Every Single Right for Every Single Child

Afghanistan

First report
October 2009

AFGHANISTAN UNCRC CIVIL SOCIETY COALITION
# Contents

All names used in this report have been changed to protect identity
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Map of Afghanistan\textsuperscript{1}
I. Introduction

1. This is the first NGO alternative report on the implementation of the Convention on the Rights of the Child in Afghanistan. It has been coordinated by Save the Children Sweden – Norway (SCS-N) and Afghanistan Independent Human Rights Commission (AIHRC), with contributions from 45 civil society organizations.

2. To write this report existing information was collected and evaluated, and gaps were identified. To generate the data, SCS-N and AIHRC used different standardized methods to draw conclusions concerning the areas in which deficits of information were found. For this, the questionnaire/checklist developed by UNICEF, was used by all thematic groups and individual organizations. With the help of core group and thematic group members, the data and information was analyzed and main priority areas for reporting were finalized. Many existing reports were used, and additional interviews were conducted with officials and experts working in the area of child rights. The information included in this report is meant to be an impulse to carry out more monitoring or detailed studies in the area of child rights in Afghanistan. The report was reviewed and revised in comparison with the issues brought up by the government’s initial report.

3. Following extensive lobbying efforts by civil society, the government of Afghanistan agreed to prioritize the preparation of the State report on the implementation of the CRC in 2008. Key members of the civil society coalition on CRC reporting were invited to take part in the State established process on CRC reporting both at the steering and drafting committee levels.

4. While civil society organizations appreciate openness of the government for the inclusion of civil society voices in the report, the final government report focuses mainly on existing laws and policies and barely raises controversial issues in implementation. This civil society report looks specifically at the gaps in legal implementation and the limitations in service provision to address the rights of the child in Afghanistan. The report presents case studies where it has not been possible to acquire statistical data.

Challenges towards implementation of CRC

5. There is no particular department in the government assigned exclusively to children’s affairs; the responsibility for the implementation of the CRC is shared between different ministries and departments. The Ministry of Labor and Social Affairs Martyrs and Disabled (MoLSAMD) is in charge of all social protection issues including those related to children. In practice, there are severe problems in coordination and cooperation, resulting in the weak implementation of policies and programs for the best interests of the child. For example, the implementation of the National Plan of Action for Children at Risk (2004) has been a very slow process,
spite of the establishment of the Child Protection Action Network (CPAN) - a network consisting of ministries, civil society organizations and international organizations. This is due not only to a lack of resources and political will, but also to a lack of clarity around the roles and responsibilities of different government departments, NGOs and civil society organizations for its implementation.

6. In addition, a high number of ad hoc commissions have been established by the government on issues related to child rights which further challenges coordination. For example, a high commission on combating child sexual abuse has been established which carries the same mandate as CPAN, lead by MoLSAMD. These two structures have never tried to establish a single mechanism through which children victims of sexual abuse can receive protection services. Limited or no allocation of resources, mainly financial resources, presents further obstacles in the implementation of laws and policies. For example, the National Plan on the Protection of Children with Disability has not been implemented as no financial resources have been allocated.

**Data**

7. The collection of data on the number of children affected by different provisions of the CRC is a major challenge. There are limited reliable data or statistics on different issues, including issues related to child victims of violence. Existing data from different sources are inconsistent, and no systematic approach in gathering data and information is in place at national level. The lack of accurate data makes it difficult to lobby for increased governmental action. It is essential that a comprehensive data collection system is put in place to ensure that disaggregated data is systematically collected and analyzed in order to guide policies and assess their implementation.

**General information**

8. General information on the situation of children in Afghanistan can be drawn from a limited number of reports produced sporadically by different organizations including UNICEF, Save the Children Alliance, AIHRC and other international and national organizations. However, these reports are not produced regularly and do not follow unified formats or time lines, nor are they are comprehensive to all issues related to children (most reports concentrate on child labor). The government does not produce national reports and statistics on children’s issues on a regular basis. The gap in information prevents conclusions to be drawn in relation to the overall situation of children in Afghanistan.

**Process of reporting**

9. SCS-N, in partnership with AIHRC, initiated a civil society dialogue on CRC reporting in 2006. The efforts culminated in the formation of the NGO Coalition on Civil Society Reporting, involving 45 organizations. The Coalition divided into five thematic groups: Education, Leisure and Culture; Basic Health and Welfare; Family;
Environment and Alternative Care; Civil Society and Freedom; and Special Protection Measures.

10. Thematic groups were oriented to gather information and undertake preliminary analysis. Each thematic group was led by a lead agency responsible for coordination within the thematic group. Several capacity-building exercises were organized by SCS-N for members of the Coalition. Although a sincere attempt has been made to ensure that all information is analyzed, a lack of adequate information was a critical limitation in completing a full analysis of the issues raised in many cases.

11. The NGO Coalition for Civil Society began the process of planning for children’s participation in mid-August 2008, and formed a coordinating committee on child participation consisting of five child-rights organizations: SCS-N, TDH, SCUK, War Child UK and AIHRC. The consultation process with children was implemented in 8 provinces, and a total number of 240 boys and 240 girls participated.

12. A consultation session with NGO members of the Coalition was conducted to critically review the draft report. Around 20 NGO members participated. The report was widely distributed to NGO groups for their final feedback and comments. A consent form on the content and format of the report was completed by each organization whose name and logo appears in this report.

II. General measures

Articles 4, 42 and 44, paragraph 6

13. The government’s initial report lists relevant legislation and some preventive and cooperative measures including national policies. The Constitution recognizes the CRC as an international treaty: article 7 of the Constitution provides that no law in Afghanistan should be contrary to the government’s international obligations; additional specific articles refer to child rights on education; the right to health for mothers and children; prevention from forced labor and child labor; and safety and protection of the family.

14. Little reference has been made to CRC provisions in legislation enacted after Afghanistan’s ratification of the CRC in 1994. At present, the CRC has not been incorporated into domestic law which means that it cannot be applied directly. As a consequence, the CRC has no direct legal applicability at domestic level. This is also the case for the CRC Optional Protocols ratified by Afghanistan (OPSC was ratified in 2002 and OPAC was ratified in 2003). The only legislation referring directly to the provisions of the CRC is the legislation on Children in Conflict with Law which confirms the implementation of the CRC as part of its objective.

15. Although non-discrimination, best interests, survival and development, and participation have been guaranteed in the Constitution for all citizens of Afghanistan,
no particular reference has been made in the country’s legal system to the four guiding principles of the CRC.

III. Definition of the child

16. Children in Conflict with the Law (2005), which defines all persons aged under 18 as children,7 is the only legislation which defines a child. This law has been under discussion in parliament for more than a year, where members of both houses have proposed an amendment to the provision on the grounds of gender, suggesting that children should be defined below the age of 18 for boys and below the age of 17 for girls. This amendment was rejected by the President on the basis of discrimination and referred back to Parliament for a second review. The state of the law is not yet known.

17. Legislation permits gender discrimination in the minimum age of marriage. The Civil Law permits boys to marry at 18 years-old, whereas girls are allowed to marry when they reach 16 years-old (although marriage of the girl child may be permitted at the age of 15 with the consent of her father or grandfather). The Constitution allows the government to take appropriate measures to combat harmful practices,8 but no mechanism exists to combat child marriage below the age of 15. Equally, no mechanism is in place to punish families who conduct child marriage against the provisions of the law. Child marriage at very early ages is widespread.

18. The Labor Law provides the minimum age of employment as 18 years-old, and guarantees the right to work at the minimum age of 15 years-old for educational purposes. In practice, there is no mechanism in place to prevent child labor in the private sector or self-employment spheres, where most of the children are believed to be engaged.

19. Children in Conflict with Law (2005) has risen the minimum age of criminal responsibility from seven to 12 years-old. However, limited access to identity cards and birth registration makes precise age identification difficult.

20. Provisions to increase the punishment of perpetrators of sexual offences against children are provided in the Penal Code.9 It is of concern that legislation has only defined rape as a sexual crime and makes no particular reference to any other types of sexual offences, nor does it define the sexual exploitation of children.
IV. General principles

*Articles 2, 3, 6 and 12*

**Non-discrimination**

21. The Constitution prohibits discrimination on the basis of race, tribe, place of origin, residence or other local connection, political opinion, or sex. In practice, lack of appropriate laws and policies result in discrimination against particularly vulnerable groups of children.

   **a. Children with disability**

22. A gap exists between legislation and practice, resulting in discrimination against disabled children. MoLSAMD, in cooperation with AIHRC, has prepared a national strategy on children with disabilities. Greater priority needs to be given to this strategy, which is currently under-funded and lacks technical resources.

   *In 2006, an AIHRC monitoring mission found that a boy who had a speaking disability was held in a correction center. His case was on hold as no sign-language interpreter was available to assist in taking his case further. Source: AIHRC monitoring, 2008.*

23. In practice, no comprehensive mechanism is implemented to address the needs of children, denying most children with disabilities their right to education and making them extremely vulnerable in their contact with the juvenile justice system.

24. Despite the provisions of the Juvenile Code, which state that every child shall be permitted to have, without payment, the assistance of an interpreter if s/he cannot understand the language used at the trial, there is no structure for those rights to be realized.

   **b. Children living with mothers in prison**

25. The Prison Law (Date of Issue # 969 and date 14th January 2009) states that mothers in prison are allowed to keep their children with them up to the age of seven, and for children above the age of seven to live in government-run orphanages facilitated by MoLSAMD. In practice, no system is in place to support children living in prisons. A recent report by AIHRC finds that 26% of children who are staying in prison are above the age of seven years-old.

25. Children living in prison, regardless of their age, have no legal entitlement to food, health facilities or education. Mothers who have their children in prison with them share their portion of food with their children in most of the cases. During a consultation session with children living with their mothers in prison, the majority of participating children were unhappy about living in prison with other criminals when they had not committed a crime themselves; they said that they wanted to have other opportunities such as going to school.
c. Girl child and early marriage

26. Although the Constitution prohibits discrimination on the basis of sex, other legislation does not conform to this provision (e.g. the Civil Code). Traditional and customary practices, which have a strong presence in Afghanistan, discriminate against girl children.

27. Afghanistan has a high percentage of child marriage (almost 48%). According to the Civil Code, the age of marriage for boys and girls is different (boys are permitted to marry when they are 18 years-old whereas girls can marry at the age of 16, and at the age of 15 years old if permission has been granted by their father or grandfather). Civil society considers the provisions of this law to be discriminatory as it deprives the girl child from other rights including her right to education and not to be separated from her parents.

28. Legislation makes no reference to the treatment of children who have married as children.

29. Reported cases illustrate the severity of the violation of the rights of the girl child on the bases of discrimination, and show how courts and other State structures can escalate the cycle of violence. Civil society has strongly urged the government to take measures to address the traditional practice of child marriage; however no actions have been taken to revise legislation, raise awareness or prevent traditional practices which result in growing numbers of early marriage cases.

30. Sensitization in the community about the harms caused by early marriage, drafting amendments and new legislation, and providing shelters and protection for girls who escape child marriage are all currently undertaken by NGOs and AIHRC. Small-scale civil society efforts have had an impact and helped to stop early child marriages in some cases. If larger cultural and awareness raising programs were conducted more people would be likely to review their practices and protect the rights of the children.

Source: reports documented by AIHRC
Best interests of the child

Although the government report assures that the best interests of the child have been addressed in almost all of Afghanistan’s legislation, civil society believes that there are provisions in the law and cases in practice where the best interests of the child are not taken into consideration. The legal age of marriage for girls (16 years-old, and 15 years-old if the father or grandfather has granted permission); lack of punishment for perpetrators who violate this provision; and lack of remedy for the child who is married illegally contradict with the best interests of the child. This provision allows for the marriage of girls at a time when they have to complete their education.

Article 256 of the Civil Code, which is referred to in the government report as a provision of the best interests of the child by obliging the father to provide for his children (for the boy child until he is able to earn income and for girl child until she gets married) contradicts the best interests of the child as it promotes child labor and child marriage. Many families without adequate access to sources of income give their daughters away for marriage to decrease their financial burden and support other family members. Child labor studies show that most working children have parents and are asked by their families to work to earn money for the family.

Right to life, survival and development

The child’s right to life, survival and development are guaranteed in legislation as stated in the government report. However, civil society is not satisfied with the provision or implementation of these laws. In spite of developments in the areas of health, vaccination and education, the vast majority of children are denied access to such rights.

The right to life for children living in conflict zones in mainly eastern and western parts of the country is not guaranteed; the majority of civilian casualties are among young children who have lost their lives as a result of air strikes, or fighting between government and armed groups.

Access to the right to life, survival and development is not a fulfilling reality for children living in remote areas of Afghanistan when there is no access to clinics, schools and other facilities.

Respect for the views of the child

Legislation in Afghanistan has not restricted children to express their views although in practice the social structures do not allow children to access these rights. Children’s views are not given any attention in matters affecting their lives in almost all settings, but particularly in the family, schools and judicial system.

AIHRC reports that the child’s right to be informed of the charge held against them and have access to a lawyer is not practiced adequately. Research suggests that in
almost 56% of cases, children were forced to give a confession. Moreover, only 17% of boys, and 62% of girls had access to lawyers. Inadequate actions have been taken by the government to address these limitations. Mechanisms to promote respect for the views of the child, including sensitization and awareness programs, have only been implemented by civil society and non-governmental organizations on a smaller scale.

Recommendations:

- The culture to listen and respect the views of the child at all levels of family, society and government should be promoted to address the marginalization of children from government policies and programs. Children’s participation in relevant social structures needs to be ensured within effective mechanisms.

- A Child Act should be drafted with the view of non-discrimination and best interests of the child to address all needs and rights of children.

V. Civil rights and freedoms

*Articles 7, 8, 13, 14, 15, 16, 17, 19, 37(a)*

**Child identity**

38. Birth certificates and identity cards prove the identity of the child. It is not compulsory to own both documents although in some cases the government has introduced the requirement of an identity card in order for Afghans to obtain other rights, such as getting a passport, and school admission.

39. Many Afghan families avoid obtaining these documents mainly because the procedures are complicated and time-consuming. Limited resources are available on this issue, although existing studies conducted suggest that it requires a minimum of around 10 – 15 days to obtain an identity card. The absence of an effective system to provide individuals with identity cards and birth certificates undermines children's prospects for exercising and benefiting from their rights.

40. A birth registration system is available in most maternity hospitals, but given that more than 65% of deliveries take place at home, most births do not get registered. Moreover, limited

**Anisa’s husband was killed after he was kidnapped; her in-law family took her out of the house with her only one year-old daughter. Also threatened by kidnappers, Anisa applied to MoI to obtain an identity card for her daughter. She was asked to bring a copy of the identity card of her husband, her brother in-law or anyone from her male in-law family. This was not possible. She spent 20 days but was told as a mother of the child she could not apply for an identity card for her own daughter. The identity card was finally issued when her sister in-law secretly helped her with providing a copy of her husband’s identity card.**

Source: interview with Anisa by author
systematic relationships between hospitals and the population office result in poor communication of registered births to the population office. A more comprehensive strategy is needed to achieve the target of having all newborns registered by the end of 2009.

41. Although the government report refers to non-discrimination in applying for identity cards, in practice there are problems and obstacles. It is especially difficult to obtain an identity card if the applicant is a woman.

**Freedom of expression, thought, consciousness and religion**

42. Listening to children, especially girls, and respecting their views is not practiced widely in Afghanistan. There is no legal obligation for the government to respect the views of children in matters relating to them, although the Constitution upholds the right to freedom of expression for everybody.

43. Since children are under the authority of their elders, in practice they hardly get an opportunity to exercise their right to expression and association. No mechanism or program has been implemented by the government to address this need.

44. Efforts have been made by civil society to promote the child’s right to express their views. Forums have been created for this purpose, and the involvement of children in child-to-child programs has been widely practiced. According to AIHRC, around 5000 children from all over Afghanistan participate in such programs where they get the chance to express their views.

**Freedom of association**

45. Initiatives to establish different types of associations, for children and by children, including students’ associations and child rights committees, have been facilitated by SCN, SCUK, their partners, and many other civil society groups. These associations have also been established for vulnerable groups, including children involved in cross-border activities, mainly in the border area with Pakistan. TDH has established at least 5 child-to-child groups in Torkhum, Nangarhar province, involving 101 children (52 boys and 49 girls); community and children’s groups including 4 joint elders; and children’s groups consisting of 44 members.

**Protection of privacy**

46. Although the government report states that the protection of privacy for everyone is guaranteed in legislation, in reality there are many challenges in implementation. A major area of concern is the disclosure in the media of the identity of children involved in sensitive legal cases. The identity of child victims of crime, or children in conflict with the law, has been often disclosed through official and private media channels. Many attempts have been made by AIHRC and civil society organizations to raise awareness to avoid this practice, but mechanisms to investigate or follow up
such violations are not in place. Culturally, children are not in a position to file a complaint themselves, and limited awareness in families prevents such cases being taken further. In addition, given the slow implementation of any government procedures, follow up to such violations does not seem practical or realistic to many families.

**Child’s access to information**

47. No law in Afghanistan refers to the child’s right to information; much needs to be done by the government in this regard. The emergence of over 400 private media (print, audio and visual) contributes to children’s access to information. Almost all of the private TV channels operating in Afghanistan have special programs which are run by children and provide information for children.

48. Government support to this area has been limited. NGOs report that the only sign-language program broadcasting news and programs for children with hearing disabilities was aired through national TV funded by NGOs. It was stopped recently as government did not agree with the timing of the program; the new timing proposed by the government was at a time when children would have been in school and had no opportunity to see the program. However most of the children with hearing disability are not able to go the schools but this mainly refer to the group of children who were receiving education under the services provided by NGOs.

49. There are major gaps in the area of print media and literature for children. Only a limited number of magazines are published for children and these are accessible only to a minority of children in Kabul and some other major cities.

50. According to the Press Law 2004, people below the age of 18 are not allowed to register their programs and publications, or run such programs independently. Full and meaningful participation of children in producing children’s programs through visual media needs to be strengthened.

**Violence against children**

51. Although Afghan culture supports care and love for children, ongoing conflict has made children vulnerable to many types of violence at different levels of society. Legislation (including the Afghanistan National Development Strategy) fails to address and define different types of violence, and there is an absence of measures to deal with such violence.

52. Many children face violence in the home. Serious types of violence committed against children at family level include, but are not limited to child marriage, denying the right to education, discrimination against the girl child, marginalization of children with disabilities, and physical abuse. Legislation lacks any provision to protect children from family violence.
A marriage proposal came for Zainab, a 16 year-old, from one of her father's colleagues. Her father took this as a dishonorable act and accused his daughter of having relations with the man. Zainab was locked up, shackled and handcuffed by her father in her own house for 3 years. She was eventually released with help from AIHRC, but there is no law or regulation to punish the father for his act.

Source: AIHRC monitoring, 2008.

A 6 year-old girl was raped on the way to school by a neighbor, and suffered physical and psychological damages. Her father regarded her as a source of shame and dishonor on his family, and only tried to follow up with the judiciary to make sure that the perpetrators were punished: no attention was given to treat the girl. The girl belonged to a very poor family who were not able to afford her treatment. AIHRC persuaded the father to take his child to receive treatment in Kabul (because no local clinic and hospitals were able to take up her treatment). The child was placed in a shelter run by Women for Afghan Women, where she received extensive support. After 6 months the child returned to her normal life.

Community-based structures known as Jirga act as major mechanisms for the implementation of informal justice in Afghanistan, and are a potential source of violence against children. A customary practice called Bad is among the serious types of violence committed against the girl child. In this practice, girl children are given away to settle disputes and conflicts between two parties (e.g. families, tribes, groups). The conflict can be the result of a serious crime, such as murder or simple injuries, or disputes over lost property.

The practice of Bad has been identified as a crime in the Penal Code. However this law is not implemented; the government has never intervened in a dispute where a girl child has been exchanged to settle a dispute; and no individuals have been held accountable for this practice. Moreover, the provision of the Penal Code makes no reference to children which means that it can only benefit a person above the age of 18.

Civil society in Afghanistan have been very active in collecting data and cases on this issue, and raising awareness in communities on the harm of such practices. Members of government have publicly condemned such practices, but in reality, no steps have been taken to eliminate them or hold Jirga accountable.

Child victims of violence have limited protection both under legislation and in practice. Victim protection has not been addressed at legislative level and policies have not been developed; a full and comprehensive system of protection for child victims of violence is not in place. At government and civil society levels, capacities to deal with the rehabilitation of victims of violence, especially sexual violence, are very limited or do not exist. WAW is among the very few NGOs who can provide shelter and psychological treatment for a small number of victims on a temporary basis. Such NGOs operate in major cities, mainly in Kabul, with very limited capacity.

Government has not established any shelters to assist children with special protection needs. Girl children are mainly referred to shelters for women, whom they share with women from different backgrounds; boys have no access to A marriage proposal came for Zainab, a 16 year-old, from one of her father's colleagues. Her father took this as a dishonorable act and accused his daughter of having relations with the man. Zainab was locked up, shackled and handcuffed by her father in her own house for 3 years. She was eventually released with help from AIHRC, but there is no law or regulation to punish the father for his act.

Source: AIHRC monitoring, 2008.
similar facilities. NGOs and civil society organizations providing shelter services for children are very limited and barely have the capacity to respond to the growing needs for the protection of child victims.

58. Due to the lack of clarity in procedures, child victims of abuse and violence are often treated as perpetrators. It is reported that a considerable number of children (particularly girls) in juvenile rehabilitation centers are actually victims of abuse and violence. These children are arrested and detained as offenders instead of being provided the protection and support that they need.

Right not to be subjected to torture and other degrading treatment

59. The Constitution outlaws and protects every person from torture and other cruel, inhuman or degrading treatment or punishment. The Juvenile Code (2005) provides protection for children in conflict with law from different forms of violence, including torture and other degrading treatment. The Juvenile Code prohibits the use of handcuffs for children, with the exception of instances where a child may harm him/herself.

60. In practice, torture and other acts of physical and psychological ill-treatment are committed against children by individuals and institutions. Out of a total of 247 child respondents, AIHRC and UNICEF report that 48% claimed they had been beaten (11% female; 55% male), and another 8% said they had suffered verbal abuse. Only 39% of juveniles reported ‘normal treatment’ during arrest.

61. Denunciations are rare when the perpetrator is a relative of the victim. The Penal Code (1976) allows fathers to discipline family members, including children, without incurring penalties.

62. Compared to boys, girls are more often victims of abuse and torture by their relatives, mainly father and brothers. The notion of honor has caused the victimization of the girl child, with no punishment for awarded to the perpetrator(s). Traditional norms play a strong role in promoting such practices in Afghanistan. Little or almost no efforts have been made by the government to address this issue.
Recommendations:

- Special Budgets and resources should be allocated immediately to ensure the provision of services and care for child victims of abuse.

VI. Family environment and alternative care

Articles 5, 9, 10, 11, 18, 20, 21, 25 and 27, paragraph 4

Parental guidance and the child’s evolving capacities

63. Afghan legislation places a high value on the family, and emphasizes the importance of living with the family for children. The Constitution holds parents primarily responsible for providing protection and development opportunities for children. The Civil Code holds fathers financially responsible for the provision of food, clothes, shelter and other family needs.

64. No mechanisms have been established to implement legal provisions. The government report attaches a high degree of importance to the existence of laws which generally cover education, including early education including kindergartens, schools and institutions. However, the government has made limited efforts to raise awareness about parents’ responsibilities towards their children.

65. Denying children the right to education, forcing early marriage, and economic exploitation of children, are among the major areas where parents use their power and authority to violate fundamental rights of their own children.

66. It is a major concern that parents are rarely held accountable for violating their own children’s rights. In order to better fulfill their responsibilities towards their children, families need support from the government. For example, families who send their children out to work to earn an income would benefit from government support to be able to replace their child’s income and be able to afford to send their child to school.

67. Almost half of working children stated that the cost of education was the major reason forcing them to work. Such expenses include transportation costs, clothes, stationery, and the income they would have earned from employment. Any attempts by government to cover or subsidize these costs would reduce the number of working children significantly.

68. Child marriage is practiced widely, particularly among poor families. WCLRF reports that at least 4.5% of child marriages (from a total of 200 cases studied), were arranged to settle a debt; 15% of child marriages were conducted only to receive the bride price.
**Parental responsibility and assistance by the State**

69. Poverty, ongoing conflict and limited access to education have prevented many families from fulfilling their responsibilities towards their children. Government capacity in providing assistance to families who are not able to support their children is very limited.

70. Families are in great need of support from government in raising children with disabilities and special needs. Apart from one government-run school for the blind, there is no assistance available for families who have children with special needs. Families are not always aware of the additional support their children may face; these children are more likely to be marginalized and denied access to their basic human rights.

71. AIHRC reports that 62% of respondent families have identified themselves as being in debt.\(^{29}\) More vulnerable groups such as women, children, returnees, IDPs, households headed by persons with disabilities, and households with more than eight children have higher levels of debt than the general population (70%). The highest percentage of indebted population is reported in child-headed families. This puts a particular risk on girl children who are more likely to be sold for marriage to clear family debts.

72. No government policy is in place to support families to overcome their economic challenges or to protect children from being used to pay debts and no mechanism of accountability is in place to hold families and communities accountable for committing child marriage for this reason.

**Children deprived of family care**

a. **Children in orphanages**

73. The exact number of children living in orphanages is not known due to complications with the orphanage registration system. However, thirty years of ongoing war have left numerous children without parental care, many of whom have lost at least one of their parents during the war.

74. Poverty forces families to separate their children and send them to orphanages; as a result a high number of children living in orphanages have both or at least one parent alive. Research reveals that at least 83% of children living in orphanages do not have a father or mother; while only 14% of children interviewed in AIHRC’s research stated that both of their parents had died.\(^{30}\) If households living in poverty were supported by the government these children would likely have the opportunity to live with their families.

75. Although there have been positive developments in the living situation of children in orphanages, there remain many challenges. During consultation with 43 children from Alahaa-w-deen orphanage, it was found that most children were dissatisfied with the
facilities. The major complaints were poor food quality, lack of sanitation facilities, and physical and verbal violence against them:
- At least 22% had no access to personal washing facilities;
- 60% did not have their own toothbrush, toothpaste, and soap;
- At least 36% were not able to wash themselves for more than a month;
- Over 48% had no access to heating in the winter.
Organizations working in the area of child rights session confirmed that the quality of living in the orphanages is very poor. There is no mechanism in place for monitoring private orphanages.

b. Children in conflict with the law
76. Children in conflict with the law are among the group most at risk of separation from their families. In contrary to the provisions of the Juvenile Code, separation from family and deprivation of liberty is used as a first resort in Afghanistan. Police and judiciary rarely apply other disciplinary measures to avoid the separation of children from their families. The situation is more challenging for girls because when there is no girls’ juvenile center in place, girls in conflict with the law are more likely to be sent to a woman’s prison.

c. Sale of children
77. Although there is no system to systematically report such cases, the sale of children has been reported in different provinces of Afghanistan in recent years. Almost all registered cases of children sold in 2007-2008 have been girls of different ages, including infants. Drought and poverty have compelled some families to sell their children in order to support the lives of other family members. Many other children may face similar risks, which is a major concern.

78. In some cases, the government has taken action to reunify children with their families and provide them with essential means of living, however, no policy or program exists to address this violation.

d. Child marriage
79. The Civil Law prohibits forced and child marriage, but it remains one of the practices separating children from their parents, depriving children from family care, love and affection. A survey of educated married women in Herat revealed that nearly 29% had been married before the age of 16. The statistics cited in the Afghanistan National Development Strategy show that almost 60% of girls in Afghanistan are married before they reach 16 years-old. There are no known cases when parents were prosecuted for child marriage.

“In 2001, Faryab province, Nassima was married at the age of nine to a 70 year-old man. She has been a servant to him since then. He is impotent and has never touched her. When she turned 16, she demanded a separation. The court rejected her claim saying that her marriage at nine years old was legal. An appeal was filed in 2007, but the civil court has not yet reached a decision on her separation.”

Source: AIHRC documents year 2008
e. Unaccompanied minors

80. Over the last few years Afghanistan received a large number of forced deportations of Afghan refugees from Iran, including a considerable number of unaccompanied minors. Most of these children were separated from their families during the deportation operation; in some cases, children were left alone in Iran while their parents were deported. In the first 4 months of 2009 alone, border monitors interviewed 660 children; the total number of deported children is expected to be much higher. Exploitation of unaccompanied minors is reported frequently, linked clearly with the issue of child trafficking.36

f. Children living with parents in prison

81. Under the Prison Law the government is obliged to ensure regular contact between prisoner women and their children. This law also states that children are allowed to stay with their mothers in prison until the age of seven.37 The Prison Law provides that the government should ensure kindergartens for children aged between two to seven years of age, and that the government should place children above the age of seven who have no other option in government-run orphanages.38

82. It is reported that 169 children are living in female prisons in Afghanistan, while the total number of women in prison is 319: for almost every two women in prison there is one child.39 reports that 23% of these children are above the age of seven, with no access to formal education and other basic rights.40

83. There are no comprehensive policies to address the needs of children in the prison system as well as no legal provisions obliging the government to protect the well-being of children in prison, including ensuring access to food and health care. Over the last six years, seven children have died due to cold weather and lack of access to food and medicine inside the female prison. AIHRC reports that 69% of the children it interviewed were unhappy living in the female prison and wanted to live a normal life elsewhere where they had access to education.41

f. Family reunification

84. Lack of social workers and social integration policies have caused many problems in the process of reunification between children and their families. Children in conflict with the law, whose terms have ended in rehabilitation centers, struggle to be accepted by their families and society around them, including in the education system. Children rejected by their families and without access to social workers, even resort to suicide.

“In 2007, a 12 year-old boy whose term [in the rehabilitation center had ended], was rejected by his family as the family was not prepare to take him back. He committed suicide inside the rehabilitation centre in Kabul.”
Source Documentation by AIHRC child right monitor in Kabul Juvenile center- year 2007
Illicit transfer and non-return of children abroad

85. Child trafficking, both internally and beyond the country’s borders, exists in Afghanistan. Information on the actual number of children affected by this is not available because the National Action Plan on Combating Child Trafficking lacks adequate resources to be fully implemented. There is limited awareness of the characteristics of child trafficking in Afghanistan.

Child adoption

86. Although the government report refers to provisions in legislation which manage the custody and adoption of children, in practice there is not an adequate law in place to address all issues regarding adoption. Provisions in Children in Conflict with the Law are general and cannot assure the best interests of the child in such settings. A law on guardianship has been drafted by civil society in cooperation with MOWA, and has been presented to the MoJ where it has to go through legislative procedures before it is enacted. If approved, the new law will have provisions providing criteria for both the person who applies for guardianship and the child who can be adopted. It lists the rights of the child in guardianship situations and guarantees the best interests of the child in all circumstances. Support from international and national stakeholders is needed to make sure that the law is approved without any prejudice.

Periodic review of treatment of children

87. Civil society believes that human resources and technical capacity are needed for the successful review of the placement of children in institutions. Social workers should play a key role in the reunification of children with their families. However, Afghanistan’s institutions of higher education do not provide spaces for academic studies on social work at university level. MOLSAMD, with support from UNICEF, has begun to establish a mid-term curriculum for improving the social work capacity in Afghanistan. However, given the government’s bureaucracy, the process for developing such resources has been limited and slow. Support from the international community is needed to establish the sustainable capacity of social work in Afghanistan.

Recommendations:

- Government should address the root cause of the increasing numbers of working children through establishing a comprehensive socio-economic security mechanism, including the provisions of special schemes for poor parents and those of vulnerable backgrounds to provide them with basic assistance to ensure the healthy upbringing of their children.
Alternate care of separated children (children in orphanages, children in rehabilitation centers and children in prison with their mothers) should be improved to address the basic rights and needs of children.

VI. Basic health and welfare

Articles 23 and 24

88. Legislation addresses the child’s right to health as part of the rights for every citizen. The Constitution outlines the State’s obligation to provide free means of preventive health care and medical treatment, and proper health facilities to all citizens, and obliges the State to take all necessary measures to ensure medical assistance as well as financial assistance for medical purpose to those who are dependent, orphans, old women and other vulnerable groups. The Law of Health obliges MoPH to maintain the health, physical strength and psychological well-being of children. National policies and programs developed by MoPH and MOLSAMD also ensure the rights of the child to health and welfare.

89. There has been a slight improvement in access to health services in recent years for children. The under-five mortality rate, which was 257 per 1000 in 2000, has decreased to 191 per 1000 in 2006; the under-1 mortality rate, which was 165 per 1000 in 2000, has fallen to 129 per 1000 in 2006.

90. However, the government faces three major challenges in the implementation of health services for all its citizens: targets are ambitious; services are significantly underfunded; and the deteriorating security situation has forced the shutdown of a significant number of health facilities.

Children with disabilities

91. Children with mental and physical disabilities face discrimination in society as well as in the family. The government report mentions that legislation, including the National Action Plan on Children with Disabilities, has many references to the well-being of children with disabilities. In practice those plans and provisions have not been implemented due to limited, or no, allocation of resources. Lack of professional capacity to carry out rehabilitation and reintegration programs with children is a big concern. Strategies to prevent disabilities, including awareness-raising on the causes of disability, have not been implemented widely.

92. With the exception of one school for people with visual impairments, the government has not provided any special services for children with disabilities. NGO-run facilities are limited to two schools for deaf and dumb children and one school for mentally challenged children in the whole of Afghanistan.
93. Children with mobility disabilities are deprived of access to schools and other public and private spaces as facilities are not provided in the majority of locations to facilitate access. AIHRC has made some developments in this area- its Herat regional office has recently persuaded architects to let supervise further construction plans to see that ramps are included in initial designs.47

94. Limited sensitization and public awareness programs have been conducted to overcome the discrimination which disabled children face. Lack of general awareness about the causes of disability is a concern: in most cases a disabled child is considered God’s punishment to the family for their wrong deeds.

**Access to health and health services**

95. Although efforts have been made to improve the health situation in Afghanistan, adequate programs targeted to raise-awareness with families about the availability of such services (particularly the importance of vaccinations, and preventing HIV/AIDS) are not in place.

96. Concern is expressed over the quality of health care available. Vaccines, such as Hepatitis B and Pneumonia, are not available or are prohibitively expensive. There is a lack of government control over the importation of medicine. No monitoring system in place to supervise the quality of services provided by private health centers and clinics.

97. Health facilities in Afghanistan are inadequate and insufficient to support the needs of the Afghan population and their health problems. Whilst no accurate data are available for the number of pediatricians per population, available statistics reveal that per 10,000 of the population there are only 2 general physicians; 0.31 dentists; 0.30 pharmacists; 5 nursing staff and 4.2 hospital beds.48

98. Most children in Afghanistan die due to preventable diseases.49 Parental education on child health, including vaccination, child-specific health facilities, and adequate nutrition, would prevent a high number of child deaths.

99. There are discrepancies in access to health care between vulnerable citizens living in rural and urban areas. Research finds that 15% of vulnerable people in urban settings, and 30% of those in rural areas, including children, do not have access to any government, NGO or privately run health facilities, while only 22% of people in urban areas and 2% in rural areas have access to all health facilities.50

100. The reasons why households do not use government-run clinics include distance (28% of urban and 61% of rural households); lack of medicine at the clinic (30% of urban and 20% of rural households); and poor quality of staff (25% of urban and 8% of rural households).51
101. Inability to access private health facilities is attributed to the prohibitive expense (95% of urban and 40% of rural households). Distance accounts for why 37% of rural households do not access private health clinics.52

102. Research conducted separately by AIHRC and WCLRF reveals that around 30% of women who are deprived access to health services use narcotic drugs to treat themselves and their children, resulting in addiction.53

103. The extent of the lack of coverage for maternal care in 2007 is highlighted by AIHRC.54 Relatives and friends remain one of the main sources of assistance during labor (40% of urban and 50% of rural households). Overall, trained staff assisted only 30% of births and 8% of births took place with no assistance.

104. Research reveals geographical variation in access to maternal health care. More households in urban locations use trained help compared with households in rural areas (22% with a doctor or nurse and 25% with a midwife or trained birth attendant). Only 10% of rural households had the assistance of a doctor or nurse and another 17% were assisted by a midwife or trained birth attendant. In light of the lack of medical care available in rural areas, these numbers leave mothers particularly vulnerable; in case of complications at birth, 30% of the rural population would not be able to reach medical facilities in time.55

105. In the east of the country, research revealed that almost 70% of births were assisted by relatives or friends, followed by 60% in the central region. These two regions also have the highest number of households using midwives or trained birth attendants. In the northern region, 35% of births were assisted by a relative or a friend and 30% by qualified help. Respondents in the western region reported 20% and 55%, respectively.56

_Adequate standard of living_

106. UNICEF reports that in Afghanistan:
   - 34% of the population use adequate sanitation facilities (49% urban; 29% rural);
   - 29% of babies (6-9 months) are breast-fed with complementary nutrition;
   - 28% of households consume iodized salt;
   - 54% of children under-five are stunted;
   - 39% of children under-five are underweight;
   - 7% of children under-five are wasted.57

107. Insufficient access to water is a significant problem for many households. It is reported that 40% of vulnerable urban and 70% of vulnerable rural households have problems accessing adequate water for household needs and sanitation.58 This does not take into account the quality and safety of water- it is reported that roughly 70% of urban dwellers are without safe drinking water.59 Factors impeding better access to water include a lack of financial resources, insufficient investment into hydrological studies, and inadequate technical capacity.
108. In preparation for this report, children stated that limited access to water is one of their biggest problems. Children are responsible for providing their family with water in many households in Afghanistan, and often need to walk extreme distances to access water sources. At least 23.5% of children interviewed by AIHRC stated that they have to walk one hour or more to reach the water source.

109. Limited access to an adequate standard of living in Afghanistan can be linked to other social trends. Almost 97% of children in conflict with the law come from families with very poor, poor or middle level of income.

110. Only 5.7% of those who married when they were under fifteen described the economic situation of their families as solid; 40.2% described their family’s situation as weak and 52.2% described the economical situation of their families as intermediate. A high number of children facing marriage at a very young age are dependents of poor or middle income families with responsibility of earning living expenses for other members of the family.

111. Other forms of violence against children, including the sale of children, child labor and other forms mentioned in this report, have a direct link with lack of access to an adequate standard of living.

**Access to food**

112. Under legislation in Afghanistan, children are not legally obliged to provide food for themselves or others; it is the father’s responsibility. In practice, with over 42% of the Afghan population living below the poverty line, many children have to work to provide food for themselves and their families. AIHRC reports that at least 1% of families interviewed were headed by children.

113. Official government statistics show that:
- 44% of Afghan households are food-insecure;
- 35% of households do not meet their daily energy (calorie) requirements;
- 61% of households have poor food consumption as indicated by diet diversity.

A nutritional survey found that:
- Over 6% of children under-five suffer from acute malnutrition (low weight-to-height ratio);
- 45-60% of children under-five are chronically malnourished (low height-to-age ratio).

**Recommendations:**

- Ensure quality and access to health care services for poor households;
An extensive health education program is needed, especially on women’s and children’s health, to address critical health challenges;

Community-based health programs need to be improved through capacity-building. The number of trained dais (mid-wives) needs to be increased;

The quality of imported medicine should be monitored through implementation of an effective monitoring mechanism throughout the country.

VII. Education, leisure and cultural activities

114. The Constitution obliges the State to take necessary measures to promote education at all levels; grants equal rights to education to all Afghan citizens and free education up to the level of graduation, keeping Afghanistan much ahead of many developing and under-developed countries; and requires the State to ensure effective programs for promoting the education of women and nomads, and to eliminate illiteracy.

115. No specific provision is made for the education of children with disabilities, although the State is obliged to take necessary measures to reintegrate people with disabilities into mainstream society.

116. The National Plan of Action on Education requires the State to achieve the targets mentioned in the government report; however, no mechanism is in place to ensure that education is free and compulsory for all.

Access to education

117. In 2007, education was accessed by 5,950,455 students (64.44% male and 35.56% female) - only 54% of the 11 million eligible children in Afghanistan. More than 46% of Afghan children, and particularly girls, are deprived access to education.

118. Children most deprived from education are those who never get to school at all (38% boys and 51% girls), and those who drop out at later stages (61% boys and 48% girls). Drop-out rates are extremely high: almost 82% of boys and 63% of girls enrolled in primary school reach grade six; only 11% of boys and 5% of girls continue to grade 12. Families play a key role in preventing children from attending school.

“We have about 100 families [in our village]. The nearest school is two hours walk away. The road is unsafe and even in spring might remain closed for weeks. Sometimes flash-floods come down in the day leaving the children cut off from the other side of the river path. In the summer, the children have to walk under the sun. We are afraid that something will happen to our children and there will be no one to help them.”

Village elder, Badakhshan province.
Source: economical social right report by AIHRC
school mainly because of prioritizing marriage for girls and work for boys.

119. It has been reported that children’s names have been kept in school registers even after they have stopped attending the school more than three years earlier. This implies that the actual numbers of children enrolled in primary school and continuing on to higher grades are much lower than reported.

120. AIHRC has found that the reasons for irregular school attendance include quality of education; inadequacy of school facilities; and economic factors. This broad category might also include cultural preferences, taboos, and a fear of sexual abuse or harassment in school.

121. Distance is among the major reasons limiting access to education. Children living in remote communities often have to make long and dangerous walks to get to school. Access for education is particularly challenging for children living in rural areas. AIHRC reports that over 13% of girls who do not attend school say that the distance between home and school made them unable to attend. Family sensitivities over the movement of girls make this issue a major concern in relation to girl’s education.

122. Education in insecure areas faces many qualitative and quantitative challenges. Helmand, Kandahar, and Paktia and amongst the provinces desperately in need of schools, teachers, and education.

123. Education opportunities for girls are limited. AIHRC reports that there were no schools for girls available in 2% of urban households and 6% of rural households. This is compared to only one household out of more than 15,000 that reported no education opportunities for boys. This translates into some 40,000 urban girls and roughly a million rural girls who have no access to education.

124. Disabled children are denied access to education for reasons including absence of facilities, such as ramps and wider gates, and a lack of programs to sensitize fellow children or teachers to ensure dignity to disabled children. No education opportunities are available for mentally challenged children throughout the country.

**School infrastructure**

125. A considerable number of schools throughout the country are located in tents. These schools do not have basic facilities such as toilets, fencing, lights, water, and space for sitting and protection from extreme weather conditions. AIHRC has found that from the total number of schools that it surveyed, only 53% had school buildings.

“We have to study our lessons in the village mosque. But what can we learn? We do not have a teacher, no books, nothing to write with. More than 100 girls here can’t read or write because the closest school for girls is two and a half hours away so our parents do not allow us to go.” Girls from a village in Badakhshan province. AIHRC (2008): Third Report on Economic and Social Rights in Afghanistan.
126. Whilst the government report pledges to provide opportunities to learn computer skills in schools by the end of 2010, NGOs views this as unrealistic; at the time of writing many schools do not have basic facilities, including electricity.

**School dropout and vulnerability**

127. The reasons children drop out from school in Afghanistan vary between gender groups; the majority of girls drop out from school because they get married whereas most boys drop out to access work to earn an income for their families. 10% of girls interviewed stated that marriage is the main reason for their drop out. Work is the main reason for boys (36% of boys compared to 7.6% of girls).78

128. Although the State is obliged to ensure compulsory primary education, girls begin to drop out in grade 3 from a high of 39.9% in grade 2 to only 24.91% by grade 12. The most dramatic drop occurs between grades 6 and 7 i.e. from 33.75% to 28.37%.79

129. Many girls drop out from school when they reach the age of puberty, when girls are considered mature enough for marriage. In interviews conducted in preparation for this report, girl children stated that they are deprived from education by their families once certain grades have been passed as they are required to get married and reduce their economic burden on the family.80 SCA found that from the 2 million primary school-aged children who are out of school, an estimated 1.3 million are girls (65%).81 AIHRC has documented several cases where children were prevented from going to school by the head of their family.82

130. Children belonging to minorities also face challenges in accessing education. AIHRC has documented discrimination towards Hindu children in schools. The director of the Education Department in Kandahar city acknowledged that this is a problem for all religious minorities and that nothing could be done about it.83

**Teaching techniques and disciplinary measures**

131. The quality of education is not defined in most of the government’s documents, including the education policy. Focus is given to the number of teachers and teacher training institutes, not on the quality of teaching methods. The Education Strategy
(2006-2010) confesses that very few teachers in the system are educated beyond high school level and trained to teach classes higher than primary grades. Their low level of knowledge has barely been attended to over the past five years as most attention has been given to the improvement of primary school teaching skills. This has been addressed almost exclusively through short term in-service training for classroom teachers. Existing classroom-based methods are not effective in making students literate or numerate nor do they develop critical thinking or analytical skills.

132. Developing teachers’ practical skills and subject knowledge is a major requirement for improving the quality of education in Afghanistan. In a study conducted by AIHRC, from among those who left/dropped out of the school, 34% stated low quality of education, including teacher’s behaviour and teaching methods, as the main cause of their dropout.84

Corporal punishment

133. Despite a ban on physical and humiliating punishment by the MoE and MoJ, cases continue to be reported of children who suffer injury from corporal punishment in schools. Sufficient measures to ensure that legislation is fully implemented are not in place. There is no adequate mechanism established to systematically address cases of violence against children. All schools have a discipline/guards committee, comprised of teachers and students, with full permission to use physical punishment on students.

134. A baseline study conducted in Jalalabad in 2008 by SCS-N indicates that the use of violence against children by teachers continues to be a common practice in schools, with verbal abuse being the most prevalent form. Children were physically abused in 100% of observed classrooms in the boys’ school(s) and in 20% of observed classes in girls’ schools; the stick was found to be the most common method of discipline for both boys and girls.85

135. The same research found that over 50% of teachers were not aware of the ban on physical and humiliating punishment and believed that they had the right to beat their students. On the other hand, the teachers who were aware continued to beat the pupils, believing that physical punishment was an essential practice to maintain discipline.86

Teacher training and adequate number of female teachers

136. Despite the need for more female teachers, their enrollment in teacher training courses remains minimal. Numbers indicate that there are 64% male students in teacher training courses compared with 36% female students.87

Curricula development

137. Education in Afghanistan is closely associated with Islamic teaching, requiring children to learn from religious texts. Children from minority (particularly Hindu)
communities are deprived of learning about their religion through the education system.

138. AIHRC is cooperating with MoE to revise text books to ensure that they respect human rights and dignity, and replace messages of violence and hatred among children, which have been inserted in text books during war time. To date, text books for primary grades have been revised and work on books for secondary grades is in progress.

139. The lack of space for cultural development and sport activities in school curricula is concerning. From the consultation conducted in preparation for this report, it was found that only half an hour per week is allocated for sports activities in the school curricula; these are normally not implemented due to a lack of space, particularly in girls’ schools.

140. Concern is expressed over the content of schools text books which is inappropriate and too advanced for the age of the children.

### Sexual harassment

141. Sexual harassment in schools, or on the way to school, is a major concern. The sensitivity of this issue means that cases are rarely reported, however, the baseline study conducted by SCS-N in Jalalabad city reveals that sexual harassment and abuse has been reported directly and indirectly by boys and teachers. Reports of rape of male students by older boys against younger boys indicate a high rate of sexual abuse in the boy’s school with teachers and older boys as the prime perpetrators. Sexual abuse was repeatedly mentioned by male students as something that they needed protection from.88

142. While no such cases were reported from girls’ classes, girls were found more vulnerable to sexual violence on the way to and from school.

### Schools under attack

143. The number of attacks by insurgents on educational facilities has risen dramatically in the last couple of years and has caused children to drop-out from school. In 2007, there were 55 security threats and over 180 male teachers and sexual advances by older boys against younger boys indicate a high rate of sexual abuse in the boy’s school with teachers and older boys as the prime perpetrators. Sexual abuse was repeatedly mentioned by male students as something that they needed protection from.88

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### Schools under attack

143. The number of attacks by insurgents on educational facilities has risen dramatically in the last couple of years and has caused children to drop-out from school. In 2007, there were 55 security threats and over 180
attacks carried out on schools, killing 108 people and injuring 154. In the first three months of 2008, there were five threats and 24 attacks killing two people. The situation is particularly critical in southern Afghanistan where the insurgency is strongest. Attacks on schools are usually the last step in a long process of intimidation to keep Afghan children, particularly girls, out of school.

144. The widespread nature of insurgent attacks on Afghanistan is confirmed by HRW who reports at least seventeen assassinations of teachers and education officials in 2005 and 2006; and more than 204 attacks on teachers, students, and schools between January 2005 and June 21, 2006. According to all available information, the situation has become significantly worse since then and attacks on schools continued to increase throughout 2007 and 2008.

145. MoE reports that 42% of schools in Kandahar and Uruzgan provinces, 49% in Paktika, 69% in Zabul and 59% in Hilmand Province were closed this year 2008 due to the increase of insurgent activities in these areas. The MoE reported the killing of 357 students and teachers during last year, but a sharp increase is seen this year with 226 assassinations in the last 7 months. The number of Shabnama (night letters) and intimidations have also increased from 57 cases for the last year to the 54 cases in the last seven months.

146. Girls going to school have also been targeted by acid being thrown at them. Such actions have forced the closure of more than 200 schools in 2007. Schools where boys and girls attend classes together or where they share a building were the primary targets of the attacks. In November 2008, girls going to school in Kandahar province were attacked by two men who threw acid at them. The girls were seriously injured, and it is reported that two became blind.

147. School children are likely to be threatened and attacked by other means. A well-known example took place in Baglan province in 2007, when a large number of school children welcomed a group of MPs who visited the province. A suicide bomber attacked the gathering, targeting the MPs and killing around 60 children; many others were injured. After this incident the MoE sent an immediate directive to all its departments ordering them to avoid the use of children in such ceremonies. Other types of attacks and intimidation techniques include threatening letters, threats of kidnapping, attacks on teachers, and the intimidation of local officials.

148. Two cases of poisoning were reported in two girls’ school in Parwan province in 2009; affecting 80 students and teachers in total, who were admitted to hospitals immediately. AIHRC reports that this has raised local concern and may result in families preventing their children from attending school if the problem escalates.
AIHRC reports a decrease in attendance amongst those who regularly attend school (8% for boys and 10.5% for girls). This decline is arguably linked to increasing insecurity and in particular to threats and attacks against schools and families who send their children there. When insurgents attack schools, teachers and students, their intent is to destroy the education system in Afghanistan at any cost. Security was the number one reason cited when AIHRC investigated allegations of girls being prevented from going to school by their relatives.

**Recommendations:**

- Appointments of teachers in primary and secondary schools, capacity development and quality of training of teachers should follow a system of inclusion for all children regardless of sex, physical or mental abilities;

- A special programme for the education of girls and other vulnerable groups is needed with exclusive budget provisions.

- Rest, recreation and leisure should be included as core components of the education system.

**VI. Special protection measures**

*Articles 22, 30, 32, 33, 34, 35, 37, 38, 39 and 40*

**Children and armed conflict**

All children in Afghanistan are directly affected by conflict. Explosions, suicide attacks and airstrikes by insurgency and pro-government forces have caused damage to the normal growth and development of children. Although the number of civilian causalities is rising, there are limited reliable and impartial resources available to provide an accurate and disaggregated record of the situation of children living under armed conflict in Afghanistan. Analyzes made in this report are based on resources using non-disaggregated data.

**a. Child casualties as a result of operations by pro-government forces**

Airstrikes by pro-government forces are one of the major causes of child casualties. UNAMA reports that airstrikes were responsible for 25% of all civilian causalities in 2008; 63% of pro-government forces caused civilian causalities.

"We were asleep when the explosion happened. We woke up in fear and I didn’t know what and why it was happening to me and my family ... We came out from the house to go to a safer place... The Americans fired at us and shot me several times on my left hand. My little sister, 5 years old, who was sitting behind my father on a motorbike, also got injured. ... I don’t know why they were shooting on us. We were not Talib or their enemy."

Boy, 15 years-old, Herat province
A combined air and ground offensive in Azizabad village, Shindand district, Herat province, by international military forces and Afghanistan National Army (ANA) on 22 August 2008, resulted in 78 civilian casualties and 91 fatalities, of which 78 were positively identified as civilians, comprising 59 children, 16 women, and three elderly men. Two ANA commanders involved in the operation were reportedly dismissed and under investigation for their involvement. The Afghan government paid a sum to the family of those killed and to those injured however; the US military did not offer any monetary “condolences” to civilians and indicated no future plans to do so in a press conference.98

Cases have been reported from Zerkoh village, Shindand district of Herat province, where many children have been killed or injured while escaping the battlefield.99

On 6, July 2008, at 6:30am, international military forces bombarded a wedding party traveling in a remote district of Nangarhar province. Forty-seven were killed and at least 10 others were injured, primarily women and children. Locals and local officials reported that the strike was the result of bad intelligence and that the attack could have been prevented if international forces had coordinated their activities or checked their intelligence with local officials.100

Firing on women and children, and the bombing of civilian houses has caused significant community outrage. The absence of any efforts to investigate or acknowledge claims of potential civilian casualties has exacerbated this resentment. Concern with many of these cases is not just that insufficient care was taken to protect civilians, that there was a failure of intelligence, or a lack of respect or sensitivity in operations; it is more that any misconduct or violations would subsequently be ignored, and that those pro-government forces responsible would not take responsibility or be held accountable for their actions.

b. Child casualties by acts of insurgency

In an attempt to weaken the Afghan government, insurgents in Afghanistan are systematically terrorizing the civilian population with “night letters,” kidnappings, executions (often by beheading) and other crimes.101

“In...2007...at 3:00 pm when my father, mother, brothers, sisters and I were sitting in the yard, a rocket suddenly hit our house and exploded. I lost my left leg. My father, my 8 year-old nephew and my brother’s wife were injured. My mother and my 8-year-old sister were killed. My father was a teacher but after he was injured in that incident he quit his job and now he’s out of work.”

Boy, 17 years old
Source AIHRC
157. Rocket attacks targeting military locations have also resulted in civilian casualties including a high toll of children.

158. The number of suicide attacks by insurgents has risen sharply since 2006, intentionally targeting and killing civilians.\textsuperscript{102}

159. Attacks on schools and teachers by insurgent rockets, and suicide bombers in civilian areas have resulted in attacks on teachers and schools, as well as children, effecting access to education. Bombing and arson attacks on Afghan schools has doubled, from 91 reported attacks in 2005 to 190 attacks in 2006.\textsuperscript{103}

160. The case of a 15-year-old child hanged by the Taliban accused of spying for American forces in southern Afghanistan reveals that insurgents directly target children.\textsuperscript{104}

161. It is also reported that children have also been used by the Taliban in insurgency operations. For example, in September 2006, a child dressed in civilian clothes escaped the notice of the guards at a large funeral of the Governor of Paktia and detonated himself in a crowd of civilians and police.\textsuperscript{105}

162. Complying with UN SCR 1612, the UN in Afghanistan launched a Country Task Force on Monitoring, Reporting and Response (CTFMRM) in July 2008 and produced its first annual report in August 2008. The establishment of the MRM provides the information necessary to conduct advocacy and will serve to guide program design for the protection of children. It will also serve as an early warning system and will enable prompt and relevant programmatic interventions.

\textit{Administration of juvenile justice}

\textbf{a. Age verification}

163. Juvenile justice in Afghanistan is regulated by the Children in Conflict with Law enacted by presidential decree since 2003; however this law is still under discussion in the parliament.

164. Although the minimum age of criminal responsibility is 12 years-old, children below this age have been reported in juvenile rehabilitation centers. Whilst conducting research in 22 provinces, AIHRC identified 5 children below the age of 12 in rehabilitation centers, 4 of whom had spent more than one month there.\textsuperscript{106} Accurate age determination is very difficult because many children do not know their exact age or date of birth, and do not have identity cards. An effective birth registration system is not in place and it is estimated that less than 10\% of births are registered.

\textbf{b. Initial contact with family}

165. The principle of ensuring initial contact with family at time of arrest has not been regarded adequately.\textsuperscript{107} In 32\% of cases reported by AIHRC/UNICEF, parents or
guardians were not informed of the arrest of the child (36% boys, 8% girls); 10% of child respondents were actively denied meeting their parents or guardians thereby increasing their vulnerability.

166. Immediate release after arrest is not practiced in Afghanistan due to factors including limited skills and awareness of police and other related authorities. Out of the 71 juveniles who participated in the consultation session for this report, 68 (96%) resented the police for failing to inform the juveniles’ families upon arrest.108

c. Torture
167. Torture is prohibited in all circumstances, as guaranteed in the Constitution and the Juvenile Code. However, research conducted with children in conflict with the law in 22 provinces of the country by AIHRC -UNICEF found that the use of physical force, abuse and torture were common during arrest and questioning:
   a) 48% of children reported being beaten by police personnel during arrest;
   b) 62% of juveniles reported being handcuffed during arrest and many interviews revealed the use of ‘shackles’ during detention to prevent escape at night, during transportation or even as a form of punishment;
   c) 59% of respondents were taken into police custody before being referred to the juvenile facilities;
   d) Only 21% of juveniles reported that they were not ill-treated in police custody.109

168. During the consultation session with children in preparation for this report, it was alleged that one of the children brought to the juvenile center the day before the consultation took place could not participate as he was too severely beaten by police to be able to sit or walk properly.110

169. A consultation session conducted with 71 juveniles in another juvenile center revealed that 68 of the juveniles (96%) feared police as they had experienced punishment and physical abuse by them during arrest and detention.111

d. Access to legal aid
170. Children’s access to legal advice, parent/guardian presence and counseling services are not always addressed. This situation is improving gradually, but according to data registered with AIHRC, in 2007:
   - Only 8% of juveniles were explained their rights upon arrest;
   - 56% of respondents reported that they had not given their statement voluntarily;
   - Only 38% of juveniles had seen ‘their’ statement;
   - In detention, only 23% of respondents had access to a lawyer (17% of males and 62% of females);
   - In court, 38% of juvenile respondents had a defense lawyer.112

In relation to their status as juveniles:
   - 7% were presented before a children’s court;
8% of children had a parent, guardian or social worker present when their statement was taken;
43% had a parent or guardian present during the trial.\textsuperscript{113}

This is significant because the immediate assistance of family members and/or legal representatives is crucial in protecting children in the justice system and ensuring access to their rights. The risk of torture and abuse is reduced when family members, legal guardians and lawyers are actively involved in a juvenile’s case.

\textbf{e. Background of children in conflict with law}

171. Studies in Afghanistan show that 97% of children in conflict with law come from families described as very poor, poor or middle income.\textsuperscript{114}

\textbf{f. Alternative measures to imprisonment and pre-trial detention}

172. Contrary to the government report, in almost no case have available means to replace imprisonment been used. Detention of juveniles is a first resort due to limited awareness of other alternatives, revealed through interviews with judicial officials.

173. A considerable number of juveniles are detained pretrial. AIHRC – UNICEF reports that at least 41\% of respondents were in the juvenile rehabilitation centers awaiting trial or delivery of the verdict from the court; another 3\% of juveniles reported lack of guarantee as the reason for their detention.\textsuperscript{115}

174. According to the Juvenile Code, 40 days is the maximum length of time a juvenile can be detained from arrest to completion of trial. With 41\% of respondents in the juvenile rehabilitation centers awaiting trial, AIHRC – UNICEF found that:

\begin{itemize}
\item only 16\% of respondents had spent less than 1 month in the juvenile rehabilitation centers;
\item 46\% of respondents reported having been detained in the centre for a period of 1-6 months;
\item 30\% of respondents had spent more than six months in the juvenile rehabilitation centers.\textsuperscript{116}
\end{itemize}

In the consultation for this report, the majority of participating children:

\begin{itemize}
\item disliked prosecutors for proposing long sentences for minor offenses;
\end{itemize}
• believed that judges treated children badly;
• reported that judges did not listen to the defense lawyers.\textsuperscript{117}

175. Children express great concern over their unlawful detention and long delays in the process to final decision which jeopardize children’s access to education and right to live with their family.\textsuperscript{118} No mechanism of compensation is available.

\textbf{g. Facilities in the juvenile rehabilitation centers}

176. Children in rehabilitation/juvenile centers are not adequately provided with care, protection, education and vocational training. Although the majority of provinces have a juvenile center they are often in rented houses where there are limited facilities.

\textbf{h. Reintegration and need for social services}

177. Juvenile centers provide limited support for the rehabilitation and reintegration of juveniles; numerous children report living in an atmosphere of fear. Many juveniles are rejected by their families upon release, especially when they have been accused of moral offences. No social services exist to facilitate the contact of juveniles with their families and reintegration after release.

\textbf{Sexual exploitation}

178. Legislation in Afghanistan does not distinguish different forms of sexual abuse. Only rape and extreme molestations are specifically mentioned in the Panel Code of the country. Abuse in homosexual relations is not mentioned.

179. The number of sexual abuse cases in Afghanistan is significantly under-reported, particularly in cases where the child has been abused a parent, relative or another person known to the child, reflecting prejudice about this issue.

180. Cases reported to the police are inadequately followed up. In some cases the perpetrator is not arrested and in other cases they are released by the court for lack of “proper evidence”.

\begin{quote}
“Our situation in the rehabilitation centre is not good. A few days ago a child ran away from the centre. Since then us six remaining inmates are shackled from 8 o’clock at night until 9 o’clock in the morning. Due to fear from, and intimidation by, security guards and the head of the rehabilitation centre, we do not dare to say anything to monitors. There is no adequate space, insufficient food, and no access to education and vocational training in the centre.”

Boy, 13 years-old

Source: AIHRC
\end{quote}

\begin{quote}
A 14 year old girl was sold by her step-father for marriage to an 80 year old man for $2000. She was then sold on to another man for $5000. When the man had sexual intercourse with her she went into a coma and was transferred to hospital where police began to investigate the case. She was transferred after 3 days to the prosecution office and then to a rehabilitation center. She remained there for 3 ½ months with the judge insisting she should marry the man. Only after intervention of AIHRC and the Child Protection Action Network was she finally released from illegal detention.

Source: AIHRC/UNICEF DATE: 2007

Justice for Children.
\end{quote}
181. Recent figures by AIHRC shows 37 cases of rape leading to death of the victim over a period of 7 months in 2008.119

182. Boys are more at risk of sexual abuse than girls, and most of the perpetrators have been either children or slightly older at an average age of 19.

183. Child victims of sexual abuse are often held responsible for the crime. A study by AIHRC reveals that high numbers of children in juvenile centers are victims of sexual abuse, held equally responsible for the act committed.120

184. A number of cases of sexual abuse of children in institutions by officials were reported in 2008. One case, from a juvenile center in Badghis province, reported that the head of the juvenile center sexually abused juvenile girls held in custody.121 Although this abuser was arrested and is now serving his sentence in prison, such cases raise alarm about the well-being of children in government-run institutions. Similar cases also have been reported from a number of other institutions.122

185. No systematic preventative or protective approach is in place for cases of child sexual abuse. The major issues of concern include a lack of a legal definition of sexual abuse; limited sensitization and awareness among officials dealing with cases of child sexual abuse; lack of services for victims of abuse and inadequate follow up by the judiciary resulting small number of offenders faced punishment.

Sale, trafficking and abduction

186. Child trafficking has only gained recognition in Afghanistan since 2003, when the government of Saudi Arabia announced that it would deport a high number of trafficked Afghan children. Most of these children were staying there illegally with their families, and many had trafficked with the consent of their parents.123

187. AIHRC, civil society organizations, UN and the government initiated a joint program aiming to address the problem of child trafficking. One of the major outcomes was a National Plan of Action on Combating Child Trafficking (2004). The Action Plan defines child trafficking and lays out actions to be taken by different organizations to combat this issue. The actions include awareness-raising campaigns, technical capacity-building of police and security forces, active

Source: report from AIHRC regional office in Heart, Afghanistan
Children are used by drug traffickers to transport drugs through the Afghan – Iran border. In the year 2008, AIHRC identified 14 children from one village in Herat jailed in Iran. At least 2 of the children are charged with the death penalty by Iranian courts.”

Source: AIHRC
194. The use of children for begging and trafficking of drugs are among the issues of major concern. For example, 14 Afghan children were jailed in Iran charged with drug trafficking in 2008. AIHRC, with support from UNICEF, has established a border monitoring program on the two major borders with Iran to monitor such cases closely.

195. Since there is no overall comprehensive national strategy to address the problem of child labor, it is feared that other worse forms of child labor are rising.

196. A lack of political will, and absence of mainstreaming rehabilitative programmes, deprives working children with adequate opportunities for their development.

197. Civil society believes that addressing the problem of child labor is not possible in a vacuum; the implementation of wider social security programs is needed to support poor families. In a consultation session with 25 working children in Bolkh province, children have asked the government to provide their fathers with secure jobs so that they can have the opportunity to stop working and return to school.\textsuperscript{126}

**Recommendations:**

- The Child Protection Secretariat of MoLSAMD and the child rights unit at AIHRC need to be supported and strengthened through capacity building exercises to be empowered to generate vital information from state bodies at national and provincial levels, to better ensure the protection of children at risk.

- The juvenile justice system needs to be strengthened with adequate resources and capacity to reach children all over the country and prevent the re-victimization of children by the state;

- The culture of impunity towards crimes committed against children should be replaced by a culture of accountability with due consideration to the best interests of the child;

- Special measures should be taken to address causalities of children living in armed conflict; both government and anti-government operations should minimize damages to the lives of children.
VII. Conclusion

198. This report demonstrates that although policies and documents related to the implementation of the rights of the child are largely in place, the NGO coalition have not been able to find any evidence of adequate resource allocation (mainly financial) to carry out implementation. This has resulted in the poor or non-existent provision of services for many children.

199. Inconsistency in minimum age provision in many areas (e.g. Minimum age of marriage; age of employment; age of maturity) create double standards in the implementation of Afghanistan's laws relating to children.

200. Lack of clarity among different institutions dealing with children's lives, and the absence of a national focal point in the government to take the lead on all issues related to children, have caused double standards in rules and regulation and their implementation. A clear example mentioned throughout the report is the disparity in defining a child.

201. The situation of children, both in the area of protection and promotion of their rights, suffers from the lack of a data collection and documentation mechanism. Important data including the number of children in the population, number of children with disabilities, number of working children, number of children affected by armed conflict, and number of child victims of abuse are not available. This leaves no space for measuring any change or improvement in the situation of children. Disaggregation by sex or age is rarely available in existing government data.

202. Limited professional staff trained to work with children at all levels, including kindergartens, schools and in the public service, and especially those trained to work with vulnerable groups of children, including those with disability and child victims of abuse, can lead to the double victimization of children. Social workers are in particular need to deal with different groups of children in Afghanistan.

203. Social and economic challenges in Afghanistan have put children in a very vulnerable situation; the poor socio-economic situation of families reduces the child’s opportunity for healthy growth and development. Moreover, the deteriorating security situation and military operations place children’s lives at great risk.

204. The interconnectivity of children's rights is not recognized in the government's policies and programs. One unified approach is needed to capture all children’s rights and needs. Coordination among institutions is required to ensure adequate monitoring and implementation of every single right for every single child.
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Most of the figures and information on child casualties used here are taken from the report “From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces in Afghanistan”, published by AIHRC in December 2008. That report does not provide detailed information on the total number of children
killed during PGF operations, but from the cases presented throughout the report and the analyses made, a conclusion on the situation of children under armed conflict can be drawn.

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IX. Annex I: Recommendations

General principles

1. The culture to listen and respect the views of the child at all levels of family, society and government should be promoted to address the marginalization of children from government policies and programs. Children’s participation in relevant social structures needs to be ensured within effective mechanisms.

2. A Child Act should be drafted with the view of non-discrimination and best interests of the child to address all needs and rights of children.

Civil rights and freedoms

3. Special Budgets and resources should be allocated immediately to ensure the provision of services and care for child victims of abuse.

Family environment and alternative care

4. Government should address the root cause of the increasing numbers of working children through establishing a comprehensive socio-economic security mechanism, including the provisions of special schemes for poor parents and those of vulnerable backgrounds to provide them with basic assistance to ensure the healthy upbringing of their children.

5. Alternate care of separated children (children in orphanages, children in rehabilitation centers and children in prison with their mothers) should be improved to address the basic rights and needs of children.

Basic health and welfare

6. Ensure quality and access to health care services for poor households;

7. An extensive health education program is needed, especially on women’s and children’s health, to address critical health challenges;

8. Community-based health programs need to be improved through capacity-building. The number of trained dais (mid-wives) needs to be increased;

Education, leisure and cultural activities

9. Appointments of teachers in primary and secondary schools, capacity development and quality of training of teachers should follow a system of inclusion for all children regardless of sex, physical or mental abilities;
10. A special programme for the education of girls and other vulnerable groups is needed with exclusive budget provisions.

11. Rest, recreation and leisure should be included as core components of the education system.

Special protection measures

12. The Child Protection Secretariat of MoLSAMD and the child rights unit at AIHRC need to be supported and strengthened through capacity building exercises to be empowered to generate vital information from state bodies at national and provincial levels, to better ensure the protection of children at risk.

13. The juvenile justice system needs to be strengthened with adequate resources and capacity to reach children all over the country and prevent the re-victimization of children by the state;

14. The culture of impunity towards crimes committed against children should be replaced by a culture of accountability with due consideration to the best interests of the child;

15. Special measures should be taken to address causalities of children living in armed conflict; both government and anti-government operations should minimize damages to the lives of children.
X. Annex II: Afghanistan UNCRC Civil Society members

This report has been produced by Save the Children Sweden-Norway.

The non-governmental organizations listed below support this report to the UN Committee on the Rights of the Child.

Afghan Association for the Blind
Afghan Independent Human Rights Commission (AIHRC)
Afghan Women’s Education Center
Afghanistan Human Rights Organization
All Afghan Women’s Union
Aschiana
Best Education and Employable Skills Training
Child Fund Afghanistan
Children in Crisis
Children’s Rehabilitation Center
Church World Service
Coordination of Afghanistan Relief
Coordination for Relief
Drwaz Rehabilitation and Service Association
Family Welfare Focus
Foundation for Cultural and Civil Society
Global Education Sport
Humantrain Assistant for Women and Children of Afghanistan
Ibnisna
International Medical Corps
International Rescue Committee
Just for Afghan Capacity and Knowledge
Legal and Cultural Service Organization for Afghan
Mini Mobile Circus for Children
Norwegian Afghanistan Committee
Reconstruction Service Association
Reconstruction Services for Afghanistan
Save the Children Sweden-Norway
Save the Children UK
Save the Children USA
Social Volunteer Foundation
STEP Health and Development Organization
Swedish Committee for Afghanistan
Terre Des Hommes
WADAN Afghanistan
War Child Holland
World Health Organization
Women and Children
Women and Children Legal Research Foundation
Women’s Education Center