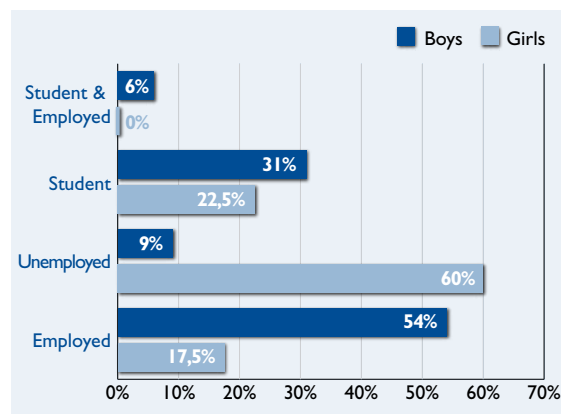
The vast majority of male juveniles who participated in this study reported being employed prior to their detention representing 54% of those questioned. Only 31% of the males interviewed in this study reported being students prior to their arrest. Of the jobs obtained, the boys reported being shopkeepers, tailors, drivers, farmers, and one juvenile in the west reported being an indentured servant prior to his arrest. When questioned further on his role as an indentured servant, the 13 year old indicated that he lived and worked with his employer who owned him. He indicated that he was expected to work the land and he also had household duties that he was responsible for. The boy further reported that he was detained due to the criminal activity of his owner. He was not able to articulate what he was charged with but he did communicate that the police came to his owner's house and that his owner gave the juvenile to the police in exchange for himself.

Conversely, 60% of the girls indicated that prior to arrest they were housewives with no school or employment experience. Of the girls reporting, 32,5% or thirteen girls indicated that they were currently married. 7,5% reported that they were currently engaged and 60% reported being single. In addition to this, 17,5% of the girls indicated that they had prior employment experience. Of the jobs reported the girls communicated that they worked as tailors, rug makers, cooks, and shopkeepers.

These figures suggest the imperative need for more educational and vocational programming within the JRC's which should be considered an absolute necessity. Article 12 of the Juvenile Code states that a detention center is to provide access to educational, social and vocational programming¹⁶. The argument should be made that by offering appropriate vocational and educational programming this will better prepare the juveniles reintegration back into society upon their release¹⁷.

After visiting the Kabul and Herat detention centers which represented the two largest JRC's in Afghanistan the directors agreed that more vocational and educational programming should be offered. While in Kabul's JRC the lack of funding for such programs was discussed. At the present time, three hours of educational and vocational instruction five days per week are offered. These programs include literacy, religious studies, and tailoring. In Jalalabad, the centers have two computers that ideally could be used to conduct computer classes. Unfortunately, the inconsistent electricity and funding available for instructors does not necessarily make computer classes a viable option. The catalyst for such programs not being offered in all of the JRC's was attributed to the lack of funding for such programs to be implemented within the JRC's.

Juvenile Experiences Prior To Arrest



Footnotes section 2

⁹ Interview, Mohommad Seddiq, Head of Juvenile Justice Department of the Ministry of Justice, 13 December 2009.

¹⁰ *Id.*

¹¹ Information provided by contributor to ICPC roundtable on Afghanistan who recently carried out a large research study in Afghanistan, 21 February 2008.

¹² Brown, G. (2007). Statement by the Prime Minister on Britain's future strategy in Afghanistan, 7 December 2007.

¹³ *Id.*

¹⁴ UNICEF and AIHRC, *Justice for Children: The situation for children in conflict with the law in Afghanistan* (2008).
UNODC, *Assessment Report on Implementing Alternatives to Imprisonment, in line with International Standards and National Legislation*, 2008.

¹⁵ *Id.*

¹⁶ Juvenile Code, Article 12 states that, the suspected and arrested child shall be detained in a special temporary location. The detention authority is obliged to provide access of the detained child to social, educational, vocational, psychological and health services considering the age and gender requirements of the child.

¹⁷ The Convention on the Rights of the Child, Article 3, 1. States, 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.



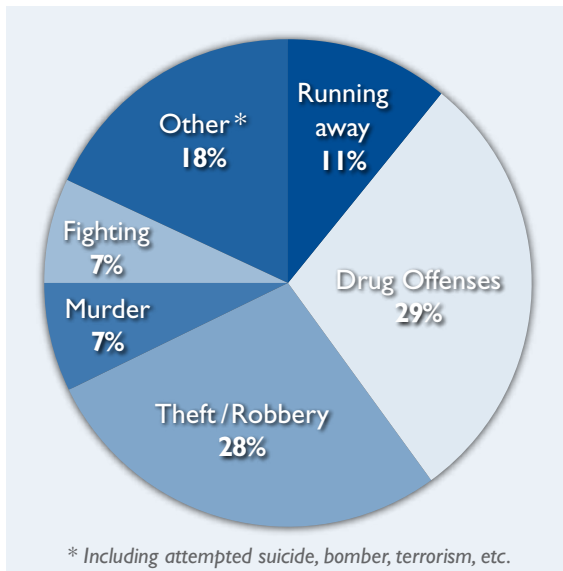
A blue-tinted photograph of a prison cell. The cell door is made of dark metal bars and is set into a white wall that shows signs of wear and peeling paint. Inside the cell, a white cloth is draped over the bars. The floor is a light-colored, textured surface. The overall mood is somber and institutional.

3

Crimes represented

a) Eastern region

Eastern Region Juvenile Crimes Reported



In the Eastern Regions of Afghanistan near the Pakistan border juveniles were asked to articulate the crimes that they were charged with and or convicted of¹⁸. 100% of the girls that knew their charges indicated that they were arrested for the moral crime of running away from home. Judges working in juvenile courts in the four regions were asked for the legal reference in charging juveniles with moral crimes such as running away from home, adultery, and kidnapping where the children were their own victim. 61% of the judges questioned cited Article 130 of the Constitution as the jurisprudence allowing convictions of juveniles for moral crimes with the remainder 39% of judges questioned refusing to answer the question¹⁹. When further inquiring where such moral crimes can be found in any customary or religious written references for the purposes of citing within this assessment none of the judges were able to cite such references.

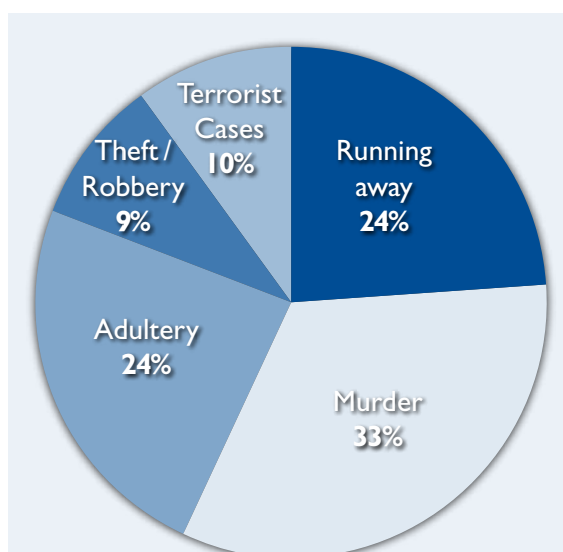
According to this study, the majority of juveniles in the East were charged and or convicted of drug and theft offenses. 28.57% of those juveniles who knew their charges indicated that they were in custody for drug offenses such as possession, cultivation of drugs, and alcohol consumption. This figure may be attributed to the fact that most of the provinces represented are on or near the Afghanistan and Pakistan border. Many of the kids indicated that they used drugs such as opium at least once and some even admitted being

addicted to drugs. What attributes to such a high percentage of juveniles involved in drug activity? One can hypothesize that many of these children work on lands cultivating drugs. Children involved in the harvest, through their contact with the crop, often develop an addiction²⁰. In addition, with the absence of readily available alternative medicines, drugs are often used as an analgesic substitute and have even been used to assist with teething problems for babies²¹. It has even been suggested in Afghanistan that there are 1 million drug addicts and treatment facilities are minimal²². Such high percentages of drug criminality suggest that there is a need for drug treatment facilities, especially in dealing with children who are addicted to drugs. Clearly, juveniles could benefit from some type of drug treatment programming. Such programs could potentially be offered in the JRC's which may help towards the rehabilitation goal.

Also reporting in at 28.57% of crimes that boys were charged with were theft and robbery charges. The overwhelming tangible item reported as being stolen was money. Murder and fighting combined represented 14.28% of the population of charges that juveniles were in custody for. Other crimes reported in the interviews included attempted suicide bombing, counterfeiting, terrorism, traffic, and pederasty.

b) Northern Region

Northern Region Juvenile Crimes Reported



The Northern region proved to have interesting results in the charged and convicted crimes represented²³. Murder represented the most popular offense that juveniles were charged and or convicted of reporting in at 33% of those juveniles detained. When questioning juveniles charged and or convicted of murder offenses, the vast majority reported that they were either guilty by association meaning that a family member committed the murder unbeknownst to them and they were summarily accused or they reported being flat out innocent of the charges. Many juveniles convicted for murder indicated that they were accused, charged, and convicted for the offense based on little to no evidence being presented in court. One juvenile reported that on his way to school he was stopped by police and accused of murdering another neighborhood boy. According to the then 16 year old juvenile, after being kicked and beaten for hours by the police “like an animal,” the police forced the literate teenage student to sign a confession that they authored. After going to court with no witnesses or any other evidence aside from the written confession the 16 year old reported he was physically forced to sign at the hands of the police, the juvenile was convicted of six years sentence in primary court which was reduced to five in the appellate. He is currently awaiting a decision from the Supreme Court.

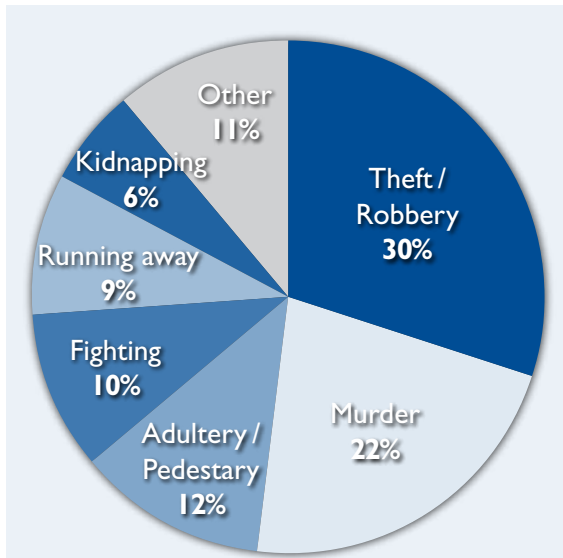
48% of juveniles reported being charged with the moral crimes of running away from home and adultery. Some of the juveniles reported running away from home to escape physical abuse at the hands of parents or spouses, and some reported running away to escape arranged marriages. For many of the kids that were charged with adultery, they reported being falsely accused of the charges. In one case, a girl reported trying to go home and getting into a car with two men that she thought was a cab. Less than thirty minutes later the girl reported that the car was pulled over by the police, and she was subsequently charged and arrested for adultery receiving a 2 year 6 month sentence.

In 11% of cases reported juveniles were charged and convicted of terrorism. One boy shared his experiences of his indoctrination into the juvenile justice system. Interestingly enough, the researcher was initially informed about this case from the Saranwal (Prosecutor) working with juvenile cases. According to the Primary Saranwal, this case involved a seventeen year old farm boy. With no witnesses and no evidence this unfortunate kid was accused of having relations with the Taliban. The prosecutor openly admitted that

the boy was tortured and abused for weeks while in the custody of the National Security Police. It was even reported to the author by the prosecutor that the boy was hung and electrocuted by the National Security Police. The prosecutor admitted to seeing physical signs that were consistent to the physical torture that she reported to the author. Despite the fact that the police investigation was “very poor”, and there was no corroborating evidence that this child was guilty of Terrorism, the prosecutor’s office still forwarded this file to the court. Pursuant to Article 16 of the Juvenile Code and Article 39(1) of the Interim Criminal Code for Courts (ICPC) it states in relevant part that, if there is no grounded evidence the Saranwal has an affirmative duty to dismiss the charges²⁴. When the author reminded the prosecutor of Article 39 of the ICPC the prosecutor simply indicated that they were concerned about the power of the National Security Police and that the prosecutor’s office had no choice but to forward the file onto the courts despite their belief that the juvenile was innocent. This case was also mentioned to the author by the juvenile judges who presided over the case. The judges reported that the juvenile was accused of putting up signs around the city threatening terrorist acts. When asking the juvenile judges on this case whether those signs were entered into evidence, or if any witnesses testified in court that they saw the juvenile put up the signs, they indicated that such evidence was not brought forward. In fact, other than the police reports, the juvenile judges were not able to cite any evidence that was presented in court that gave grounded reasons for a conviction. The judges also communicated that in this particular case, “the Saranwals behaved like defense attorneys and said the boy was innocent.” When the judges questioned the prosecutor as to why they still went forward with the charges, the prosecutors admitted in court that they were scared of the influence of the National Security Police and had no choice but to forward the file despite the fact that they believed that the juvenile was innocent²⁵. Ultimately, as a result of poor investigation by the police, the passivity of the prosecutor’s office, the prosecutor’s fear of the National Security Police, and the incredulous evidentiary oversight by the Juvenile Court, the juvenile was convicted and received a seven-year sentence; his case is currently pending appeal.

c) Central region

Central Region Juvenile Crimes Reported



The Central Region proved to have some interesting results as well²⁶. Robbery and theft comprised the majority of the crimes committed at 29,5% of the crimes represented. Again, the overwhelming tangible item reported as being stolen was money. Coming at a close second were murder cases representing 22,4% of the crimes a juvenile was charged and or convicted of. Overall, 6,66% of the juveniles reported that they had no idea what they were being accused of having done which represented two girls and five boys.

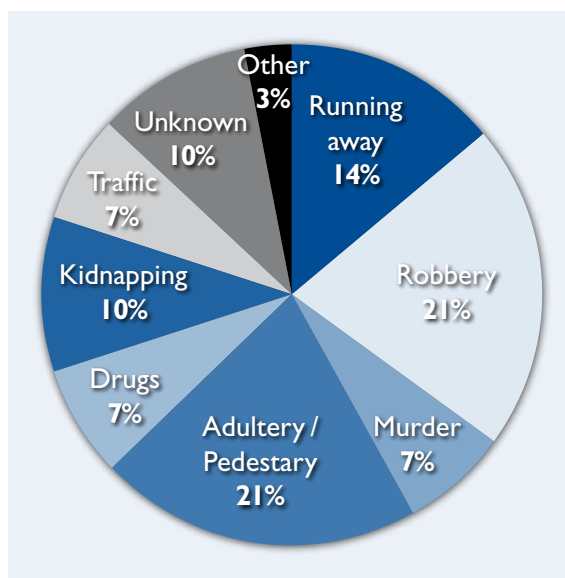
The remainder of the girls were accused of having committed moral crimes such as adultery, running away from home and kidnapping. One girl reported being charged with running away from home after coming home two hours late from school and received a 1-year sentence. Another female charged with kidnapping recounts her experiences of being abducted by two adult males for three days. After three days of being raped and beaten by her captors she was reunited with her family only to be presented with kidnapping charges and subsequently a two-year sentence in court. Unfortunately, for many of the females surveyed, the detention serves more as a place of refuge due to the fact that many of their families do not want them. Some females articulated their fear of release due to the threats that they have received from their family members.

Overall, in a close second were pederasty and adultery offenses which comprised 12,2% of those sentenced. These offenses are codified in Article 427 of the Penal Code for the Islamic Republic of Afghanistan and call for long imprisonment if convicted²⁷. Pederasty can be loosely defined as sexual relations between an adult male and a child²⁸. For many of the boys convicted of this offense, they were unfortunate victims of rape. Instead of treating them as such, they have been charged and convicted for their victimization. One unfortunate male juvenile reported that he tried to talk about his experience in court. Being the victim of rape, the juvenile was charged with pederasty. In court, the juvenile reported being victimized again but this time by the legal system and was told by a juvenile judge to not speak or even look at her. After being denied his right to testify, reporting that his attorney barely spoke out for him, he received a five-year sentence which was subsequently upheld by the Appellate Court.

When discussing with the Primary Court Juvenile Judges some of the concerns such as the denial of a juvenile's right to testify in court. One judge stated, that "juveniles lie all of the time²⁹." She further communicated that when the kids come to court she tries to talk to them³⁰. She shared in the interview that upon arrival to her court many of the kids proclaim their innocence³¹. She further indicated that she warns the children that they will get a better sentence if they tell the truth³². If they choose to lie, their sentence will be harsh³³. She continued by saying that in the four years that she has served as a judge that she has never had a case where the juvenile said they were innocent the whole way through³⁴. There is a lot of work to be done.

d) Western region

Western Region Juvenile Crimes Reported



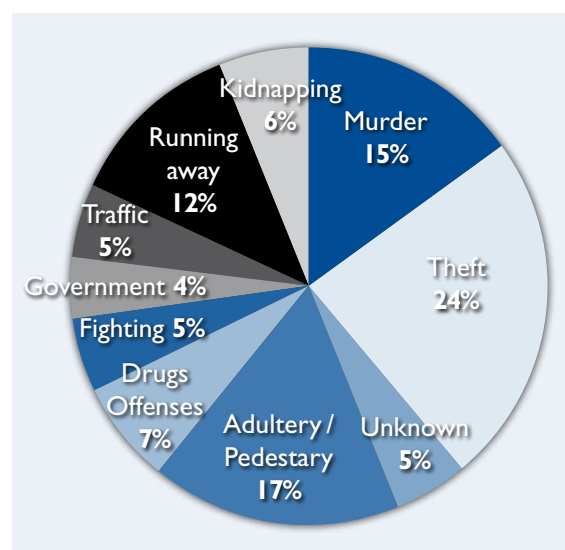
In the west, 42% of the juveniles reported being involved in robbery, theft, adultery, or pederasty offenses. The Western region represented the region with more pederasty cases than any other region accounting for almost 17% of the total crimes reported. Among pederasty cases, many of the boys reported being kidnapped, raped, and then subsequently charged with pederasty for their role as a victim in the offence. One juvenile shared his experience of being kidnapped by three men for five days. The men asked the juvenile's family for ransom money in return for the child. After being brutally raped and beaten, the juvenile reported being returned home. The perpetrators were arrested but immediately released and never charged. The boy indicates that after going to court and being denied his right to testify, he was convicted and sentenced to a 2-year sentence in primary court that was subsequently upheld by the appellate court.

As in the other three regions discussed, many juveniles in the West reported being convicted on little to no evidence in court. For the females, the girls consistently reported being charged and convicted of moral crimes such as adultery and running away. One girl reported being out in public with a male friend. The 16 year old reported that both she and the boy were arrested while they were out in public and she is currently awaiting trial.

Unfortunately, juveniles in the west reported the most civil liberty violations in court. Interview after interview, juveniles reported not being allowed to testify in court, 10% reported not knowing what their charges were, no witnesses being presented in court, and some juveniles reported being asked for bribes by judges while they were in court.

e) Overall Findings of Crimes Represented

Overall Juvenile Reported Crime Representation



The data shows that more than half the charges that juveniles are convicted of included theft, murder, or adultery/pederasty offenses. Overall, 4% of juveniles reported being charged and convicted of terrorism. Such crimes are represented above under government crimes that include terrorism, attempted suicide bombers, speaking out against the government, and counterfeiting. For most boys charged with what has been categorized as government offenses, all reported being forced to sign confessions orchestrated by the police after being intimidated, beaten, electrocuted, handcuffed, and even hung. One juvenile shared his experience of being kidnapped from his family and then taken to Pakistan by his captors. He talked about being underground for months with the Taliban, while being taught to fight and learning Islamic Doctrines. The juvenile reported that during the time that he was kidnapped one kid tried to escape but was caught and beheaded. After gaining the trust of his captors,

the juvenile was finally allowed above ground and escaped to find his family. Upon his return home, he reported that he was spotted by one of his abductee's father who told the police that he was a terrorist. The juvenile boy reported that he was then charged and arrested for what he still does not know. In court with no witnesses or evidence presented he was given a 3-year sentence for a charge still unknown to him.

Many of the juveniles who participated in this research proclaimed their innocence. Some of the follow up comments that the juveniles volunteered were that they were forced to sign confessions, they were located at the wrong place at the wrong time, and that the police fabricated witnesses that supposedly accused them of committing the crime for which they were arrested. The self reported proportion of children who proclaimed their innocence due to trumped up charges accounted for 28% of the cases represented in this study. It is important to note that the author did not directly question juveniles on their guilt or innocence of the charges for which they were in the JRC for and such data was volunteered by the juveniles.

When following up with judges on what if anything judges look for in convicting a juvenile, many reported their reliance on police reports and not necessarily the physical presence of police during the trial process. This was especially surprising since 44% of the judges questioned also indicated that juveniles routinely complain of being tortured and abused by police officers. 33% of those judges questioned refused to answer whether they had heard complaints of abuse by police for children in conflict with the law. This data suggests that more mentoring, training, and or oversight should be given for the juvenile courts to help to ensure that civil liberties are not consistently violated in all of the regions.

Footnotes section 3

¹⁸ Eastern region consists of Ghazni, Khowst, Paktika, Paktya, and Wardak.

¹⁹ Art. 130 of Afghanistan's Penal Code states, that in cases under consideration, the courts shall apply provisions of the Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and within the limits set by this Constitution, rule in a way that attains justice in the best manner.

²⁰ House of Commons International Development Committee (2008)). *Reconstructing Afghanistan. Fourth Report of Session 2007-08*. London: The Stationery Office. Para 128.

²¹ *Id.*

²² *Alternatives to Imprisonment in Afghanistan: A Report by the International Centre for Prison Studies*, Kings College London, International Centre for Prison Studies, February 2009, p.8.

²³ Northern Region refers to Badakshan, Baghlan, Balkh, Faryab, Jawzjan, Kunduz, Samangan, Saripol, and Takhar.

²⁴ Pursuant to Art. 39 (1) of the Interim Criminal Code for Courts states that, "At the conclusion of the investigations phase, if the Primary Saranwal deems that there is not grounded evidence (they are to) dismiss the case. Juvenile Code Article 16 entitled closing the file states that, in the absence of facts and evidence that warrant prosecution, the prosecutor closes the file and notifies the victim and the one who has sustained property losses within one week. The one who has sustained property losses can submit his/her request for compensation of losses sustained to the relevant civil court within 30 days.

²⁵ Interview with a Juvenile Judge in Mazar-e-Sharif, November 23, 2009.

²⁶ Central regions consists of Bamiyan, Kabul, Kapisa, Konat, Laghman, Nangarhar, Nuristan, Panshir and Parwan.

²⁷ Penal Code, Article 100 (1) states, Long imprisonment is the confinement of (a) convicted person in one of the jails allocated for this purpose by the State. The duration of long imprisonment cannot be less than five years and more than fifteen years.

²⁸ Black's Law Dictionary, 6th Edition West Publishing Company, 1990 defines pederasty as, In Criminal law, the unnatural carnal copulation of male with male, particularly of a man with a boy; a form of sodomy.

²⁹ Interview with a Kabul Juvenile Judge, October 5, 2009.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*





4

Due Process Violations

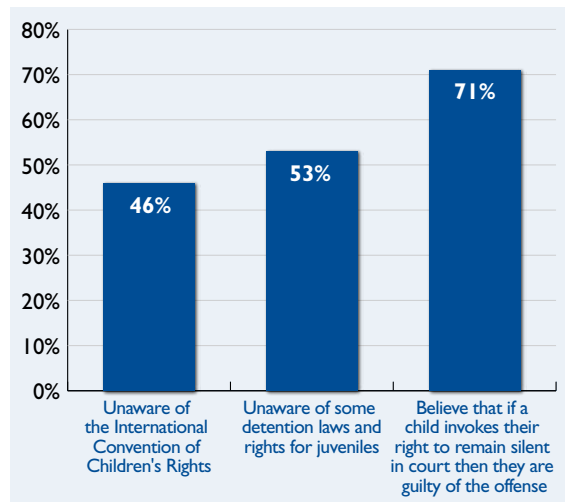
The Juvenile Code provides the basis for juvenile justice which is to protect children in conflict with the law especially in safeguarding their due process rights during the investigation and trial stages³⁵. Due process are rights guaranteed to all citizens in order to ensure that they receive a fair trial. Such rights have been promulgated as a means to protect persons from governmental actions that potentially threaten life, liberty, or property. With this being said, Judges, Prosecutors, Police, and Defense Attorneys should possess the requisite knowledge of up to date laws as it relates to juvenile justice.

In a voluntary test given to judges on their knowledge of some of the due process rights of juveniles the results were shocking. 46% of those judges tested were unaware of what the UN Convention of the Rights of the Child is³⁶. Of this number many thought that this legislation was a speech given by either President Karsai or U.S. President Obama³⁷. 53% reported being unaware of some of the detention rights for juveniles³⁸. For those that reported, many were also unaware of Article 10 of the Juvenile Code, which states that handcuffs should only be used for juveniles if there is a risk of flight³⁹. For many of the judges questioned, they were of the belief that handcuffs could be used either when the juvenile is simply being questioned by the police or handcuffs can be used when a juvenile is a suspect in a crime.

An overwhelming 71% of judges who participated in this survey were also of the belief that if a juvenile invokes their right to remain silent in court, as codified in Article 5 of the ICPC, then they must be guilty⁴⁰. One judge explained that since no defense attorneys ask the kids if they committed the crime then it is their job to do so in court. The judge believed that failure to answer is more likely an admission of guilt than an actual invocation of their right to remain silent.

One could argue that this data does not reflect a lack of will to know but instead reflects a lack of access to resources necessary for professionals to perform their jobs. In a random survey of 157 Afghan judges conducted in May 2006, 36.3% reported that they did not have access to statutes or other governmental regulations, 54.8% indicated that they did not have access to legal textbooks, and 80.9% reported that they did not have professional support from an experienced mentor⁴¹.

Judges and Prosecutors Lack of Knowledge of Juvenile Justice n = 31



a) Right to an attorney

Juvenile Code Article 22 and Article 5 of the ICPC, affords all juveniles the right to have a defense attorney⁴². A juvenile's defense attorney should be a qualified professional who is to be on an official registry with the Ministry of Justice and should be a person who has graduated from Sharia Law or with a law degree⁴³. In 2008 UNICEF and AIHRC reported that 23% of juveniles had access to defense attorneys while in the detention center and 38% had access to attorneys while in court⁴⁴. The data collected in this research suggests that the number of persons represented in court by defense attorneys has increased. Of the 246 juveniles who answered whether or not they had a defense attorney in court, 8.1% indicated that they did not have an attorney while the remaining 91.9% reported that they in fact did have a defense attorney. The increase of juveniles with defense attorneys as compared to the 2008 study suggests that the courts are more savvy with juveniles when it comes to making sure that they have a defense attorney. Unfortunately, of the 91.9% that reported that they did have the benefit of a defense attorney many juveniles complained about the advocacy skills of their counsel. The complaints given were pretty consistent in that many juveniles reported that their attorneys did not visit them while they were in the JRC, their attorneys did not talk in court, their attorneys did not talk to them prior to the trial and in general their attorneys were unprepared. In the Eastern region 50% of the girls reported having an attorney but of this amount

none of them could name their attorneys nor the organizations that they worked for. This is significant in that while conducting this study it was also learned that many juveniles were under the belief that the prosecutor was in fact their defense attorney. It is plausible to believe that in fact more juveniles do not have defense attorneys then reported due to the fact that some juveniles mistakenly thought that Prosecutors were in fact their attorneys.

b) Right to Notification of Charges and Right Against Long Durations of Confinements

The Islamic Republic of Afghanistan's Constitution Article 31 states that juveniles have the right to be notified of their charges upon arrest⁴⁵. Despite this Constitutional right, this study revealed that there were many juveniles who were unaware of their charges, some even after going to trial. The vast majority of juveniles who reported not knowing what they were charged with were awaiting either a visit from their defense attorneys or waiting for their trial dates to know what their charges were.

Overall, 5% of the juveniles reported not knowing what they were charged. One 16 year old girl in the central region who at the time of this research, reported being in the detention center for 45 days, went to court without an attorney, and was subsequently sentenced to an unknown amount of detention time.

Pursuant to the Juvenile Code, the maximum amount of time that a juvenile can be detained from arrest to completion of trial is 40 days⁴⁶. This right to protect ones liberty goes in concert with the presumption of innocence that all juveniles are supposed to be afforded when they are accused of a crime⁴⁷. In the Eastern region, data reported revealed that females who were unaware of their charges had been detained an average of 42 days with the longest amount of time being 90 days before going to court. Of the girls who reported knowing their charges they reported being in custody for an average of 54 (fifty-four) days before going to court. Conversely, the boys who had not gone to court had been detained for an average of 75 days with the minimum being one day and

the maximum being 90 days that they were detained while awaiting trial. Overall, of the juveniles who reported not knowing their charges they reported being in custody for an average of 51 days. The maximum amount of time reported by a juvenile was 240 while still awaiting his first appearance in court. This particular 17 year old reported being detained in an adult prison for five months before he was brought to the JRC and is currently awaiting trial for charges unknown to him.

c) Presumption of Innocence

Article 25 of the Constitution and Article 4 of the ICPC basically states that any person within the juvenile court is presumed innocent until the prosecutor produces evidence to prove their guilt⁴⁸. One juvenile judge presiding for four years interviewed for the purposes of this study shared her experiences in the courtroom⁴⁹. She shared in the interview that upon arrival to her court many of the kids proclaim their innocence. The judge further indicated that she warns the children that they will get a better sentence if they tell the truth. If they choose to lie, their sentence will be harsh⁵⁰. She continued by saying that in the four years that she has served as a judge that she has never had a case where the juvenile said they were innocent the whole way through. She was insistent in stating that the kids always lie, they learn to lie in the JRCs, and often their defense attorneys also instruct them to lie⁵¹. When asked how defense attorneys react when the juveniles, who proclaim their innocence, then claim that they are guilty, she indicated that the defense attorneys are shamed and then the defense attorneys also begin to chastise the kids in court⁵².

Many of the children reported going to court and being immediately told by judges to admit their crime. A 17 year old charged with pederasty and who had been beaten by police into signing a confession was told by the Primary Court Judge, to "not speak while I am here, and don't even look at me." Several juveniles interviewed separately, reported being told the same thing by the same judge in the central region when going to court.

d) Right Against Torture or Abuse

Torture is specifically defined as, “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity⁵³.” Article 5, section 4 of the ICPC states that the suspect and the accused shall not undergo intimidations or any form of physical or psychological pressure. With this being said juveniles were questioned about whether they had fallen victim to torture or abuse while engaged in the juvenile justice system.

Overall, 45% of the juveniles interviewed reported being physically abused by police and prosecutors. The 45% for the most part represents boys and only two juvenile girls reported being beaten. While girls did not report being physically beaten many reported being intimidated by the police who screamed at them and “called them bad names,” as one 16 year old in the Central region reported. Juveniles reported that the beatings occur usually as a means to coerce them into confessing or signing confessions authored by the police. Many of the juveniles reported that they communicated their ill treatment to their defense attorneys and some to judges in court. The overall sentiment was that despite the fact that the abuse was reported to professionals within the juvenile justice system no one seemed to care that the juveniles were beaten. In one particular case, in the North, one seventeen year old charged with adultery indicated that “he was kicked like an animal,” by six or seven police after he was arrested.

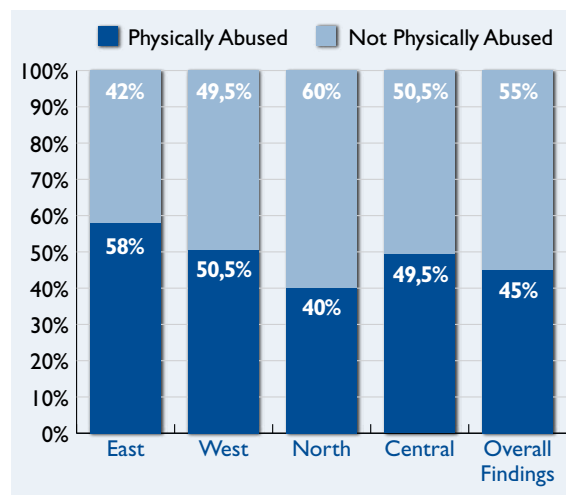
Juveniles in the Eastern regions reported the highest levels of physical abuse with more than 58% reporting that they had been abused. One juvenile who was arrested three days prior to our interview with him, indicated that he was beaten in the back of the head with a gun by the police. The author observed marks on the back of his head that suggested that he had been hit with some type of object. Many of the boys individually gave similar details of the beatings that

they were subjected to. The juveniles indicated that they were beaten with sticks, guns, or cables, usually on the legs and while at the police districts.

The vast majority of juveniles in the West also reported ill treatment especially while in the custody of the police. Over half of the juveniles or 50.5% reported being beaten while in the custody of the police. Again, this figure remains consistent with other like studies⁵⁴. One girl reported being beaten with a stick by the police and subsequently signing a confession authored by the police. Still other kids reported similar accounts of brutality in individual interviews. Of the most common types of corporal punishment used by the police, it was reported that sticks and wires were usually the weapons of choice in the West.

In the Northern regions juveniles reported high levels of beatings at 40%. Again, the stories were very similar about their encounters. Many juveniles indicated that they were beat and kicked by multiple police simultaneously. One juvenile reported being electrocuted and hung by the National Security Police. This particular juvenile was held at the police station for more than two months and four months after that he went to court. When talking with the prosecutor about this case, they communicated that they were aware of this juveniles accusations and believe his story. They further communicated that they even saw marks and thought that his confession was obviously coerced as a result of the brutality of the police. Despite all of this, no formal charges or complaints were brought to the attention of the National Security Police for the brutality.

Juvenile Reports Of Physical Abuse Within The System



Juveniles also reported that their families were solicited for bribes both in and out of court. By and large juveniles reported that bribes were requested by the police, however, there were also reports of judges soliciting bribes. One juvenile reported being asked for a bribe by several Primary Court Judges. The juvenile further reported that the judges went so far as to ask the juvenile's defense attorney to leave the room in order to solicit bribes from the child and his family. When the attorney left the room, another judge also asked for a bribe from the child and his family. The juvenile reported that the two judges could not agree on the right amount to ask and also the juvenile had no money to give. After being asked for a bribe, no witnesses being presented and denied his right to allocution, he received a six-year sentence for a theft charge. Another juvenile reported that a judge complained to him about the judge's salary as justification for the bribe that was requested. Ultimately, he too did not have any money to give and was summarily sentenced to five years on a robbery charge.

Overall, the juveniles came from very poor economic backgrounds. Their lack of paying bribes was not a result of their unwillingness to do so, rather, it was a result of their inability to do so. For those juveniles who reported being asked for bribes, some indicated that bribes were paid, however, the deal of getting a charge dismissed or lowered was not honored. One juvenile reported paying 20000 Afghanis or \$400 U.S. Dollars to the police to make his robbery case go away as promised which ultimately did not happen.

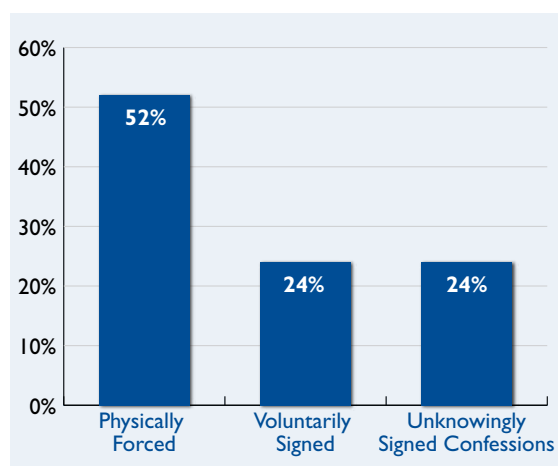
e) Right Against Coerced Confessions

Coerced confessions are expressly forbidden pursuant to Article 37 of the Afghan Constitution⁵⁵. Pursuant to the Article 30 of the Constitution confessions are to be voluntarily made and anything obtained on the contrary shall be considered invalid⁵⁶. Article 7 of the Interim Criminal Procedure Code states that, evidence which has been collected without respect of the legal requirements indicated in the law is considered invalid and the court cannot base its judgment on it. This exclusionary rule was codified as a further due process protection of citizens against illegal evidence that may be used to incriminate them. Data collected in this research showed that by and large although this exclusionary rule exists, it is often not followed in court.

The information reported for physical abuse and psychological abuses within the system ran parallel to the amount of coerced confessions that juveniles reported. Juveniles were asked specifically if there were any confessions made and whether those confessions were knowingly and voluntarily made. Participants were specifically asked if they signed a confession voluntarily, whether they felt or were intimidated to sign confessions, if the juveniles were physically forced to sign confessions, how they were physically forced and if the juveniles simply signed documents at the police station only to later find out that it was a confession that they neither read nor understood.

Many juveniles reported signing various documents while in the custody of the police, often only to find out in court that they unknowingly signed a confession. 52% of the juveniles reported that a confession played a role in their convictions. This 52% reported that they were either physically forced or intimidated to sign confessions written by the police. 24% 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.

Juvenile Reports of How Confessions Were Obtained



f) Testifying in Court

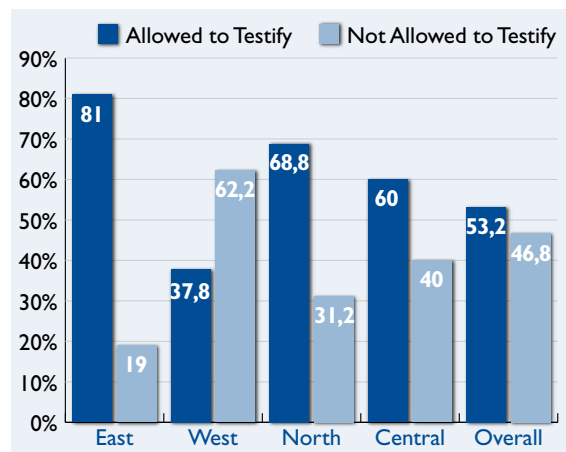
Just as a juvenile has a right to remain silent in court proceedings they also are afforded the right to testify. In juvenile proceedings, the right to allocution is usually invoked by way of the defense attorney or the judge asking questions of the juvenile. Data collected in this research revealed that children in conflict with the law are often denied their right to testify in court.

The West at 62% of those reporting was the only region where juveniles were more likely to be denied their right to testify in court than not. Several juveniles in separate interviews communicated that they were told by judges that they were not allowed to speak in court. They further reported that upon entering court, they were told by judges that their files had been read and therefore it was not necessary for them to speak because the judges already knew what the juveniles were guilty of.

40% of the juveniles in the central regions reported that they were also denied their right to testify. Juveniles consistently reported that while in court they were yelled at, told not to speak, and some even reported that they were told to not even look at the judges. One 17 year old charged with murder to a family member was told not to speak or look at the judge in court. After reportedly being beaten by cables at the hands of the police and subsequently being forced to sign a confession authored by the police, the court relied on the written police statement and coerced confession and ultimately sentenced the juvenile to 7 years 6 months in primary court.

Unfortunately, while juveniles were denied their right to testify, many reported that their defense attorneys and prosecutors failed to insist on their being allowed to speak. Many juveniles reported, that their convictions were predicated upon confessions – often coerced, flimsy evidence, and often no witnesses in court.

Juveniles Reports of Being Allowed to Testify in Court



Footnotes section 4

³⁵ Afghan Juvenile Code, Article 1 states in relevant part that, This code in compliance with article 54 national constitution and International Conventions protecting human rights and in particular the interests of children, dictates provisions indicating measures and procedures applicable to children in conflict with the law, children at risk, and children in need of care and protection and safeguarding their rights during investigations and trial.

- ³⁶ Pretest for judges, social workers, prosecutors, defense attorneys, juvenile rehabilitation workers and police officers working with juvenile cases were created by the authored and proctored on October 4, 2009.
- ³⁷ Pretest for judges, social workers, prosecutors, defense attorneys, juvenile rehabilitation workers and police officers working with juvenile cases were created by the authored and proctored on October 4, 2009.
- ³⁸ *Id.*
- ³⁹ *Id.*
- ⁴⁰ ICPC Article 5, section 6 states that the suspect and the accused have the right to abstain from making any statement even when they are questioned by the relevant police or judicial authorities, section 7 States the police, the Saranwal and the Court are duty bound to clearly inform the suspect and the accused before interrogation and at the time of arrest about his or her right to remain silent, right to representation at all times by defense counsel, and (the) right to be present during searches, line-ups, expert examinations and trial.
- ⁴¹ Center for Policy and Human Development, "Afghanistan Human Development report 2007" p.70-71. Assessed at: http://www.cphd.af/nhdr07/download/pdfs/eng/nhdr07_complete.pdf.
- ⁴² Article 22 of the Juvenile Code states that,
1. In all stages of investigation and trial, the child shall have the right to a defence counsel and interpreter. In case the parents or legal representative cannot afford a defense counsel or interpreter, the juvenile court shall appoint a defense counsel and interpreter on government costs.
2. The legal representative, defense counsel or the interpreter of the child has the right to be notified and participate in all stages of legal proceedings carried out by the prosecutor or the court.
ICPC Article 5 see footnote 35.
- ⁴³ ICPC Article 18,
1. states that Legal assistance to the suspect and the accused requires the service of a qualified professional.
2. To this end an official register is established in the Ministry of Justice where only persons with a university degree in law or Sharia can be included.
- ⁴⁴ UNICEF and AIHRC, *Justice for Children: The situation for children in conflict with the law in Afghanistan*, 2008.
- ⁴⁵ Islamic Republic of Afghanistan's Constitution Article 31 states that immediately upon arrest, the accused shall have the right to be informed of the charges.
- ⁴⁶ UNICEF and AIHRC, *Justice for Children: The situation for children in conflict with the law in Afghanistan*, 2008.
- ⁴⁷ Afghanistan's Interim Criminal Procedure Code for Courts, Article 4 states that, from the moment of the introduction of the penal action until when the criminal responsibility has been assessed by a final decision the person is presumed innocent. Therefore decisions involving deprivations or limitations of human rights must be strictly confined to the need of collecting evidence and establishing the truth.
- ⁴⁸ Afghan Constitution Article 25 states that, Innocence is the original state. The accused shall be innocent until proven guilty by the order of the authoritative court.
ICPC Article 4 entitled Presumption of Innocence, states that, from the moment of the introduction of the penal action until when the criminal responsibility has been assessed by a final decision the person is presumed innocent. Therefore decisions involving deprivations or limitations of human rights must be strictly confined to the need of collecting evidence and establishing the truth.
- ⁴⁹ Interview conducted with a Juvenile Judge on October 9, 2009.
- ⁵⁰ *Id.*
- ⁵¹ *Id.*
- ⁵² *Id.*
- ⁵³ UN Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment.
- ⁵⁴ In a 2008 study conducted by UNICEF and AIHRC they reported that 48% of the juveniles they interviewed reported being abused with 8% reporting verbal abuse.
UNICEF and AIHRC, *Justice for Children: The situation for children in conflict with the law in Afghanistan*, 2008.
- ⁵⁵ Afghanistan Constitution Article 37 states that a statement, confession or testimony obtained from an accused or of another individual by means of compulsion shall be invalid. Confession to a crime is voluntary admission before an authorized court issued in a sound state of mind.
- ⁵⁶ Afghanistan Constitution, Article 30 states that a statement, confession or testimony obtained from an accused or of another individual by means of compulsion shall be invalid. Confession to a crime is voluntary admission before an authorized court by an accused in a sound state of mind.



5

Juvenile Rehabilitation Centers



Article 12 of the Juvenile Code states that the suspected and arrested child shall be detained in a special temporary location. Article 12 continues by saying that the detention authority is obliged to provide access of the detained child to social, educational, vocational, psychological and health services considering the age and gender requirements of the child. Despite these regulations, all of the detention centers visited lacked social, educational, vocational, psychological, and health services that the juveniles are legally entitled to⁵⁷. The rationale for the lack of services was not necessarily the lack of will to offer such resources, but the lack of funding that is needed in order to offer such services.

The most noted complaint by professionals working within the juvenile justice system as it relates to the juvenile rehabilitation centers were the lack of educational and vocational programs offered within the centers. One judge reported going to the JRC's a lot and observing that the kids are often bored and that this boredom is not good for their development. With the lack of space and funding it is very difficult to offer vocational and educational programming for the juveniles despite the system's duty to do so.

For some of the JRC's, many of the JRC staff are extraordinarily committed to protecting the juveniles and reported working longer hours without pay and also paying for some basic resources for the juveniles out of their own salaries. Signs of appreciation from juveniles housed in the JRC decorate the offices of some of the JRC directors who are making such sacrifices. These sacrifices while well intentioned ought not to be made as such resources should be available to the juveniles through more formal mechanisms.

After visiting the Kabul and Herat detention centers which represented the two largest JRC's in Afghanistan the directors agreed. In Kabul's JRC the lack of funding for such programs was discussed. At the present time, three hours of educational and vocational instruction five days per week are offered. These programs include literacy, religious studies, and tailoring. Girls and boys are given minimal supplies to make jewelry and pictures during their free time.

In the Eastern regions, juveniles through *Terre des hommes* are offered educational classes five days per week. Juveniles are also supposed to be receiving computer skills training, and will potentially receive vocational training in tailoring. The Eastern Region was the only region visited where there was purported to

be computer skills training. The author did observe two computers in the JRC available to the juveniles, unfortunately, the inconsistent electricity and funding available for instructors does not necessarily make this a viable option.



Eastern JRC Computer Room November 2009

It was reported that some of the daily requirements such as food are even scarce for juveniles in the detention centers. It was reported in one region that although juveniles are supposed to be allotted 75 Afghanis, or approximately \$1,25 USD per day for food, they actually only get about 40 Afghanis or about \$0,90 USD per day for food. The difference of \$0,35 USD per day goes to the salary of the person who is preparing the food. As a result of the low budget kids are denied their basic nutritional needs and are given rice and beans almost every day.

The lack of space in all of the JRC's visited was obvious. In the East and the North, the JRC resembled a guest house as opposed to a detention facility. In one region there were three rooms for the twenty-six boys. These same rooms were used for recreation, sleeping, and educational training. The girls in the East and North are all housed in one small room together where they sleep, spend their recreation time, and receive their education in. Often, 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 centers small children under the age of 5 that were the responsibility of the juvenile girls were also living at the JRC.

In making observations of the JRC's it was painfully obvious that certain basic needs of the juveniles were not being met. At the time of this research, the author noted that Kabul JRC lacked working equipment to

heat the JRC for the children. This information was brought to the attention of the Italian Cooperation and heating equipment was priced and is anticipated as being put into the Kabul JRC in the early part of 2010. There were also complaints at the JRC's about the lack of recreational equipment, blankets, shoes, and warm clothes. The researcher was able to provide some of these resources, but clearly a more systematic approach to providing such resources on an ongoing basis to the JRC's should be implemented.

Footnotes section 5

⁵⁷ Afghanistan Juvenile Code, Article 12 states that, the suspected and arrested child shall be detained in a special temporary location. The detention authority is obliged to provide access of the detained child to social, educational, vocational, psychological and health services considering the age and gender requirements of the child.





6

Sentencing Disparities

The author questioned the juveniles about sentences that they received in the different courts. Pursuant to Article 42 of the Juvenile Code it states that the convicted child, his legal representative or the prosecutor can contest the decision of the primary court by filing an appeal. The purposes of these questions were that the author wanted to track what if any sentencing disparities existed during the Appeal process. According to the Principle of Proportionality of the Beijing Rules 5,

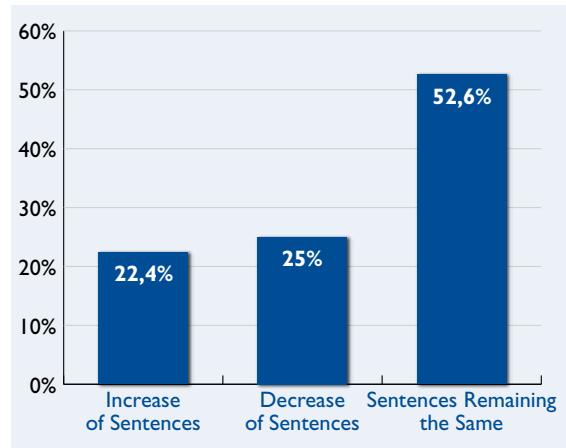
The response to young offenders should be based on the consideration not only of the gravity of the offense but also of personal circumstances. The individual circumstances of the offender should influence the proportionality of the reactions⁵⁸.

In appealing a case, the court is only to consider a case if there is a wrong application of law and definition of the crime, wrong evaluation of facts and circumstances, or a wrong application of the penalty and its amount⁵⁹. Ideally, in looking at the four sentence data charts, what should be shown is that all of the courts are equally matched or that sentences for juveniles should decrease as one moves from Primary Court to the Appellate Court and then to the Supreme Court. Overall, 116 juveniles reported that their cases had gone to the Appellate Court representing 46% of the total juveniles reporting.

Overall, juveniles reported that from Primary Court to Appellate Court sentences were more likely to stay the same then not reporting in at 52,6%. 25% of the sentences were reported as decreasing with 22,4% of juveniles reporting that their sentences increased.

The Western region represented the region with the most increased sentences then any other region. The Central region reported the region where sentences were more likely to decrease from Primary to Appellate Court as opposed to increase. This decrease of sentences from Primary to Appellate Court in the Central region may be attributed to the fact that juveniles were more likely to have a defense attorney in the Appellate Court than the Primary Court. Also, juveniles in the Central regions reported being able to testify in court, which is a right that many reported being denied in Primary Court.

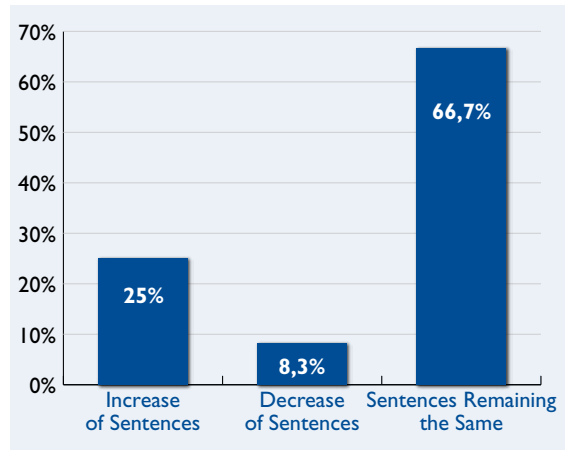
Juvenile Overall Sentencing Disparities from Primary Court to Appellate Court



24 or 9,6% of the juveniles represented in this study reported that their cases had been heard by the Supreme Court. Of this number 25% reported that their sentences increased while 8,3% reported that their sentences decreased, and 66,7% reported that their sentences remained the same. Juveniles with cases being heard from the Supreme Court reported not going to court and hearing about their cases through their attorneys or being told of their sentences through letters from the court received at the JRC.

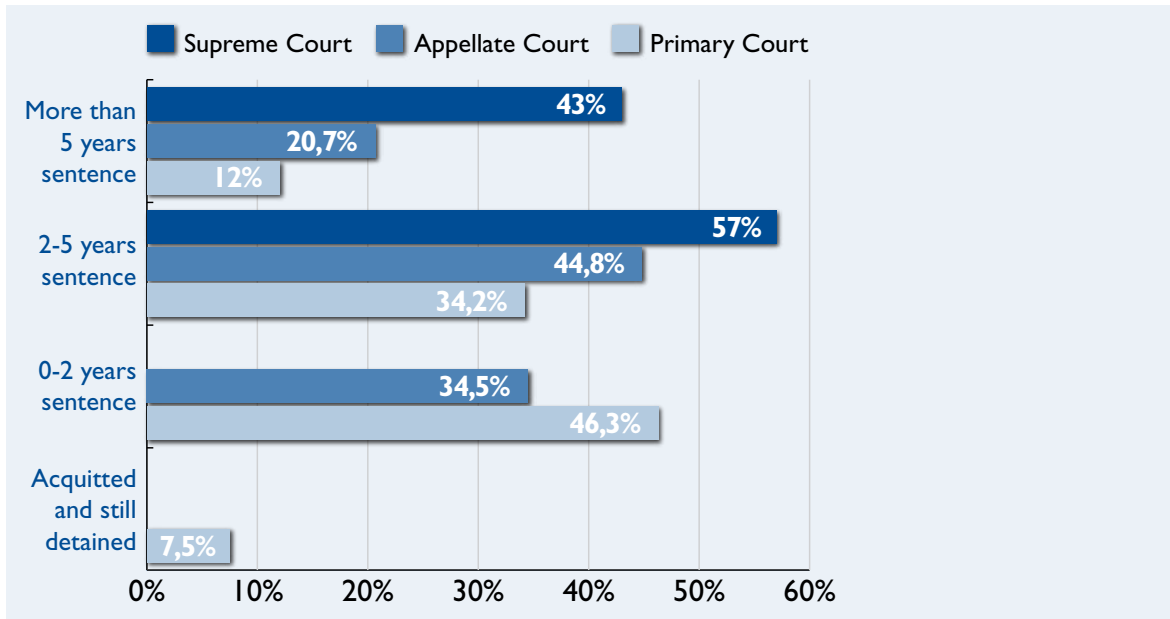
One 15 year old in the West charged with adultery reported being originally sentenced to 4 years in Primary Court to 5 years in Appellate Court and then finally to 6 years in Supreme Court. The illiterate teenage who did not have an attorney in any of the courts could not offer any explanation as to why his sentences were incrementally increased.

Juvenile Overall Sentencing Disparities from Appellate Court to Supreme Court



Juveniles in the west reported the greatest number of sentences increasing from primary court to appellate court than any other region. 58 juveniles reported going to the Appellate Court. Of this number, 14 sentences increased or 24% of cases reported, and 14% of cases reported decreased, the remaining 62% of the sentences remained the same. Juveniles were further questioned as to what happened from Primary to Appellate Court to account for the increases in the sentences. Many juveniles reported that no new evidence was presented that justified the increase in the sentences. In a case where a juvenile was charged and convicted for kidnapping, the juvenile was sentenced to 6 months in Primary Court, which increased to a 4 year sentence given by the Appellate Court. In another case, a 15 year old charged and convicted for pederasty was sentenced to 1 year 6 months in Primary Court that increased to 5 years in Appellate Court. When both juveniles were questioned on what happened in Appellate Court that did not happen in Primary Court – both reported that no witnesses or evidence was presented in either court, and both also reported not being allowed to testify in court. 10.5% of the juveniles in the North reported their cases going to the Supreme Court. 40% of the cases that went to the Supreme Court received increased sentences from the Appellate Court, 50% of the sentences remained the same and only one case sentence decreased to an acquittal, but the juvenile was still detained at the JRC.

Western Region Sentence Data

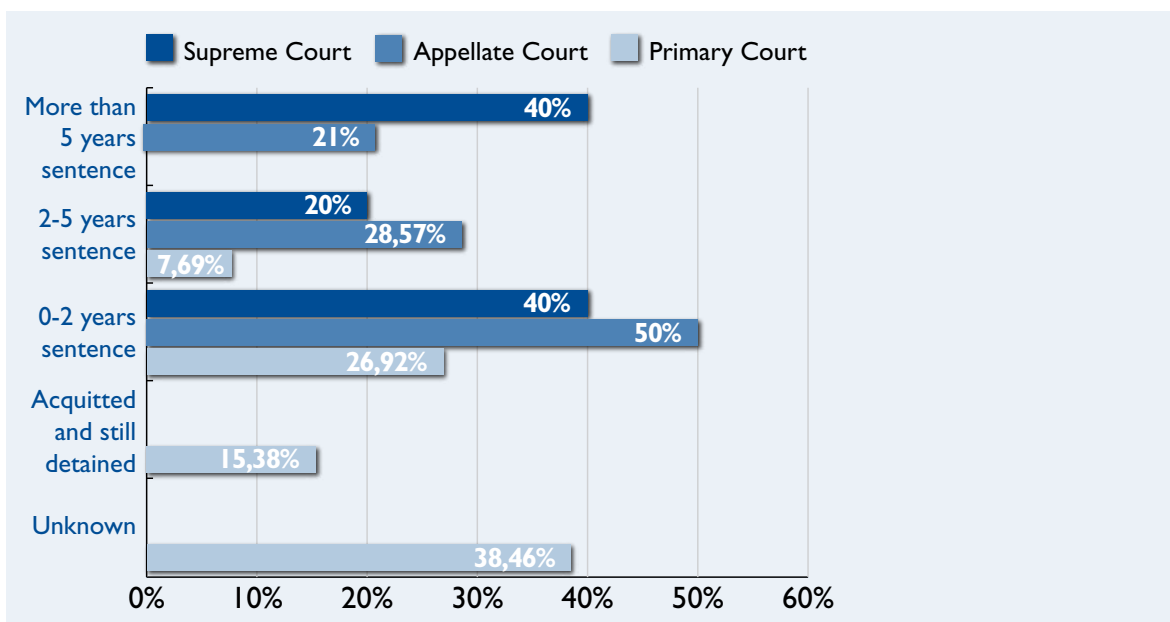


Overall, sentences were more likely to stay the same when being appealed to the Supreme Court. However, reported changes to sentences for the most part could not be explained by the juveniles. In all of the interviews, only one juvenile was able to articulate why her sentence was increased in Appellate Court from 6 years to 9 years in Supreme Court. In this particular case the 16 year old female was convicted of murdering her husband. In Supreme Court, she reported that her husband's family came

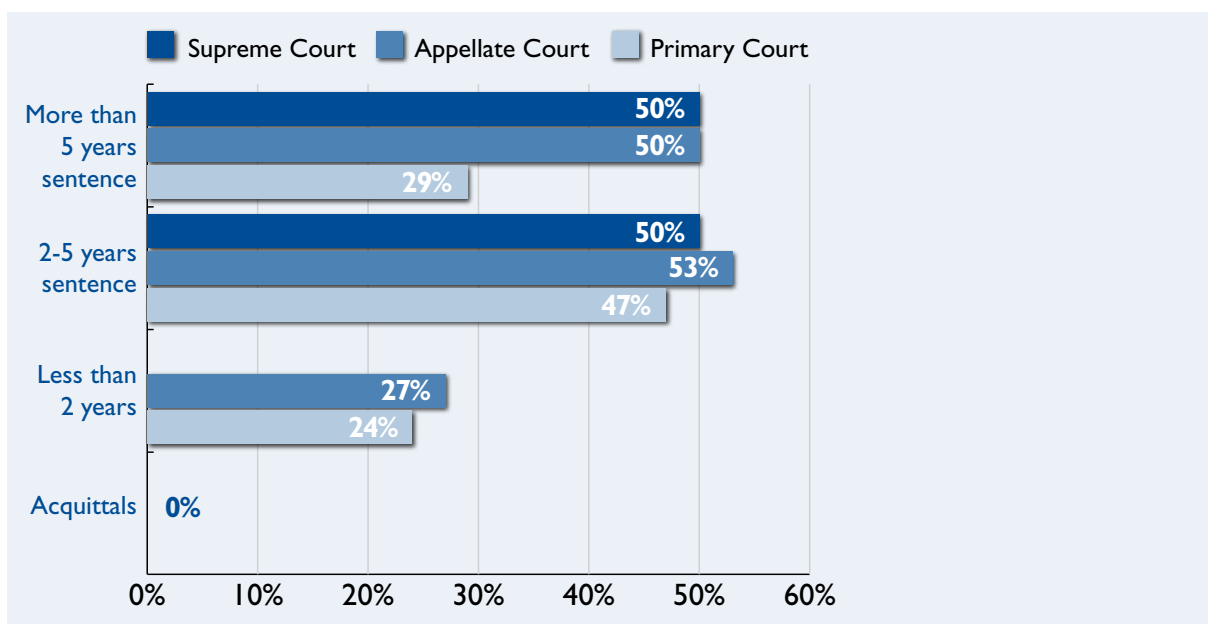
to the Appellate Court voicing their dismay over her 6 year sentence, because of their protests the juvenile's sentence increased by 3 years.

Such huge sentencing disparities show that there is so much wrong within the court system that it is almost difficult to articulate. At the absolute minimum there should be more oversight of the juvenile courts in order to help ensure fairer sentencing practices.

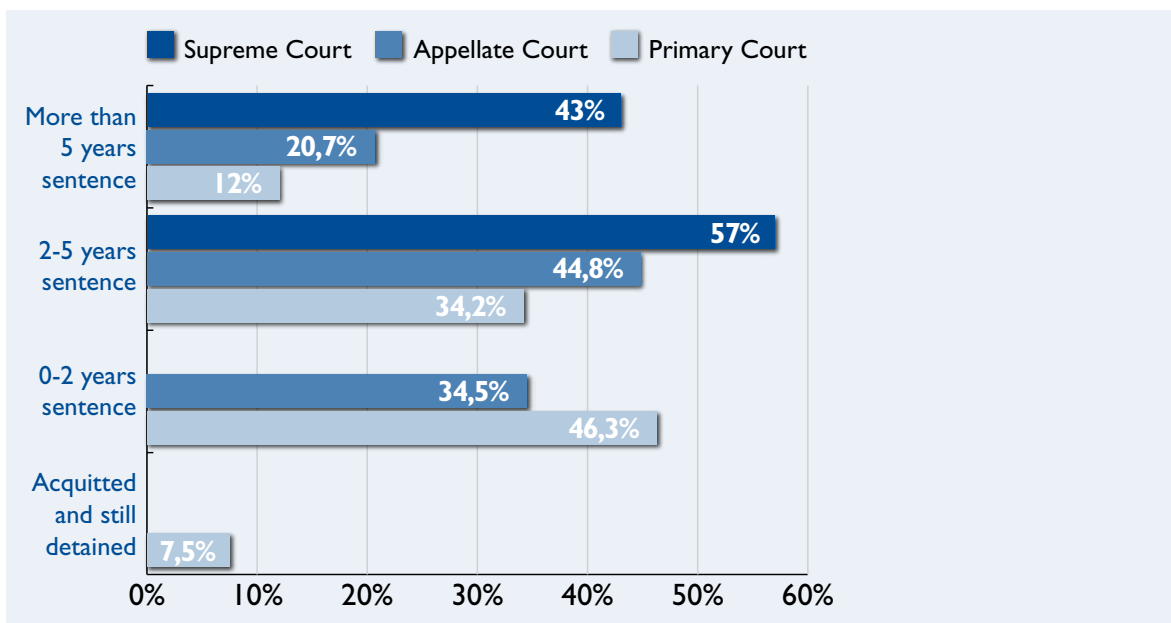
Eastern Region Juvenile Sentence Data



Northern Region Juvenile Sentence Data



Central Region Juvenile Sentence Data



Footnotes section 6

⁵⁸ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules, Official Commentary of Beijing Rule 5, 1985.

⁵⁹ ICPC Article 66 entitled Content of Appeal states that 1. The act of appeal shall contain the indication of the contested decision and expose the reasons according to which the decision is considered wrong. 2. The denunciation of the errors of the decision shall make reference to: a. Wrong application of the law and definition of crime; b. wrong evaluation of facts and circumstances; c. wrong application of the penalty and/or of its amount.



7

Medical and Mental Health Considerations



a) Age Determinations

A juvenile is defined as a person who has completed the age of 12 and has not completed the age of 18⁶⁰. Art. 6 of the Juvenile Code states in relevant part that “during investigation and trial (age) is determined on the basis of his/her citizenship card⁶¹.” “In case a child has no ID card or his/her physical appearance indicated an age different from that indicated in the ID card, the opinion of a forensic doctor shall be sought.” For purposes of this study, the author questioned juveniles about their ages and subsequently the ages that they were told that they were from forensic doctors. All references to age given in this study were voluntarily offered by the juveniles while being interviewed. The author questioned 67 juveniles, or 15 girls and 42 boys, representing 26% of the total sample size. Our study questioned children on their current age was, whether there was any identification that they or their families had to prove their age, they were questioned as to whether they had been tested by a doctor in determining their age, what age did the doctor say they were and what if any tests were done to determine their ages.

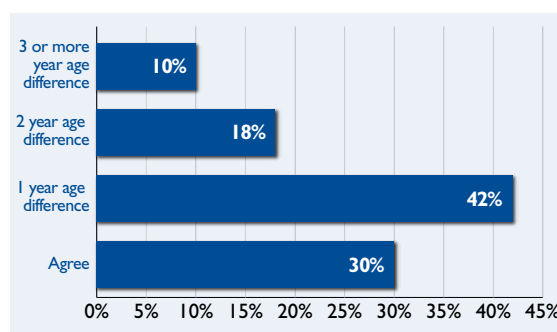
Age determination is measured through the use of x-rays to look at bone development, teeth examinations, and physical examinations to track signs of puberty⁶². All requests for age determination tests to the Forensic Medicine Office are made through police agencies, the attorney general’s office and the courts. After conducting interviews it was determined that the Forensic Office receives over fifty cases per month, or about 600 cases per year, of age determination inquiries to be evaluated amongst five doctors in Kabul⁶³. During the data collections it was admitted that the age determination is not an exact science and that “there are many errors⁶⁴”. In fact, the exact age is difficult to measure so usually a range of 2 years is determined. It is hoped that with the opening of Afghanistan’s first DNA lab that age determination will become more accurate with DNA testing. Unfortunately, DNA testing while more accurate is also more expensive than traditional tests with costs of more than \$700 USD per test⁶⁵. Despite the upfront costs of DNA testing, inaccurate age determinations would be more expensive when considering punishing juveniles as adult offenders.

100% of the girls that were randomly selected for this line of questioning indicated that they had been referred for age determination. This showed that girls

had a higher likelihood of being tested for age than boys. The purpose of this exercise was to track the validity of age determination testing currently done in Afghanistan. Our study revealed that 37% or twenty-five children indicated that they were tested disagreed with the results of the doctor. Approximately 30% or twenty children agreed with the age the doctor determined them as being and the remaining twenty-two juveniles or 33% were unsure and or indifferent to what age they were determined as being.

Of the twenty-five children who were in disagreement with the results 15 indicated that they were either one year older or younger than the result that the doctor reported them as being. Seven reported that there was a two year age difference, with most reporting that they were younger than the results of the doctor. One child reported being told that he was seventeen when in fact he is fourteen. Of those tested, another juvenile also indicated that he is eleven years old but was determined to be thirteen despite his personal knowledge and the identification his family showed to the doctor.

**Juvenile Reported
Age Determination Disparity**
n=62



In a letter to the U.S. Department of Homeland Security, dentists, doctors, and psychiatrists criticized the use of bone and dental tests to determine the age of a child⁶⁶. They communicated that for such tests, the “standard deviation can be as much as three years – a large margin of error, particularly given the attempt to distinguish whether an individual is a minor or an adult⁶⁷.”

This obviously can have a significant impact upon juveniles. Some of the juveniles in this study reported being tried and having had served some of their time within adult facilities, only to be declared a juvenile in subsequent courts. One juvenile reported being sentenced and imprisoned at an adult facility for five months before he was tested and determined to be a juvenile. In one region, it was reported that at times the juvenile rehabilitation centers have housed persons who were “diagnosed” as being seventeen when in fact they were twenty-four years old.

In determining the age for children seeking asylum, The United Nations High Commission for Refugees recommends that age assessment “should take into account not only physical appearance, but also psychological maturity,” and that children “should be given benefit of the doubt if the exact age is uncertain⁶⁸.” The ramifications for incorrect age determinations is and will continue to be quite significant for those children who are ten but tested as being twelve and for those adults who are nineteen but are tested as being juveniles. We also suggest that age determination should also include psychological assessments of the potential children in conflict with the law.

b) Posttraumatic Stress Disorder

Posttraumatic Stress Disorder (PTSD), is an anxiety disorder that can develop after exposure to a terrifying event or ordeal in which grave physical harm occurred or was threatened⁶⁹. Traumatic events that may trigger PTSD include violent personal assaults, natural or human-caused disasters, accidents, or military combat⁷⁰.

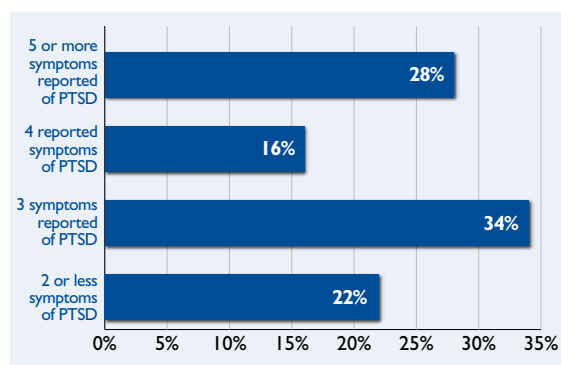
Article 38 of the Juvenile Code states that a child is to be referred to mental health institutions if the child looks to have irregular behavior during the court proceeding, the prosecutor’s office and the court can issue an order to refer the child to a mental health institution for diagnosis and treatment. Questions were created in order to track possible post-traumatic stress disorder (PTSD) symptoms as defined by American Academy of Child and Adolescent Psychiatry. Among the questions asked juveniles were questioned if they had any possible symptoms of post traumatic stress disorder such as a fear of dying, bad headaches, bad stomach aches, bed wetting, bad dreams, trouble concentrating, reoccurring thoughts of a bad event.

Due to the high sensitivity of these questions and to alleviate the potential to cause unnecessary trauma to the juveniles only 25% or 62 juveniles of the juveniles were asked questions of this nature by a person with a medical educational background. Only one juvenile questioned indicated that they exhibited no symptoms consistent with PTSD.

Almost 34% of the juveniles questioned communicated that they exhibited three or more symptoms consistent with PTSD. While 28% of the juveniles stated that they experienced four or more symptoms consistent with PTSD. Juveniles who reported physical issues for the most part reported persistent headaches and stomach aches. When questioning the children if they had ever been diagnosis with a mental illness or been put on any medications, not one juveniles reported either.

These numbers suggest that there may be a need for more mental health services to be offered to children in conflict with the law. Furthermore, these numbers also suggest that competency issues may be under utilized in the court system as it pertains to children in conflict with the law. For several juveniles questioned in this research, JRC staff alerted the author to children thought to have serious mental health issues. In all of the interviews conducted in this study not one professional was able to cite a case where the mental health of a juvenile was investigated or even questioned in court.

Juvenile PTSD Symptoms Reported
n = 61



Footnotes section 7

⁶⁰ Juvenile Code Article 4.

⁶¹ Juvenile Code Article 6.

⁶² Interview, Dr. Zurmati, Head of Forensics in Kabul, Afghanistan, 1 December 2009.

⁶³ Interview, Dr. Zurmati, Head of Forensics in Kabul, Afghanistan, 1 December 2009.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Letter from American Leaders in Dentistry, Medicine, and Psychology Expressing Concern Over Irresponsible Age Determination Practices Affecting the Lives of Young Immigrants, Including Asylum Seekers To Department of Homeland Security (DHS), June 2, 2004

⁶⁷ *Id.*

⁶⁸ UNICEF and AIHRC, *Justice for Children: The situation for children in conflict with the law in Afghanistan* (2008).

⁶⁹ Taken from the National Institute of Mental Health website at:
<http://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml>

⁷⁰ *Id.*



A blue-tinted photograph of a person in custody. The person's hands are cuffed in front of them, and their arms are visible. The background is blurred, suggesting an outdoor setting. The overall tone is somber and institutional.

8

Alternatives to Detention

Article 8 of the Juvenile Code states that confinement of a child should be a last resort for rehabilitation and reeducation of the child. Beijing Rule 19.1 also states that “the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period⁷¹.” Despite this article, and the rehabilitative purposes of the juvenile code, formal alternatives to detention measures were reported as being used in an extreme minimal amount of cases.

Overall, informal alternatives to detention were reported as being used by judges. In several instances of girls running away from home due to physical abuse at the hands of their husbands, one judge shared a case dealing with this issue. The fifteen-year old girl reported running away from her forty year old husband to avoid continued abuse. When caught and brought before the court, the judge communicated that she chastised the husband and told him to stop beating his wife and subsequently told the girl to report back to her if he beats her again. When questioned

further about this case, the judge indicated that she had not heard back from the girl since nine months when the case was heard therefore, the beatings must have stopped.

By and large this study illustrated that formal alternatives to detention are not being fully utilized. Article 40 of the Juvenile Code entitled suspended and confirmed confinement is the legal authority that allows for alternatives to detention. It states in relevant part that if confinement of the child is not more than 2 years, the court can introduce the child for spending specific period in one of the social service institutions⁷². As an added protective measure for juveniles, the heads of social service institutions and juvenile rehabilitation centers may also request of the court to look at alternatives to detention at any given time that they are being detained⁷³. Despite these protective measures to guard for the best interests of the children, the system has yet to provide widespread formal alternatives to detention mechanisms.

Footnotes section 8

⁷¹ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules, 1985.

⁷² Article 40 of the Juvenile Code states in detail that, If the duration of confinement of the child is not more than 2 years, the court can introduce the child for spending that specific period in one of the social services institutions. In addition to this, the court can order to one or more than one of the following obligations:

- Periodical stay.
- Performance of specific tasks.
- Education and training.
- Movement restricted to specific locations/areas.
- Enrolment in an institution with social rehabilitation programs.
- Obligation to apologize and to compensate the damage caused to the victim.
- Surrender of child to parents or someone who has the right of guardianship over him/her. In this case the court shall issue necessary instructions concerning the care of the child. If the legal representative does not perform the obligations; the court can transfer such supervision to other social services institutions.
- If the child is not corrected, issuance of warning for more severe sanctions compared to the original punishment.

(2) If the child has committed a crime that its sanction is confinement for more than 2 year and less than 3 years, the court can order suspension of his confinement sentence. If the child during this period does not commit another offence, the sentence will be removed and regarded as abolished. The abolition order of the sentence shall be issued by the court that has ordered suspension of the sentence.

If a convicted child violates the condition of suspended sentence and commits a new crime, the court can introduce the child for supervision to one of the social services institutions to perform humanitarian services throughout the period of suspended sentence.

(3) After the hearing of a case, the court has the authority to suspend the procedure of trial in order to further assess the child's personality. The trial is suspended for a period not exceeding one year for misdemeanors and three years for felony; in this case the child will be surrendered to one of the social services institutions for observation, treatment and support. The court has the authority to dispose additional obligations in its order with the aim of repairing consequences of the crime and encouraging reconciliation with the victim. Suspension of trial shall nullify if the conditions for the suspension are continuously violated.[^]

⁷³ Article 45 of the Juvenile Code states that the legal representative, head of juvenile rehabilitation center or head of social services institution under whom the child is kept in detention, at any given time can request the juvenile court to review rehabilitation programmes or advise new arrangements





9

Recommendations

One obvious lesson learned is that there is a long way to go to ensure that juveniles are treated fairly within the justice system. “The present system for juveniles while providing some measure of protection for children by not placing them in detention with adults and entitling children to reduced sentences, is little different from the formal Criminal Justice System in terms of the rehabilitation and prevention of young offenders⁷⁴.” Keeping the rehabilitative goals in mind there are several viable recommendations that should be considered in order to begin improvements to the juvenile justice system.

a) Review and Upgrade of the Juvenile Code

A number of papers and reports suggest that there has been considerable duplication of effort and a failure to co-ordinate activities between organizations and within organizations⁷⁵. Attempts have been made to introduce quite new and culturally unfamiliar ways of working very quickly⁷⁶. There is a feeling that Afghans have not been involved as they should have been in all decision-making and questions have arisen about how large sums of money have been spent, for instance on high-tech prison facilities that are not being used⁷⁷.

As reported in the 2008 study conducted by AIHRC and UNICEF, we are also of the belief that a review and possible upgrade of the juvenile code is necessary. The Code should stipulate certain diversionary schemes that may be used for children in conflict with the law as potential alternatives to detention⁷⁸. “The Juvenile Code should give clear guidance on rehabilitation, reintegration, and aftercare policies⁷⁹. By doing so, this may help to ensure that up to date formal alternatives to detention are actually being utilized within the system.

b) Creation of Realistic Alternatives to Detention Options

There are serious reservations about whether Afghanistan is at a stage in its development where formal alternatives sentencing options such as community service or community based supervision could be implemented or be cost effective⁸⁰. It is believed that even with the systematic barriers that are placed in the current system that certain alternatives to detention options are available. Pursuant to Article 8 of the Juvenile Code, confinement of a child is considered to be the last resort for rehabilitation and reeducation of the child. Article 40 of the Con-

vention on the Rights of the Child state that States parties shall seek to promote measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable. Both Articles 8 and Article 40 demand that viable and realistic formal alternative to detention options be offered in order to protect the best interests of children.

As of December 18, 2009 there were no children housed at the only open JRC in Afghanistan. In fact, two months prior there were only seven juveniles held at the open JRC in Kabul. Ideally, juveniles who do not pose a significant threat to society should be sentenced to open JRCs as opposed to closed JRCs. The idea for the open JRC is that juveniles are allowed to go to school and or work during the day and are expected to report back to the JRC at night in order to complete their sentence. While the open JRC represents a formal alternative to detention it is clearly being under utilized by the court. One of the major issues that judges cite as to why more juveniles are sentenced to the open JRC is because of the limited transportation that juveniles have to get to and from the open JRC. Clearly, some type of funding or programming needs to be put in place that allows juveniles to be sentenced to the open JRC as opposed to the closed JRC's.

Diversion should be used as an integral part of the juvenile justice system⁸¹. Juveniles who are convicted for minor offenses as first time offenders would be ideal candidates for such diversionary programs. Such programs could consist of community service that would offer a rehabilitative element to help curtail future criminal activity. These programs would be appropriate especially where social workers are able to intervene in the process by conducting social inquiry reports that should be utilized by judges in making their sentencing decisions.

Short term home confinement should be another viable alternative to detention that should be utilized where professionals could conduct reports for the courts on the progression of the juveniles within the community. Such monitoring could be reported back to the courts in order to track those juveniles who have committed minor offenses and who are first time offenders. There are agencies such as Save the Children UK, Children in Crisis, and Ashiana that train and mentor social workers that work with juveniles and their families and in fact some are even

embedded within police agencies. Such professionals could be ideal candidates to monitor juvenile's progress or in offering mentorship assistance for those that are tasked to monitor children that are given home detention as an alternative.

c) Continued Oversight of Juvenile Judges

Juveniles are afforded the right of confidentiality with their hearings⁸². The right of confidentiality is a measure that is used to protect juveniles from unreasonable interferences within the court process. One may argue that this may be a contributing factor as to why so many kids reported that their rights violated in court because there is no general public that can complain about some of the illegal and unconscionable practices that are reported as occurring in the courts.

Several juveniles reported being asked by judges for money while they were in court by judges presiding over their cases. Many juveniles also believed that as a result of their not being able to pay the bribes that this may have contributed to their receiving harsh sentences in court. In Heart, a juvenile reported as being a first time offender for theft, indicated that after being denied his right to testify in court, no witnesses testifying, and after his defense attorney was told to leave the room, two judges asked him for \$12'000 USD for his release. After explaining to the judges that he did not have the money, he was then given a 6 year 6 month sentence which was lowered to five years by the appellate court. Unfortunately, there were several incidents like this one reported in the gathering of information for this research. Some may argue that such behavior is allowed to occur when there is no internal affairs mechanism to give consequences to those engaging in corrupt practices. It is believed that such oversight would hold judges more accountable and therefore help to curtail some of the illegal practices reported as occurring in court.

In a random survey of 157 Afghan judges conducted in May 2006, 36,3% reported that they did not have access to statutes or other governmental regulations, 54,8% indicated that they did not have access to legal textbooks, and 80,9% reported that they did not have professional support from an experienced mentor⁸³. With the lack of resources that are readily accessible to legal practitioners in developed and some undeveloped countries, good continual legal trainings and mentorship programs are essential in keeping judges

abreast of juvenile justice practices. Such juvenile justice trainings should be offered on an ongoing basis with mentorship follow up and assessments to track lessons learned from the training opportunities.

d) Creation of Sentencing Guidelines

The purpose of sentencing guidelines would be to promote truth in sentencing by providing uniform sentencing guidelines that could assist in the sentencing of children in conflict with the law. In the North juveniles convicted of adultery had sentences ranging from 6 months to 5 years. In the west sentences for pederasty ranged from 4 months to 7 years. What causes such a range in the sentences? Such guidelines would not restrict judges from having the liberty to sentence children in conflict with the law as they see fit, but it will be a way to suggest a minimum framework in which judges could work with.

e) Continued Training and Mentoring of Legal Professionals Within the Juvenile Justice System

"It is essential for the quality of the administration of juvenile justice that all professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of the Convention on the rights of the Child in general, particularly those directly relevant to their daily practice⁸⁴." The lessons of the past two decades suggest that reform in poor countries especially in a situation of post conflict can be very challenging. When formal system of policing, courts, and penalties is corrupt attempts at reform may just succeed in strengthening the potential for corruption or in increasing the flow of arrested people into overcrowded brutal prisons where they can wait for years for their cases to come to court⁸⁵.

In 2009 Terre des hommes sponsored a workshop entitled, *The Juvenile Justice System in Afghanistan and the Alternatives of Detention for Children in Conflict with the Law* which was held at the International Legal Training Center, INLTC, (International Legal Training Center) in Kabul, Afghanistan in the fall of 2009. There were several objectives for hosting such a workshop on alternatives to detention. One of the objectives of the workshop was to gather Juvenile Judges, Prosecutors, Directors of Juvenile Rehabilitation Centers, social workers and Defense Attorneys from across the country who work with children in conflict with the law. The workshop was also to

serve as an opportunity to explore the impact of the Afghan Juvenile Justice System for children in conflict with the law. Specifically, Tdh wanted to use this venue to analytically discuss different articles of the Afghan Juvenile Justice Code. And last, pursuant to Article 8 of the Juvenile Code which states that “Confinement of a child is considered to be the last resort for rehabilitation and reeducation of the child,” the workshop was to be an educational forum in which participants would be able to better understand the present and future needs of the juvenile system in order to begin focusing on alternatives to detention. The conference was a hybrid of lectures and interactive discussions in an effort to create a skeletal roadmap by which to explore alternatives to detention in Afghanistan. Such events represent positive steps towards educating professionals on the ongoing issues that juveniles face and the alternatives to detention options that are available.

f) Training and Mentoring of Specialized Police tasked to work with juveniles

From this study, numerous due process violations at the hands of law enforcement officials was overwhelmingly reported across the board. Some violations reportedly violated by police were denial of attorneys during the investigative process, coerced confessions, juveniles were not notified of their charges to name a few. Such repeated violations suggest that police need to receive better or more training especially in dealing with juveniles.

In the collection of this research, the author was able to visit a police holding facility specific to dealing with juvenile cases. This center is run by two law enforcement officers that are ideally in charge of juvenile files in the region. These men reported receiving specialized training specific to juveniles. The issue was that at the time of this research when the author visited the center it was completely empty. Part of the reasons reported for the lack of juveniles within the facilities was that local police stations were either unwilling or unable to bring the juveniles to the center possibly because they were not aware of its existence. Such centers offer a positive step towards protecting children in conflict with the law.

g) Increased basic needs services and social service programs for juveniles detained at the Juvenile Rehabilitation Centers pursuant to Article 12 of the Juvenile Code

Article 12 of the Juvenile Code states that a detention center is to provide access to educational, social and vocational programming⁸⁶. Despite this article, information received in this research suggest that JRC's are lacking in providing basic nutritional needs, education and vocational programming, recreation programming, and medical and mental health services. Such programming is not only a legal requirement but it essential to the well being of the child. More resources should be allocated to the JRC's to ensure that such basic needs services are met.

h) Continued Assessment Research of Juvenile Justice Practices

It is imperative that the progression of the juvenile justice system is tracked on at least on a yearly basis to test what crossroads if any are reached. Efforts should be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody, Beijing Rule 30.2. Such continued assessments and research are essentials ways to track the successes and failures in dealing with children in conflict with the law. Such assessments or research should be coordinated with national and international partners and should be conducted on at least a yearly basis.

Footnotes section 9

⁷⁴ UNICEF & AIHRO report, *Justice for Children in Conflict with the Law in Afghanistan*, 2008.

⁷⁵ *Alternatives to Imprisonment in Afghanistan: A Report by the International Centre for Prison Studies*, Kings College London, International Centre for Prison Studies, February 2009, p.11.

⁷⁶ *Id.*

⁷⁷ United Nations Development Programme (2007). *Afghanistan Human Development Report 2007*. Islamabad: UNDP.

⁷⁸ UNICEF & AIHRO report, , *Justice for Children: The situation for children in conflict with the law in Afghanistan*, 2008.

⁷⁹ *Id.*

⁸⁰ *Alternatives to Imprisonment in Afghanistan: A Report by the International Centre for Prison Studies*, Kings College London, International Centre for Prison Studies, February 2009, p.3.

⁸¹ UNICEF and AIHRC, *Justice for Children: The situation for children in conflict with the law in Afghanistan*, 2008

⁸² Article 34 of the Juvenile Code states that,

1. The child, legal representative, defence counsel, legal aid, witnesses and members of the judiciary, those who have sustained property losses and the prosecutor can attend the hearings. If presence of legal representative is not to the child's interest, or if his presence can disturb the proceeding of the trial, the court can order his expulsion from the trial session.
2. The court can allow participation of professionals and experts in education and welfare of children for research and study purposes in the proceeding of the trial.
3. The court cannot prevent anyone from providing testimonies that yield information about psychological development of the child, his/her personality and living environment in the court.

⁸³ Center for Policy and Human Development, "Afghanistan Human Development report 2007"p.70-71. Assessed at http://www.cphd.af/nhdr07/download/pdfs/eng/nhdr07_complete.pdf

⁸⁴ UN Convention on the Rights of the Child, General Comments, 44th Session, 15 January – 2 February 2007.

⁸⁵ *Alternatives to Imprisonment in Afghanistan: A Report by the International Centre for Prison Studies*, Kings College London, International Centre for Prison Studies, February 2009, p.7.

⁸⁶ Juvenile Code, Article 12 states that, the suspected and arrested child shall be detained in a special temporary location. The detention authority is obliged to provide access of the detained child to social, educational, vocational, psychological and health services considering the age and gender requirements of the child.



A close-up photograph of a hand firmly gripping a vertical metal bar. The image is heavily tinted with a monochromatic blue color. The word "Conclusion" is written in a white, serif font, centered horizontally and slightly above the middle vertically, overlaid on the image. The background is blurred, showing other vertical bars and indistinct shapes, suggesting a prison or industrial setting.

Conclusion

Conclusion

While I realize that many of these recommendations are easier to say than to implement, it is clear that enough is not being done. The recommendations offered should not be looked at as unattainable obstacles to conquer but are meant to be realistic goals that should be met. Many of the practices that are harmful to children are ultimately harmful to the well being of society as a whole. The information retrieved in this study is not to suggest that one should turn a blind eye towards juveniles who commit crimes. Rather, the information should be a reminder that we need to strive for a child's right to survival, development, and freedom in protecting the best interests of our children. More needs to be done to protect those vulnerable children in conflict with the law that are so grossly mistreated routinely in almost every spectrum of the juvenile justice system. In short, we should demand better from ourselves for our children.





The United Nations Convention of the Rights of the Child

The United Nations Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.
Entry into force 2 September 1990, in accordance with article 49.

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

Part I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. 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.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall

render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

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.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the

child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belong-

ing to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do

so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(I) To be presumed innocent until proven guilty according to law;

(II) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(III) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(IV) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(V) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(VI) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(VII) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

Part II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention. // The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

Part III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

- 1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.*
- 2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.*

Article 50

- 1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.*
- 2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.*
- 3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.*

Article 51

- 1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.*
- 2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.*
- 3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General*

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

⁸⁷ The General Assembly, in its resolution 50/155 of 21 December 1995, approved the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child, replacing the word “ten” with the word “eighteen”. The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States parties (128 out of 191).

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