



Convention on the Rights of the Child

Distr.: General
13 June 2010

Original: English

Committee on the Rights of the Child

Consideration of reports submitted by States parties under article 44 of the Convention

Initial report of States parties due in 1996

Afghanistan*, **

[28 August 2009]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

** Annexes are available only in English and may be consulted in the files of the Secretariat.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–38	5
A. Land and people	9–10	7
B. Social system.....	11–12	7
C. Economic system.....	13–15	8
D. Legal and political system	16–17	9
E. Legal mechanisms for the protection of human rights within the Islamic Republic of Afghanistan	18–27	9
F. National monitoring and supporting human rights institutions	28–38	11
II. General measures of implementation	39–71	13
A. Provisions of the Constitution	40–41	13
B. Harmonization of national laws.....	42–50	14
C. Harmonization of national strategies, policies and mechanisms for monitoring and protecting child rights	51–68	15
D. Dissemination of the Convention	69–71	20
III. Definition of the child	72–85	20
IV. General principles	86–104	22
A. Non-discrimination.....	86–90	22
B. Best interests of the child.....	91–95	23
C. The right to life, survival and development.....	96–100	24
D. Respect for the views of the child.....	101–104	25
V. Civil rights and freedoms	105–144	26
A. Right to have a name, nationality and to know and be cared for by parents	105–110	26
B. Preservation of the child’s identity	111–114	27
C. Freedom of expression	115–123	27
D. Freedom of thought, conscience and religion.....	124–127	28
E. Freedom of association and peaceful assembly	128–132	29
F. Protection of privacy	133–135	30
G. Child’s access to information and the role of mass media.....	136–138	30
H. Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment	139–144	31
VI. Family environment and alternative care	145–192	32
A. Parental guidance and the child’s evolving capacities.....	145–147	32
B. Parental responsibilities and State assistance	148–155	33
C. Separation from parents.....	156–159	35

D.	Family reunification	160–161	35
E.	Illicit transfer and non-return.....	162	36
F.	Recovery of maintenance for the child.....	163–168	36
G.	Children deprived of their family environment	169–178	37
H.	Adoption.....	179–180	40
I.	Periodic review of placement and treatment.....	181–183	40
J.	Protection from all forms of violence.....	184–189	41
K.	Rehabilitation and reintegration of victims of violence.....	190–192	42
VII.	Basic health and welfare	193–226	43
A.	Right to life, survival and development.....	193–209	43
B.	Rights of children with disabilities.....	210–216	47
C.	Right to health and access to health services.....	217–221	49
D.	Right to social security	222–223	49
E.	Right to an adequate standard of living	224–226	50
VIII.	Education, recreation and cultural activities	227–258	50
A.	Right to education.....	227–250	50
B.	Aims of education.....	251–254	58
C.	Right to recreation, leisure and cultural activities	255–258	58
IX.	Special protection measures.....	259–356	59
A.	Children in emergency situations	259–280	59
B.	Children under prosecution in the judicial system.....	281–315	62
C.	Children in situations of exploitation	316–351	68
D.	Children belonging to a minority or an indigenous group	352–356	75
X.	Conclusion	357–361	75
Tables			
1.	National gross domestic budget		8
2.	Mortality rates		17
3.	Children in day centres (2008).....		34
4.	Afghanistan's population covered by social protection (2008).....		37
5.	Children in private orphanages		39
6.	Reported cases of abuse against children (2008)		42
7.	Child and infant mortality rates.....		43
8.	The coverage of vaccination programmes for the years 2003, 2005, and 2006		45
9.	The distance of health centres from residence		45
10.	Educational budget (2005–2008)		51
11.	Some education statistics		51

12.	Information on Early Childhood Development (ECD) playgroups in Afghanistan.....	53
13.	Community-based schools 2008	54
14.	Gender parity ratios in the education system of the country (2004)	55
15.	Existing public schools in the country (2009).....	55
16.	Types of employment of children	70

I. Introduction

1. Afghanistan, in direct cooperation with the international community, has accomplished a number of important achievements: formation of a political system; adoption of a new Constitution; holding elections; reform of the legal and judicial systems; adoption and amendment of a number of laws to comply with human rights standards; protection and monitoring mechanisms; congenial environment for the growth of 102 political parties, 1348 social organizations, and 1285 non-governmental (NGOs); enrollment of more than six million children in schools, a third of whom are girls; establishment of private schools and higher education institutions; increased access to health services; freedom of expression through various forms; and extensive public access to telephone and internet services. Furthermore there have been improvements in the legal, political, economic, and social spheres for citizens, especially for children and women.

2. Afghanistan, however, still faces a wide range of challenges in the political, social, and economic arenas. There are challenges in ensuring the promotion and protection of human rights of all its citizens, failure to implement transitional justice, impunity, civilian casualties by anti-government groups and international forces, existence of extensive corruption, and lack of capacity in government and civil society institutions. Insecurity and rule of law is another major challenge that has made accessibility to humanitarian and development programme difficult especially in the south and south east parts of the country. There are a number of weaknesses of the rule of law and contradictions between a number of statutes and the Constitution. There is a serious lack of systematic mechanisms for gathering disaggregated data. There is an increasing number of drug addicts being reported, dire conditions of refugees and internally displaced persons, an imbalanced development between urban and rural areas, a high ratio of poverty and unemployment, and violence against women and children.

Methodology of preparing Afghanistan's initial report

3. The process for preparing the initial report began at the initiative of the Ministry of Foreign Affairs (MoFA) of the Islamic Republic of Afghanistan in direct cooperation with Ministries of Labor and Social Affairs, Martyrs and the Disabled (MoLSAMD); Ministry of Justice (MoJ); Ministry of Public Health (MoPH); Ministry of Information, Culture and the Youth (MoICY); General Statistics Department; Office of the President's Advisor on Children and Youth; Office of the President's Advisor on Education and Health; Afghanistan Independent Human Rights Commission (AIHRC), Embassy of Norway, Embassy of Turkey, UNICEF Afghanistan, the United Nations Assistance Mission to Afghanistan (UNAMA), and Save the Children Alliance amongst other civil society organizations (see annex 1: List of civil societies involved in the reporting process) and was completed in April 2009.

4. Afghanistan has ratified the United Nations Convention on the Rights of the Child in 1994 without any reservations. In accordance with article 44, paragraph 1(a) of the Convention, Afghanistan should have submitted to the Committee its initial report in 1996. Due to three decades of war and instability the report could not be initiated on time. As a result of three decades of war, and because of Afghanistan's fragile security situation, political instability, poverty, social turmoil, lack of technical and economic capacities, and lack of experience in the Government apparatus, preparation of this report was postponed until the establishment of the newly elected Government. The process for preparing the initial report finally began in May 2008. The initial report to the Committee covers the period from 1994 to 2008.

5. In preparing the report, under the Ministry of Foreign Affairs (MoFA), a Coordination Unit was created within the Directorate of Human Rights and Women's International Affairs (DHRWIA) that was responsible for the overall coordination to prepare the present report. Under MoFA, a Steering Committee¹ was made up of high level Government officials, civil society, and international organizations to provide MoFA with the necessary executive and advisory decisions and to guide the overall process. Under the Steering Committee, a reporting process Drafting Committee² was formed made up of focal points from the seven thematic groups: General Implementation Measures, Definition of Child, Civil Rights and Freedom, Family Environment and Alternative Care, Basic Health and Welfare, Education, Leisure and Cultural Activities, and Special Protection Measures, according to the Committee's guidelines. The Drafting Committee compiled, coordinated, guided and analyzed information gathered from the seven thematic groups to produce one comprehensive report. Later, a 12-month Action Plan for the report process was prepared which included the development of reporting standards and capacities, methodology for collecting and analyzing information, participation of stakeholders (including children and parents), and civil society organizations, public awareness, capacity building, and consultations.

6. The information for the report was collected through a comprehensive desk review by each thematic group under the guidance of focal persons utilizing checklists/guidelines provided by the Coordination Unit of the DHRWIA. Over a period of three months the thematic groups collected and analyzed their data. With the Drafting Committee the Coordination Unit prepared the first draft of the national report after analyzing and consolidating information. This draft was presented for consultation through a workshop, to the Child Protection Action Network (CPAN), government agencies, and other organizations active in the field of human rights and child rights. In the process of preparing this report, based on guidelines of the Committee, comprehensive research and participatory method of gathering information was utilized to every extent possible. The process of preparing the report was based on the principles of transparency, participation, accountability, non-discrimination, and inclusiveness.

7. Every attempt has been undertaken to ensure that the report has been participatory by including children and their views in the final draft. In order to involve children, parents, and civil society organizations in preparing the report, direct consultations took place at the local level. Seven regional consultations³ were held with children with the support of Save the Children Norway-Sweden and MoLSAMD during the period of July and December 2008 and five regional consultations⁴ were held with adult stakeholders during December 2008 and January 2009 with support of MoLSAMD. The outcomes of those regional consultations were compiled and incorporated into the final draft of the national report in April 2009. Finally, a meeting of the Steering Committee was held to review the final draft and the report was approved in this meeting.

¹ Steering Committee members are: Directorate of the Office of Human Rights & Women's International Affairs of the Ministry of Foreign Affairs, Directorate of Law and Treaties, Ministry of Foreign Affairs, OHCHR, UNICEF, MoLSAMD, MoJ, MoPH, MoE, MoICY, MoI, Child Protection Advisor to the President, Health Advisor to the President, Education Advisor to the President, AIHRC, and Save the Children Alliance.

² Drafting Committee members are: MoFA (two members), MoJ, MoPH, MoE, MoLSAMD, CSO, UNICEF-Afghanistan, AIHRC, Save the Children Alliances and a local NGO Family Welfare Foundation (FWF).

³ Consultations were held in Kabul, Herat, Mazar, Konduz, Kandahar, Nangarhar and Paktya.

⁴ Consultations were held in Kabul, Mazar, Kandahar, Nangarhar and Paktya.

8. The report has been conducted by reviewing and studying the current laws, policies, administrative procedures, judicial decisions and national strategies. Comprehensive desk research, checklists/guidelines and participatory methods of gathering information was utilized to every extent possible, including a number of consultations with children and adults from different provinces, socio-economic, and ethnic backgrounds. Capacity building, fund raising, advocacy and lobbying, data gathering, and methodology for collecting and analyzing information were conducted. The reporting process was based on the principles of transparency, participation, accountability, non-discrimination and respect for views of others.

A. Land and people

9. Geography: Afghanistan is located in the centre of Asia and gained its political independence from Great Britain in 1919. Afghanistan borders with the Republics of Tajikistan, Uzbekistan and Turkmenistan in the north, in the northeast with the People's Republic of China, in the east and south with the Islamic Republic of Pakistan, and in the west with the Islamic Republic of Iran. The territory of Afghanistan is 652,846 square km (equivalent to 252,072 miles). It is administratively divided into 34 provinces and 364 districts. In terms of topography Afghanistan is a mountainous country with a climate varying between cold winters and hot summers.

10. Population: Afghanistan rates as the forty-fifth most populated country in the world. Life expectancy in the country is 44 years and the annual birth rate is 2.03 per cent. Although there has been no census conducted in Afghanistan since 1979, according to the Afghanistan Central Statistics Department the estimated population of Afghanistan is 25 million (including an estimated 1.5 million nomads).⁵ According to the statistics, 52 per cent of the population is aged below 17 years and out of this 16 per cent are under the school age.⁶ The average number of family members is 6.3 and 3.3 per cent of families are headed by women; four per cent by men with disabilities; and 3 per cent by women with disabilities. Fifty-one per cent of the population is male and 49 per cent female; the difference decreases after 24 years of age. Overall, 24 per cent of the population can read and write, however literacy rate differs in urban and rural areas and is 49 per cent and 20 per cent respectively and only 5 per cent of the nomads can read and write.

B. Social system

11. Afghanistan is a multi ethnic/cultural and traditional society and daily lives for many are governed by customary practices, some of which are in contradiction with the Islamic law. Poverty, illiteracy, and over 23 years of conflict have exacerbated the situation, especially for children. In urban areas social classes are divided by profession, economic status, and political influence. Most of the people hold random jobs and live without social security or amenities. In rural areas big landowners, religious leaders, former military commanders, and the politically elite form the prominent social class while the majority of the people are engaged in agriculture, animal husbandry, and small rural industries.

12. Despite this, there is a growing middle class in the country after the fall of the Taliban, mostly made up of professional individuals such as lawyers, doctors, engineers, journalists, and small businessmen. Islamic beliefs have a practical impact on the lives of

⁵ Central Statistics Organization, 2007–2008, *Afghanistan Statistical Yearbook*, Kabul.

⁶ Statistics quoted on households and literacy is quoted from Afghanistan's Common Core Document 2007.

the people and have created a unified way of living founded on social conservatism in parts of the country. Relations between men and women are dictated by laws and regulations based on Sharia and social customs. The formation of families is through marriage. For more information see section, 'Recovery of Maintenance of Child'.

C. Economic system⁷

13. In accordance with the 2004 Constitution, Afghanistan's economy is based on a market system.⁸ Agriculture contributes to 47 per cent of the country's revenues which is the main source of income for the people. Twenty-seven per cent of the people are involved in business and 23 per cent in animal husbandry. One in every 20 families income is provided through handicrafts and remittances from abroad. Nineteen per cent of rural families, seven per cent of nomads, and five per cent of urban families have at least one member living abroad. Among 58 per cent of urban families business is the main source of income. In rural areas agriculture provides for the income of 57 per cent of the people and for 34 per cent of the people non-agricultural activities is the main source of income. Seventy-four of the nomads are involved in animal husbandry and 29 per cent in other activities. Receiving micro loans is another system of income for the people in combating their dire economic situation. Statistics show that 42 per cent of rural families and 25 per cent of nomads have used this loan system.

14. The following provides details of Afghanistan's national gross domestic product (GDP), GPD per person, and the national budget between 2002 and 2008:

Table 1

National gross domestic budget

2002	2003	2004	2005	2006	2007	2008
<i>National GDP in million USD</i>						
4 388	4 763	5 729	6 852	8 186	10 170	10 662
<i>GDP per person in USD</i>						
201	215	247	290	340	415	426
<i>Government National Budget in million USD</i>						
346.4	637.1	919	1 849.5	2 146.7	2 626.9	3 661.9

15. Forty-two per cent of the population are living below the poverty line. There are 360,000 people employed by government agencies and the private sector; 8,000,000 people are involved in business, shop keeping, agriculture, and other professions and 3,000,000 are unemployed.⁹

⁷ Information quoted from Common Core Document and Central Statistics Organization.

⁸ Article 10 of the Constitution: The state encourages and supports private investment based on free market economy and ensures its security.

⁹ Statistics provided by MoLSAMD for 2007 and 2008.

D. Legal and political system

Legal system

16. Article 7 of the Constitution of Afghanistan (2004) specifically obligates the Government to observe the UN Charter, Universal Declaration of Human Rights, international human rights treaties, and human rights conventions that Afghanistan has ratified: *'The state shall observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan is a party, and the Universal Declaration of Human Rights'*. Based on the Constitution the laws of the country must have legal mechanisms to implement and ensure respect for human rights. The Constitution expressly prohibits discrimination among citizens of Afghanistan (art. 22); prohibition of torture (art. 29); guarantees right to life (art. 23); freedom and human dignity (art. 24); right to privacy of correspondence (art. 37); right to privacy and non violation of homes (art. 38); private property (arts. 40 and 41); access to education (arts. 43–46); prohibition of forced labor (art. 49); and accountability of the Government to the public (art. 50). The principles of international human rights standards are reflected in national legislations with mechanisms for the implementation and protection of human rights.

Structure of the State

17. Afghanistan is based on a presidential system and the Constitution observes the separation of powers. The state system is comprised of three branches: the executive, legislative, and the judiciary. The executive branch is made up of 25 ministries and a number of general independent departments. The President is the head of the executive as well as the head of state and supreme commander of the armed forces. He has two vice presidents and the members of the cabinet. The president appoints the cabinet which needs a vote of confidence from the Wolesi Jirga (lower house) of the National Assembly. The legislative branch is the General Assembly, the highest legislative body and the symbol of the people's power. The General Assembly is made up of two houses: the Wolesi Jirga or the lower house; and the Meshrano Jirga, or the upper house. The judiciary is an independent branch of the State and is comprised of the Supreme Court, the Appellate Courts, and the Primary Courts. The Supreme Court, as the highest judicial authority, has nine members and presides over the judiciary branch.

E. Legal mechanisms for the protection of human rights within the Islamic Republic of Afghanistan

National implementing and supporting institutions for human rights

The Supreme Court

18. The Supreme Court, as the highest judicial organ of the country, has 9 members and presides over the judiciary of the Islamic Republic of Afghanistan. In recent years efforts have been made to ensure the principles of judicial independence, impartiality, and due process in the judiciary. The duties and powers of the judiciary include the resolution of claims, including between state and persons, and the interpretation and comparison of statutes and international treaties for compatibility with the Constitution. General and special courts ensure justice at national level by observing Afghanistan sources of law.

Afghanistan National Assembly

19. Wolesi Jirga (the lower house) of Shura-e-Meli (the National Assembly) monitors and approves to some extent, taking into account the new practice of democracy, the work

of government initiatives and approves developmental, social, cultural, and economic national programmes. The two houses of the National Assembly have made some attempts at monitoring the human rights situations in the country, however, due to inexperience in the practice of democracy, there are instances when this has not always been possible and instances where the abuses of human rights has not been attentively followed up and monitored. Lack of coordination between parliamentary committees has resulted in individual members following their own agendas ensuing in different views and resulting in a lack of time and efficiency in the speed of ratifying laws and monitoring issues.

Ministry of Justice

20. Ministry of Justice (MoJ) is responsible for organizing and developing legislative affairs and strengthening the rule of law. The MoJ administers the affairs of prisons, juvenile rehabilitation centres, defends public rights and properties, addresses the lawsuits of real and legal persons, raises legal awareness among the public, provides legal aid to indigents before the courts, and registers and grants operation licenses to political parties and social organizations. Despite these efforts, there are problems in the performance of the justice sector including: not separating children with respect to their age in juvenile rehabilitation centres, a low level of public legal awareness, lack of human rights standards in prisons, failure to address private property conflicts, and at times, incarceration of children with adults in the same place of detention or prison.

Office of the Attorney General

21. The Office of the Attorney General is independent within the limits of the statutes and is responsible for observing and equally enforcing laws that protect individuals through the different stages of monitoring, investigation, and judicial prosecution. It observes all legal mechanisms and accepted standards of human rights during the process of investigation of suspected or accused persons and tries to provide legal council for the accused ensuring access to lawyers and, if required, translators. Also, efforts have been made to observe, to some extent, the principle of fairness and equal treatment before the law and for expert opinions, witnesses, and the required information to be provided by surveillance and security departments during the course of investigation.

22. However, the office faces many challenges such as lack of awareness of legal rights by suspects; little or no access to lawyers, especially in the provinces; lack of security and safety for the prosecutors; shortage of technical equipment during the detection and investigation of crimes; interference and pressure by powerful individuals; low salaries of prosecutors; and lack of proper facilities for investigating suspects.

Ministry of Interior

23. Ministry of Interior (MoI) is a national law enforcement agency responsible for ensuring public order and security, fighting terrorist and anti-human rights groups, organized crimes, ensuring public order and security, campaigning against narcotics, and ensuring compliance in combating the violation of laws. During the last few years, the MoI has been training the National Police on the protection and observance of human rights in the discharge of duties. However, the police are not always sensitive towards the rights of citizens and are criticized for abusing human rights standards.

General National Directorate of Security

24. This Directorate is a national law enforcement agency whose is responsible for ensuring the enforcement of the law, combating organized crimes and terrorism, gathering intelligence on foreigners engaged in unlawful activities, gathering intelligence on smuggling and narcotics networks, performing surveillance operations on economic crimes

and sabotage, and the misuse of public property. However, there are still criticisms of mistreatment and torture of prisoners and intimidation of journalists and human rights activists by the staff of this General Directorate.

Reform in national implementation and supporting institutions for human rights

25. The Government of Afghanistan (GoA) has established the High Council for Prisons to monitor and report human rights situations and its abuses to the President. Despite continuous monitoring by the Afghanistan Independent Human Rights Commission (AIHRC) there is still torture, degrading, and abusive behavior in some of the detention centres. Many cases are not finalized within the stipulated time permitted by law.

26. The GoA has formed the Special Advisory Board to the President to fight against corruption and recommend appointments to high official positions on the basis of merit and a clean human rights background. In addition, the Government has set up the High Office for Monitoring of the Strategy against Official Corruption, the Special Prosecutor's Office, judicial departments dealing with official corruption, the Civil Service Commission, and the Commission for Combating Official Corruption.¹⁰ Nevertheless, corruption still exists among some government departments and measures are being taken to eradicate official corruption.

27. In order to implement reforms in the legal and judicial sector, the Government has adopted several national programmes¹¹ which include: the amendment and adoption of laws compatible with international human rights standards; the transfer of the administration of prisons to the MoJ, the formation of dedicated sections in the MoI and MoJ responsible for monitoring human rights abuses, the establishment of an open rehabilitation centre for children in conflict with the law, the formation of a family cases section in family courts, of special courts for children, and of the MoWA as a human rights support mechanism for women.¹²

F. National monitoring and supporting human rights institutions

Afghanistan Independent Human Rights Commission (AIHRC)

28. Article 58 of the Constitution enshrined the establishment of the AIHRC in 2002 and expanded its mandate from a focus on transitional justice to having the responsibility to *'monitor and respect for human rights in Afghanistan as well as to foster and protect it'*.

29. It has its main office in Kabul with eight regional offices and four provincial offices and a specific Child Rights Desk.¹³ It has so far trained 207,419 people through 6,569 workshops and special programmes on human rights, has received 13,389 cases of human rights complaints, and has addressed 12,555 cases. Fifty unauthorized private prisons which were run by different local commanders and coalition forces have been closed at the recommendation of the AIHRC. They have freed more than 3,614 individuals in detention centres who were held without legal cause. In cooperation with the Government AIHRC

¹⁰ The Commission on Combating Official Corruption has been formed in accordance with Article 6 of the UN Convention on Combating Official Corruption (which Afghanistan has already joined).

¹¹ Justice for All Strategy (2005), National Justice Sector Strategy (2007), and National Justice Sector Action Plan (2007).

¹² Refer to websites of Ministry of Justice www.moj.gov.af, the Supreme Court www.supremecourt.gov.af, and Afghanistan National Assembly www.nationalassembly.af.

¹³ The cases of children rights violations addressed by the AIHRC will be discussed further down in the body of the report.

has been able to monitor without prior notice all detention centres. Subsequent to agreement with Norway, France, Canada, Britain, and the Netherlands forces (part of NATO), AIHRC is able to monitor Afghans who are detained by the forces of the said countries suspected of terrorist acts, but has not been able to visit NATO detention centres.¹⁴

Special commissions monitoring the human rights situation in Afghanistan

Commission addressing the observance of human rights in investigation, interrogation, and detention stages

30. This Commission was founded in 2007 by a Presidential Decree for the purpose of ensuring the observance of individuals' human rights in the investigation, interrogation, and detention stages and for the prevention of torture and other forms of human rights violations during the interrogation of suspects, the accused, and the guilty by investigating and interrogating agencies.

Anti-Corruption and Civil Administration Reform Commission

31. This Commission was formed in 2006 by a Presidential Order in accordance with article 50 of the Constitution for the purpose of combating official corruption and bringing reforms to the civil administration. This Commission has drawn up the Strategy on Combating All Forms of Official Corruption.

Commission addressing the problems of children and juveniles

32. This Commission was established in 2008 by a Presidential Order to address the problem of children and juveniles.¹⁵

Commission on Banning Beggary

33. This Commission was created by a Presidential Decree in 2007, with the aim of preserving human dignity and social order, eliminating begging on the basis of religious guidelines, and banning the misuse of children and others in the process of begging. This Commission began its work in 2008 by removing the beggars from the streets and shifting them to various social services centres.

Commission on Addressing Capital Punishment and Retaliation Files

34. This Commission was established in 2006 by a Presidential Decree for the purposes of preparing approval documents and processing capital punishment and retaliation files.

Board for Addressing Complaints of Prisoners Transferred from Bagram and Guantanamo

35. This Board was established in 2007 to address the complaints, problems, documents, and files of the prisoners transferred from prisons in Guantanamo and Bagram to Pule Charkhi Prison. It is responsible for reporting on the situation of these prisoners directly to the President.

¹⁴ Refer to the website of Afghanistan Independent Human Rights Commission.

¹⁵ More information on the work of the Commission has been addressed under the heading, Children Involved with the Administration of Juvenile Justice.

The Board for Addressing the Situation of Prisoners in Kabul Prisons and Detention Centers

36. This Board was assigned by the President in 2007 to review case files and the situation, problems, complaints, documents, and files of the prisoners in Kabul prisons and detention centres and to report to the President.

The Commission for the Elimination of Violence against Women

37. This Commission was established in 2005 by a Presidential Order to define the five year strategic working plan of the MoWA. The focus of the Commission is to create a monitoring and review processes for the strategy.

Civil Society institutions active in the field of human rights

38. After the end of the Taliban era in Afghanistan, opportunities arose for the growth of civil society, one of the main players in ensuring and implementing human rights standards. A significant number of national and international organizations are active in the fields of education, health, participation, sanitation and hygiene, and protection issues among others in the field of child rights. These organizations have also been involved in advocating for the incorporation of human rights principles into law and, where necessary, proposing and developing laws and regulations for the protection of children's rights. These organizations have carried out valuable research on different issues relating to children's rights.¹⁶

II. General measures of implementation

39. On 5 December 2001 the Bonn Conference on Afghanistan was convened in which Afghanistan and the international community agreed on the formation of the future GoA. During the Bonn Conference, the parties agreed on the establishment of a democratic system and the development of Afghanistan in accordance with internationally accepted values, especially human rights. Subsequently, in Tokyo 2002, Berlin 2004, London 2005, and Paris 2008, conferences reconfirmed adherence and support to the process. Since the formation of the Transitional Government in 2002 the following specific measures have been taken to coordinate laws, policies, strategies, and national mechanisms in compliance with the Convention's provisions and other human rights treaties that Afghanistan has ratified.

A. Provisions of the Constitution

40. The Constitution of Afghanistan has ensured the human rights of all citizens. Article 7 of the Constitution affirms the '*observance of the International Declaration of Human Rights and international human rights conventions*' ratified by Afghanistan. Furthermore, article 22 of the Constitution prohibits all types of discrimination among Afghanistan's citizens and states that all citizens, men and women, have equal rights and obligations. Under article 24 of the Constitution the freedom of human beings is recognized as their natural right and is only limited in the interest of public safety as regulated by law. According to this principle of the Constitution human dignity is inviolable and the State is obligated to respect and support the liberty and dignity of all human beings.

¹⁶ Some of the researches include customs contradictory to Islam, family violence, women's access to justice, economic independence of women, official corruption, and refugees and IDPs.

41. Article 34 of the Constitution guarantees the freedom of expression as inviolable. All Afghans have the right to express his/her thoughts through speech, writing, illustrations, or other means in accordance with the provisions of the Constitution. Article 36 of the Constitution allows the citizens of Afghanistan the right to convene and demonstrate for legal and peaceful purposes without carrying weapons in accordance with the law. Article 37 of the Constitution ensures the right to freedom and confidentiality of correspondence and communications. Article 43 of the Constitution secures the right to education for all citizens of the country. At the same time, article 54 of the Constitution confirms that the best interests of the child should be taken into consideration and affirms the position of family as the fundamental pillar of society which is to be supported by the Government. Furthermore, the Government is obligated to take measures in eliminating customary practices which are contrary to Islam in order to secure the physical and psychological integrity of the family, especially that of the child and mother. Though the Constitution of Afghanistan prohibits discrimination, protects human dignity, freedom of expression, right to peaceful assembly, freedom of communication and correspondence, best interests of the child, and right to survival and development, it does not specifically mention children in most of the cases, but rather citizens.

B. Harmonization of national laws

42. In order to harmonize the national laws and the provisions of the Constitution, the GoA has recently begun to draw up a number of laws and regulations including the Regulation on Child Nutrition, Regulation on Juvenile Rehabilitation Centers, and the Regulation of Kindergartens. Furthermore, the Government has made efforts to address the issue of child rape so that it is better reflected in the Penal Code of the country and is working towards developing the Law on Juvenile Correction Centers in 2009.

43. The Civil Code: Although this code of laws in Afghanistan was adopted in 1977 before the establishment of the Committee on the Rights of the Child, there are clear provisions regarding the definition of family, capacity for marriage, responsibility of parents in regards to their children, maintenance of children, inheritance, and guardianship which in many cases are in accordance with the Convention. The Civil Code is in contradiction with the 'age of marriage' for girls, as defined under the Convention.

44. The Juvenile Code (2005): The GoA has a number of laws addressing the support for the rights of the child, ensuring the principles of equality and non-discrimination among children, taking into account the best interests of the child, respect for the views of the child, and right to survival and development. The Juvenile Code, adopted in March 2005 in consideration of the provisions of article 54 of the Constitution and human rights conventions, especially the Convention on the Rights of the Child, is aimed at ensuring the best interests of the child during the investigation of juvenile violations of law, children at risk, children in need of supervision and protection, and ensuring children's rights during investigation and trial. This law was adopted to provide support for the rehabilitation of children in conflict with the law and to provide physical, moral and welfare support. Furthermore, the law, in consideration of the Convention, emphasizes respect for the views of the child during investigation and trial which are expressed by themselves or through a legal representative. Under this Law, deprivation of liberty should be utilized as a last resort. However, sometimes custodial measures are utilized for the slightest violations. For minor offences alternatives to punishments should be utilized, such as guidance and supervision by guardians or social service organizations.

45. The Law of Juvenile Rehabilitation Centers: This Law was adopted in 2009 and focuses on the rehabilitation and education of children placed in juvenile detention centres. The mentioned law aims to reform the current rehabilitation system in line with the

Convention and minimum international standards for detention centres, improve the quality of services, and set up monitoring mechanisms of the centres and children in conflict with the law. The law foresees the establishment of a High Council for overall oversight and monitoring of correction centres led by the MoJ with membership of all relevant government ministries/departments as well as AIHRC and one civil society representative. Furthermore, according to this law there will be two types of centres, open and closed, established in each of the 34 provinces of the country. Juveniles will be placed in these centres according to the degree of their offences and their rehabilitation needs. Currently open centres for the rehabilitation of children in conflict with the law function only in Kabul province while in other provinces children who are referred to open centres by the Courts are being rehabilitated by closed centres during the day time and handed over to their families or legal guardians during the night.

46. The Education Law: This Law was adopted in July 2008 and guarantees the right of every child to accessible education. In addition, the Law stresses the right to free and compulsory education for all children including children with special needs. Article 48.1-3 of the Law forbids any kind of physical or psychological punishment of children even if such punishment is deemed necessary for the discipline of children. It emphasizes the establishment of school management councils (SMCs) consisting of parents, teachers, and community leaders to monitor the quality of education, enrollment, and violence in schools and, where necessary, to refer cases of abuse.

47. The Law of Labor: This Law was adopted in January 2007 and contains a number of provisions for the protection of children from exploitation and forced and hazardous labor. It also addresses work that is detrimental to health and risks impeding physical development or disability.

48. The Law on Counter Abduction and Human Trafficking: This Law was adopted in July of 2008 for the purpose of combating abduction and human trafficking and to support the victims of such crimes, especially women and children. This law protects the principle of immunity from harm and ensures the preservation of the child's identity.

49. The Law of Public Health: This Law was adopted in 2006 for the protection and treatment of illnesses and provides free health facilities for all citizens. It aims towards securing and expanding health services, including private health centres, implementing effective health programmes including the improvement of personal and environmental sanitation, the prevention and eradication of infectious diseases, and the protection of child and maternal health. It also provides for suitable working conditions in manufacturing and servicing organizations of the country. This law has paid special attention to ensuring the health and nutrition of the child and the mother and obligates the Government to provide for the survival and healthy development of children.

50. However, challenges continue to exist such as public unawareness of laws and regulations, official corruption, insecurity, lack of capacity, transportation, and infrastructure of correction centres in provinces.

C. Harmonization of national strategies, policies and mechanisms for monitoring and protecting child rights

National strategies and policies

Afghan National Development Strategy (ANDS)

51. The ANDS was approved by the President of Afghanistan on 21 April 2008 for the implementation of a series of priorities, programmes, and projects envisaged for 2008–

2013. Within this strategy, separate sub-strategies have been formulated for national institutions to deal with focal issues (paras. 36–40 below), one of which is to address Afghanistan's international commitments to the Universal Declaration of Human Rights and the six international human rights conventions that the country has ratified. According to the second and third pillars of this strategy certain benchmarks should be met including: supporting, monitoring and developing human rights; consolidating democratic institutions and the rule of law; providing public services; ensuring accountability; ensuring gender equality; adopting a social security strategy; promoting the political participation of women; promoting quality education for all; reducing child mortality; ensuring health for the child and the mother; and protecting vulnerable children.

Strategies and policies on the Justice Sector

52. In order to promote the justice sector in conformity with national and international norms and regulations, to create an Islamic society based on an impartial, just, and accessible judicial system, and to ensure the necessary security in the country the Government has developed a Justice Strategy for All (2005), National Strategy of Judicial Sector (2007), and National Justice and Legislation Plan (2007). These strategies have analyzed the needs for the next 12 years aimed at: ensuring an efficient justice system; consolidating judicial institutions; developing laws, especially those based on human rights laws; building and strengthening professional capacities; providing necessary resources and facilities; and ensuring efficient programmes. In consideration of the provisions of the convention these strategies have paid special attention to ensure accessibility of the judicial system by the child, the preparation of child sensitive laws and procedures, and the development of capacities to work with children in conflict with the law.

Education strategy of Afghanistan

53. This strategy was adopted in 2007 on the basis of the ANDS benchmarks for 2006–2010. This five year strategy has been prepared to contribute to the educational objectives set out in the Millennium Development Goals (MDG) by 2020 whereby the MoE will carry out specific programmes to increase educational attainment both qualitatively and quantitatively in different areas. The objectives include, among others, to: increase girls' attendance and the continuation of education; improve the quality of education; address school safety challenges; incorporate human rights courses in the school curriculum; and provide for the establishment of private sector schools. The strategy outlines eight priority programmes: general education; teacher education and working conditions; education infrastructure rehabilitation and development; curriculum development and learning materials; Islamic education; technical and vocational education and training; literacy and non-formal education; and education administration and reform and development. According to the plan for the development of general education programme, measures have been taken to establish 4,900 new schools and 4,800 outreach classes and to provide for the education of minority groups, the disabled, and groups with other special needs.

Public health strategy of Afghanistan

54. Based on the ANDS objectives the Public Health Strategy of the country was adopted in 2008. The MoPH is responsible for ensuring improved health and nutrition facilities for all in a sustainable manner by providing qualitative healthcare and promoting suitable environmental and living conditions. The anticipated outcomes of this strategy are to increase access to basic health services from 65 per cent in 2006 to 90 per cent in 2010; reduce maternal mortality rate by 50 per cent from 1,600 per 100,000 live births in 2000 to 800 per 100,000 live births by 2015; reduce the under five mortality rate by 50 per cent from 257 per 1,000 live births in 2000 to 128 per 1,000 live births by 2015; and reduce the infant mortality rate by 50 per cent from 165 deaths per 1,000 live births in 2000 to 82 per

every 1,000 live births by 2015; and to expand the national immunization coverage for infants (diphtheria, whooping cough and tetanus) from 77 per cent in 2006 to 90 per cent in 2010 and to sustain that coverage between 2013 and 2015.

Table 2
Mortality rates

Year	Maternal mortality rate		Under-five mortality rate		Infant mortality rate	
	per 1 000 000	% of reduction	Per 1 000	% of reduction	Per 1 000	% of reduction
2000	1 600		257		165	
2010	1 360	15	205	20	132	20
2013	1 246	21	167	35	115	30
2015	800	50	128	50	82	50

National Strategy for Children at Risk

55. This strategy was adopted in 2006 and seeks to provide a framework for the development of a network of services and programmes which protect children and support their families; establish strategic plans for the transformation from institutions into broad-based community child and family resource centres; and implement donor partnership towards building a comprehensive rights-based child protection systems. The aim is to protect children from exploitation, violence, and abuse. Various categories of children have been identified as ‘at risk’¹⁷ and interventions on their behalf should be in conformity with this strategy and programmes of the MoLSAMD, other governmental agencies, and civil society actors. Through implementation of this strategy over the last three years 2,366,177 children have been protected.

56. The Strategy seeks to transform the existing protection paradigm which relies almost exclusively on institutional care in supporting vulnerable children to one that focuses on bringing support and services to families and communities. This shift in strategy will thus promote family preservation and, where necessary, family and community-based forms of alternative care.

National Strategy for Children with Disabilities

57. In addition to social policies for children, the National Strategy for Children with Disabilities have been adopted by the MoLSAMD in 2008 which assists children with disabilities by taking measures in education, health, and technical and professional training according to their disability needs and promoting participation in national and international forums. Since the National Strategy for Children with Disabilities has recently been adopted, no clear achievements can be reported at this stage.

¹⁷ The Strategy describes ‘at-risk’ children as: Children with disabilities (mental, physical); working and street working children; children in conflict with the law; kidnapped children; trafficked children; child soldiers and other war-affected children; children deprived of parental care; girls forced into marriage or early marriage; internally displaced and returnee children; children from ethnic minority groups; children using drugs, and/or selling drugs; and children experiencing abuse (sexual, physical, emotional and neglect).

Social Protection Strategy

58. This Strategy was adopted in 2007 aiming to provide a safety net for the most vulnerable segments of the society, particularly, children and people with disabilities, families of martyrs, retired civil servants, orphans, street working children, poor women, and rural communities suffering from acute poverty. The strategy proposes three social protection programmes between the periods of 2008 to 2013. The MoLSAMD is the main implementer of the strategy in coordination with other ministries and civil society organizations.

Child Protection Action Network

59. The Child Protection Action Plan (CPAN) was established in several regions in 2003 by the MoLSAMD in cooperation with UNICEF and other national and international organizations. This network now regularly functions in 28 of the 34 provinces of the country as of March 2008. CPAN is an inclusive network of government and non-government organizations that have a mandate and perform field interventions in the area of child protection. CPANs overall goal is to prevent and respond to exploitation, abuse, and violence against children and ensure the protection of all children in Afghanistan. Provincial CPANs regularly provide monitoring and reporting on child rights violations that helps to inform programmatic interventions at a provincial level and also contribute to the development of national level advocacy and policies.

60. CPAN holds monthly meetings in each of the provinces and addresses child protection issues or problems that have been identified or referred by the community or SMCs. These problems are then referred to related agencies and are followed up in subsequent meetings. Between the periods of 2007 to 2008 the network has addressed 1,959 reported cases of child sexual abuse, children in conflict with the law, separated children, physical violence against children, hazardous labor, and other child protection issues. Other main activities of CPAN include the promotion and dissemination of the Convention on the Rights of the Child and facilitation of inter-sectoral collaborations among line agencies on issues concerning child protection.

Children's Secretariat

61. The MoLSAMD in cooperation with the European Union (EU) is currently working on establishing a Children's Secretariat within the framework of this Ministry. This Secretariat, in close cooperation with other Government agencies, will be responsible for the coordination and implementation of the Convention in the country. The main objective of Children's Secretariat is to coordinate and address child protection issues.

Youth Information and Contact Center (YICC)

62. In cooperation with UNICEF, the MoICY has been working on the establishment of information and contact centres for the youth. As of March 2009 13 of these centres were established in 14 provinces. These centres have links with youth federations at district level of the provinces. Between 2007 and 2008, 4,000 boys and 2,500 girls (between 14 and 25 years) have received guidance and counseling from YICC Youth Counselors. For more information see section, 'Child's Access to Information and the Role of Mass Media'.

Juvenile correction and rehabilitation Centres of the Ministry of Justice

63. In accordance with the Convention, children in conflict with the law are held separately from adults. The GoA has established correction and rehabilitation centres in 30

provinces¹⁸ of the country with the aim of family reintegration and social rehabilitation of children in conflict with the law. Administration and supervision of these centres are being done by the High Council of Rehabilitation of Children and the General Directorate of Juvenile Rehabilitation Centers in the MOJ. According to the survey of the Directorate carried out in December 2008, there are 550 children (69 girls and 482 boys) under the care of these centres in 30 provinces of the country. Juvenile offences range from murder, child kidnapping, theft, armed robbery, arms smuggling, traffic accidents, to other minor offences.

64. Most of the offences of children in conflict with the law tend to be of a less serious nature and are property related. The majority of females (at least 56 per cent) are charged with 'moral' offences including running away from home or adultery/sodomy. Over 90 per cent of children in detention are first-time offenders.¹⁹ For more information see section, 'Rehabilitation and reintegration of Children in Conflict with the Law'.

Custody and care centres for children

State orphanages

65. According to the criteria set by the MoLSAMD for admission of children to orphanages only a child without a father is considered an orphan and can be granted admission. For the support and care of orphans and children without family care the GoA has created 62 orphanages across the country within the framework of the MoLSAMD. Presently, there are 12,209 children (5,270 girls and 6,939 boys) of different ages in these centres; 29 of these children have some form of disability. The Government has provided, through its limited resources, for the board and lodging, care, education, and health and leisure facilities for these children within the centres. Official state orphanages of Afghanistan are regulated by the Regulation of Orphanages (1086). A new regulation is under preparation that will set the minimum standards and rules of the orphanages.

66. Poverty, conflict, and other risk factors in Afghanistan, in combination with a systemic lack of social services, family support and alternative care services, has led to the continued expansion of residential care in the country. This is a problem that the National Strategy for Children at Risk is trying to address with emphasis on a comprehensive child protection and family support system.

Private orphanages

67. In the private sector there are 20 orphanages operating as of May 2009, each of which has its branches in the capital and the provinces. In total, 5,296 children are being cared for in these institutions. Private orphanages need to receive the approval of and agreement with the MoLSAMD. The MoLSAMD has authority to monitor the orphanages, however, in practice some orphanages are registered as NGOs without the knowledge of the MoLSAMD and some orphanages are functioning as boarding schools.

Day-care centres

68. In cooperation with the MoLSAMD, national and international organizations active in the field of the child protection have established day care centres and drop-in centres to support children without family care, children working in streets, and children without

¹⁸ Data given by the Ministry of Justice, CRC Consultation, 26 April 2008.

¹⁹ AIHRC & UNICEF, 2008, Justice for Children: The Situation for Children in Conflict with the Law in Afghanistan, pp. 67–72.

education. Presently 423,965 children are supported in different provinces of the country by these institutions.

D. Dissemination of the Convention

69. Since 1995, and especially since the new Government took over in 2002, there has been many activities to generate public awareness regarding the Convention. More than 100,000 copies of the Convention has been published in Dari and Pashto with the help of international organizations and made available to the public. Various seminars, workshops, and training programmes have been held not only to disseminate the publications but also to hold dialogues on the Convention.

70. The CPAN has taken different measures to promote the provisions of the Convention at the provincial level to generate awareness on the rights of the child and to protect children from risk, exploitation, and abuse. Measures taken include a joint launch by the GoA and civil society organizations of a campaign in 2008 to eliminate violence in schools. More than 1,500 children participated and expressed their opposition against violence.

71. The AIHRC has held 1,800 public information events including workshops, seminars, meetings, raising awareness on child rights and the elimination of violence against children since its establishment in 2007 and carries out annual assessments on solutions at national level. Every year around 55,656 men and women from different social sectors and categories including teachers, police, judges, prosecutors, housewives, children, local councils, provincial councils, Government employees, and civil society groups learn about the issue of violence against children, its implications for children's survival and development, and a way forward. Another measure taken by the AIHRC is the publication of 9,000 copies of an educational book on the rights of the child. This has been included in the curriculum of the Police Academy and distributed for the information of Government officials and teachers. Other non-governmental organizations are also active in promoting child rights and the Convention through various activities. For further information see section, 'Afghanistan Independent Human Rights Commission'.

III. Definition of the child

Age of majority

72. The laws of Afghanistan define all individuals under the age of 18 years as a child.

Legal age of capacity

73. According to article 30 of the Civil Code regarding legal capacity the age of maturity is 18 complete solar years. According to article 4 of the Juvenile Code (2005) children are divided into 3 categories: 1) Non-differentiating child (a child which has not completed 7 years of age); 2) Differentiating child (a child that has completed 7 years of age but not 12 years of age); and 3) Adolescent (a child that has completed the 12 years of age but not 18 years of age).

Schooling and education

74. Article 4 of the Law on Education states that basic (completion of secondary) education is compulsory; article 5 of the said law states that children from the age of six to nine years should attend primary schools. The age of basic education in the above mentioned law is not clearly stated, however, articles 4 and 5 convey that the end of basic (secondary) education is from ages 15 to 18 years.

Legal counsel

75. According to the Juvenile Code (2005) all children have the right to use legal counseling during all stages of investigation and trial.

Age of marriage

76. Under article 70 of Civil Code the legal age for marriage is the completion of 18 years for a boy and 16 years for a girl. According to article 71.1 if the girl has not yet completed the age of requirement, as defined under article 70, her marriage can only take place if her father gives consent or there is a court decision on the matter. According to article 71.2 the marriage of young girls aged less than 15 years is impermissible.

Paid work

77. In accordance with article 13 of Afghanistan's Law of Labor the minimum employment age is the completion of 18 years of age. Light work or up to 35 hours of work per week for children between the ages of 15 and 18 years is permitted by law. Employers are required to complete a medical check up of the child before recruiting him/her. The law prohibits the employment of children less than 18 years of age for any hazardous work that is detrimental to the health, safety, and development of the child. It also emphasizes that the salary of adolescents (15–18 years) should be on par with adults for similar jobs.

Sexual relations

78. Since Afghanistan is an Islamic country, in accordance with the Constitution and Sharia law, sexual relations between children is prohibited and sexual relations among adults is lawful only within wedlock.

Conscription in the army

79. The Council of Ministers Directive No. 30 issued in 2008 states that the age of conscription to the armed services is a minimum of 18 years of age.

Testimony in court

80. Article 50 of the Interim Criminal Procedural Law adopted in 2003 states that witnesses who have not completed 14 years of age are obligated to take an oath that they are truthful. Witnesses under the age of 14 can only be heard for the purpose of information.

Criminal liability

81. Under the laws of Afghanistan and in accordance with article 5 of the Juvenile Code (2005) children less than 12 years of age do not have criminal responsibility. If the crime happened as a result of negligence by the parents and causes material damage, the parents are obligated to provide compensation. In addition, according to article 6 of the said law, the age of the child shall be established during investigation and trial on the basis of his/her birth certificate. If the child does not have a birth certificate or the appearance of the child does not match the age provided in the birth certificate, forensic opinion will be sought. If the age of the child differs with the records or the appearance of the child, a medical panel of no less than three members will be appointed to re-establish the age of the child.

82. Under article 39 of the Juvenile Code (2005), children who have completed 12 years of age but have not completed 16 years of age cannot be punished with more than a third of the punishment, as determined by the Penal Code, given to adults who have committed the same crime. The punishment given to children who have completed 16 years of age but not 18 years of age cannot exceed more than half of the punishment as determined by the Penal Code given to an adult for a similar crime. Children cannot be sentenced to life imprisonment or capital punishment.

83. In accordance with article 41 of the Juvenile Code (2005), the court has the authority to suspend a court decision and review it within one year for a minor crime and within three years for a serious crime. The suspended sentence cannot be issued without the existence of rehabilitation programmes or social services. The decision for a suspended sentence is issued before the end of a trial and the prosecutor can appeal within 3 days of the decision and inform the legal representative of the child. According to article 40 of the Juvenile Code (2005), only children between the ages of 12 to 18 years can be subject to suspended or serving custodies.

Consumption of alcohol/substance abuse

84. In the Islamic Republic of Afghanistan the use, production, and trade in narcotics and alcoholic drinks are prohibited. Under article 349 of Afghanistan's Penal Code, a person who uses narcotics or alcoholic substances shall be sentenced to 3 to 6 month's imprisonment and or pay a fine of 3 to 6 thousand Afghanis or both. However, if the person is a juvenile he/she will be dealt with under the Juvenile Code (2005) which emphasizes the rehabilitation of children in conflict with the law.

85. There is still a number of gaps and challenges. The 'age of marriage' for girls is 16 years, a direct contradiction to the Convention and Afghan Law which recognizes the 'age of maturity' at 18 years of age. Furthermore, girls younger than 16 years of age are forced into early marriage. The legal 'age of employment' is the completion of 15 years of age with a prescribed 35 working hour week. In practice, many children around the ages of 13 or 14 years are already working more than 50 to 60 hours per week. Furthermore, though the Law on Investigation on Children's Violations has been passed recently, in practice, most courts are still utilizing the Penal Code in cases involving children.

IV. General principles

A. Non-discrimination

86. The principle of non-discrimination has been expressly emphasized in the Constitution and other laws of Afghanistan. According to article 22 of the Constitution any

kind of discrimination among the citizens of Afghanistan is prohibited and all the citizens, men and women, are equal before the law and have equal rights and responsibilities. As an example, reference has been made to a number of laws where the principle of non-discrimination has been clearly reflected.

87. According to article 43 of the Constitution, education is the right of all Afghanistan citizens and is provided freely by the Government up to the graduate level in Government educational institutions. Furthermore, to promote the development of education and provide secondary education all over Afghanistan, the Government is obligated to plan and implement effective programmes and provide for the teaching in mother tongues of areas where they are spoken. According to article 44 of the Constitution the Government is obligated to develop educational opportunities for women, ensure accessibility of education for nomads, and eliminate illiteracy in the country. Article 45 of the Constitution stresses that the Government should prepare and implement a uniform curriculum based on the teachings of Islam, the national culture, in accordance with scientific principles, and prepare religious schools' curriculum on the basis of existing Islamic denominations in Afghanistan. According to article 3 of the Education Law, citizens of the Islamic Republic of Afghanistan are all entitled to an equal opportunity for education.

88. According to article 52 of the Constitution the Government shall provide free facilities for the prevention and treatment of diseases for all the citizens in accordance with the provisions of the law. The Government also encourages and supports the establishment and expansion of private medical services and centres according to the provisions of the law. The Government is obligated to take appropriate measures to promote physical training and national and local sports.

89. According to article 120 of the Law of Labor the assignment of women and children to heavy, harmful, and underground labor is illegal. A list of such works will be prepared and established by the MoPH and MoLSAMD in collaboration with relevant civil society organizations.

90. According to the Constitution and other national laws, discrimination on the basis of color, gender, language, religion, political orientation, national, ethnic, social origin, or disability is illegal. Though children are not specifically mentioned in article 22 of the Constitution on non-discrimination, it specifically mentions that discrimination and privileges between nationals of Afghanistan (which includes women and girls) is prohibited and men and women have full equal rights before the law. In accordance with article 9 of the Law of Rights and Privileges of the Disabled Persons, the Government prohibits all discrimination and mistreatment towards children and people with disabilities. Based on the National Strategy for Children with Disabilities (2208), the Government is obligated to take a number of measures to eliminate prejudice and discriminatory behaviors towards children with disabilities. Nevertheless, because of local customs and illiteracy there are cases where Afghan children are subjected to prejudice due to the socialization process, social status, and beliefs of parents (or legal guardians) and other family members. Such discriminatory behavior is in clear contradiction with the laws of Afghanistan.

B. Best interests of the child

91. According to article 54 of the Constitution the family is the pillar of society and is supported by the Government. The Government should take appropriate measures to ensure the physical and psychological well being of the family, especially the child and mother, and to eliminate traditions contrary to the principles of Islam. Article 242 of the Civil Code states that where more than one person has the right to the care of a child, the court may select the two who are in the best interest of the child.

92. In accordance with article 53 of the Constitution the Government should take appropriate measures to expand medical services and financial assistance to families of martyrs and the missing and to rehabilitate the disabled and provide grounds for their active participation in society. The Government should also provide the necessary assistance to the disabled and the orphans.

93. The Juvenile Code (2005) has been enacted to protect the best interest of the children throughout the investigation and trial process. The Law, with consideration of the provisions of the Convention, addresses the physical, psychological, educational, security, and emotional well being of children who are conflict with the law. It ensures for presumption of innocence and sets the standards for a fair investigation and trial process through the establishment of special juvenile justice mechanisms: the Special Juvenile Police Department; the Special Juvenile Prosecution Office; and the Special Juvenile Court in each province.²⁰ The Law on Juvenile Rehabilitation Centers aims to ensure the best interest of the children throughout the rehabilitation process.

94. In accordance with the provisions of articles 120 to 130 of the Law of Labor, employment of any children under the age of 18 in heavy, harmful to health and underground work is illegal. Additionally no employer has the right to assign any children under the age of 18 to overtime work or night work. Furthermore, in accordance of the above articles, employers are obligated to establish nurseries and kindergartens for the children of employees.

95. The Civil Code, with specific legal provisions, gives primacy to the best interests of the child in case of the parent's separation. According to article 236 of Afghanistan Civil Code, custody is defined as protection and upbringing of the child during the time when the child needs a woman's protection and upbringing. In accordance with article 238 of the said law, a woman who receives custody of a child should be sane, an adult, reliable, and have the ability to protect and care for the child. According to article 249 of the Civil Code the duration of custody for the child for boys is up to seven years of age and for girls is up to nine years of age. According to article 256 of the Civil Code, maintenance in all its forms for young boys is until the time he is able to work and for young girls is until the time she marries. According to article 259 of the said law, if the father does not have the ability to pay for his children's maintenance and is also unable to work, the obligation to maintain the children passes on to the custodian next to the father.

C. The right to life, survival and development

96. The right to life, survival, and development of the child is central to both family and society. According to article 23 of the Constitution, life is a gift from God and is the natural right of human beings. No one can be deprived of this right except within the provisions of the law. Article 36(2) of the Civil Code further states that even a fetus shall be protected.

97. Article 76.1 of the Penal Code also ensures that the death penalty is not applied to children under any circumstances. According to article 39 of the Juvenile Code (2005) children cannot be sentenced to life imprisonment or capital punishment.

98. In Article 24 of the Law of Health, the MoPH is obligated to maintain the health, physical strength, and psychological well being of children. Furthermore, the MoPH, in collaboration with the MoE, is responsible to monitor the volume of studies, work, and health care in orphanages, schools and kindergartens. The MoLSAMD, for the purpose of

²⁰ As of April 2009, there are 34 Special Juvenile Prosecution Offices in 34 provinces, Five juvenile courts established and functional in five provinces.

providing a better future for vulnerable children and their families, adopted the National Strategy for Children at Risk in 2006. The aim of this strategy is to provide children with a suitable accommodation, access to primary health care, awareness of nutrition, education, prevent forced and under-age marriages, provide drinking water, and to enhance social awareness regarding children's rights.

99. According to a health survey carried by the MoPH in technical cooperation with John Hopkins University, the mortality rate of children under five which was at 257 in every 1,000 live births in 2000 has fallen to 191 in 2006. The mortality rate of children under one has fallen from 165 cases in every 1,000 live births in 2000 to 129 in 2006.

100. A regular reporting system regarding abortion does not exist at the national level, nevertheless the Law of Health emphasizes the healthy development of the fetus (art. 23.2). Regarding infanticide and general attitude towards this, especially infanticide of girls and the disabled as well as intentional abortion are illegal and there is no case of fetus abortion reported in hospitals. Infanticide, whether of girls or boys, is deemed a crime by Sharia law. Although the MoPH has not yet introduced a live birth registration system, recently it has been working on a demographic surveillance system which is expected to report such incidences if they arise in the country in the near future.

D. Respect for the views of the child

101. The law accepts the value and importance of the views of the child. Article 34 of the Constitution considers freedom of speech as inviolable and has expressed that all Afghans have the right to express his/her thought through speech, writing, illustration, or other means.

102. Article 31.1 of the Constitution states that every person, which would imply children too, have the right to seek a defense lawyer to defend his/her rights and have their views be given due weight. The Juvenile Code (2005) has ensured the right of children's statements and views to be heard in the course of investigation and trial, unless a judiciary deems it harmful to the psychological or physical well being of the child. The views of the child are also dependent on his/her age, health, or mental ability. In other words, it takes into consideration the child's evolving capacities. According to the provisions of this law, if the child, his/her legal representative, or the public prosecutors are not satisfied with the outcome of a trial they can appeal against the decision of the Special Court of Children.

103. Afghanistan is a developing traditional Islamic country where the parents and guardians often make all major decisions regarding their children/wards keeping in mind the children's best interest. The best interest, particularly in rural communities principle is, however, subjective to interpretation by parents and guardians and not the child. Furthermore, in the school environment and other public forums, there are little opportunities for children to express their views in various decision making processes, although this is slowly changing due to the Government and civil society's efforts through SMCs.

104. An unfriendly environment where children are not encouraged to express dissent or to protest in the event of a violation of their rights negatively impacts their rights. When their views are not encouraged to be expressed their concerns are not likely to be taken into account in efforts to formulate development policies, programmes and projects. This can be more pronounced for girls they are sometimes excluded from taking part in activities which might offer hope, motivation and future opportunities. This can be true in either educated or in uneducated families. Girls and boys have equal rights in obtaining an education, going out of house, choosing life partners, getting jobs, and many other things, but due to lack of

security, poverty, and some customary practices against women's civil liberties, girls face many obstacles in realizing their rights.

V. Civil rights and freedoms

A. Right to have a name, nationality and to know and be cared for by parents

105. In 2003, the MoI, with support from UNICEF, launched several national birth registration campaigns in the country. According to article 31 of the Law of Birth Registration, all Afghans, including those living abroad, are required to register the birth of their children within a maximum of one year after the birth in the nearest place to their residence. Accordingly, birth certificates are issued through registration centres. Since 2007, the Vital Statistics Unit under the MoI, with support of UNICEF, started a systematic birth registration of newborn babies up to one year of age. The system uses a computerized database for data collection and registration where each child is given an identity code. The provinces are linked with a central database in Kabul under the Directorate of Statistics of the MoI. At the district level of each province birth registration officers have been hired to manage and collect data from villages. At the village level the registration of newborn children is performed by the local mullahs, community leaders, village chiefs, and health clinics. All collected data from villages and districts are sent to the provincial birth registration centres where data is entered into the database. To date, the programme has been able to reach 15 provinces of the country and has registered 192,862²¹ children (109,863 boys and 82,999 girls) in 2007 and 146,789 children (94,935 boys and 51,854 girls) in 2008. There is a plan to expand the programme to the remaining provinces in 2009.

106. In accordance with the Law of Birth Registration the birth certificate is the identity card/document for the citizens of the Islamic Republic of Afghanistan. Article 18 outlines the specifications of the child/citizen to be registered including: name, surname, name of father and grandfather, place of birth, date of birth, religion, ethnic group, profession, gender, distinguishing features, photo, finger print, permanent and current residence. All citizens without discrimination enjoy this right.

107. The Department of Birth Registration has recently adopted some reforms in its procedures for the registration of newborn babies under the new systematic birth registration programme to include both the mother's and father's name in the birth registration. With this provision, in theory, children born out of wedlock can be registered. The right of children to a name, the acquisition of the parents' nationality at birth, and the right to know the parents are expressly provided in the laws of Afghanistan.

108. According to article 69 of the Law of Birth Registration all citizens up to the age of 18 can change or correct their name once.

109. In addition to the above, article 10 of the Law on the Rights and Privileges of Disabled Persons states the MoPH is obligated to register children with disability at birth and inform the Registration Department of the MoI and MoLSAMD.

110. Afghanistan has ratified the Convention on Refugees and Stateless Persons and is fully committed to the principles of the Convention. The conditions for receiving Afghan nationality are the same for all foreigners and there are no discriminations in this regard.

²¹ Email information received from UNICEF-Afghanistan, August 2008, *Revitalization of Birth Registration in Afghanistan*.

Article 11 of the Citizenship Law states that a child born to an *‘Afghan national and a stateless or his or her nationality is not known shall be considered to be national of Afghanistan irrespective of whether the child is born in or outside the territory of Afghanistan’*. In addition to these provisions, a child found in the territory of Afghanistan whose parents nationality documents may be in question, will still be recognized as an Afghan (art. 12 of Citizenship Law).

B. Preservation of the child’s identity

111. The Law of Citizenship of Afghanistan has considered the best interests of the child and the principle of non-discrimination in all cases in the provisions related to offering citizenship. According to articles 10 and 17 of the said law, if a parent of the child born is a foreigner the child can request Afghan citizenship. Also, according to article 20, Afghan nationals can acquire a foreign nationality without losing their Afghan nationality but they will not receive the support of the Government outside of Afghanistan.

112. In accordance with article 63 and 69 of the Law of Birth Registration, in case the child and/or parents want to change the name of a child or make any modifications to name or age, these changes and related information shall be added to the identity administration records of the child. The Department of Birth Registration within the MoI has a regular system for the registration, preservation, and maintenance of information related to the identity of the child. It is responsible for the distribution of birth certificates to its citizens and has local offices at the provincial and district levels of the country.

113. The Constitution and other laws of the country emphasize the preservation and revival of the identity of all citizens of the country. The Government is obligated to take measures for the development of the language and culture of all ethnic groups in Afghanistan. According to article 43 of the Constitution the Government is obligated to provide teaching in mother tongues in all areas of the country where they are spoken. Article 2 of the Constitution provides that the followers of other religions are free to practice their religion and perform their religious ceremonies within the limitations of the law.

114. According to article 6 of the Constitution *‘...the Government is responsible to create a prosperous and progressive society with the aim of social justice, preservation of human integrity, protection of human rights, realization of democracy, achieving national unity, equality among all ethnic groups and tribes, and a balanced development all over the country’*. The Government endeavors, in accordance with the provisions of the Constitution and other laws, to take appropriate measures to ensure the objectives of the Constitution are implemented in different areas such as education, promotion of culture, literature, and linguistic identity of the ethnic groups resident in the country, the judicial system, and public health. Despite existing challenges, the preservation of the child’s identity has been observed in the mentioned areas.

C. Freedom of expression

115. Article 34 of the Constitution states, *‘... freedom of expression is inviolable and all Afghans have the right to express his thought through speech, illustration, or through other means in accordance with the provisions of this law’*. Paragraph 2 of article 34 of the Constitution permits the publication and broadcasting of matters without first submitting them to Government authorities. Although there is no direct mention of children in this article, nevertheless, as the term ‘citizen’ includes all sectors of society, children are also

included and hence their right to freedom of expression is ensured. This includes different areas such as schools, family, the judiciary, and other social environments.

116. According to article 8 of the Law on the Rights and Benefits of Disabled Persons, children with disabilities have equal rights to benefit from fundamental rights and freedoms on par with other children and have the right to express their views and participate in matters related to them. Further details maybe found in Chapter VII.

117. In accordance with article 4 of the Law on Mass Media, every person has the freedom of thought and expression. This right includes the request, receipt, and transfer of information, data, and views without intervention and limitation by Government authorities within the boundaries of the law. Furthermore, this right includes the free operation of broadcast, distribution, and receipt of information.

118. The MoE has initiated programmes through the media for children. They included Education Television of Afghanistan and Rangeen Kaman. The BBC has a radio programme entitled "New Home New Life". Some of the magazines include Kamkiano Anees, Magazine Education, Parwaz, Knowledge, Urfan and Moaref. Urfan and Moaref include children's issues. Children can contribute to Magazine Education which has a current circulation rate of 10,000 and is distributed to remote areas.

119. During the Children's Consultation many of the children mentioned that they did not have access to media groups.

120. If the right of children to freedom of speech is violated then children can file their complaints through the judicial procedures, to CPAN, and AIHRC.

121. The right of children in conflict with the law to express their opinions and to be acknowledged is proscribed for under the Juvenile Code (2005). Further details may be found in Chapter IX.

122. In principle, the right to freedom of expression can be freely exercised by Afghans, however, children's views on matters concerning them are not heard and they are actively or passively discriminated against. It is rather the parents or extended family who will speak on behalf of the children and this is more so for the girl child. Afghan children fare poorly on all these accounts whether it is at the level of family, society, and/or the state. Traditionally, opportunities for children and young people in Afghanistan to participate in the decision-making process in the family and within the community is rare, and even more so for the girl child. An individual's role and agency in the family and community affairs is determined by tradition and children are no exception. Since early childhood their identity is defined in terms of gender and they are prescribed with values and indirectly with/without future opportunities.²²

123. During the Children's Consultation children reported that they were not allowed to participate and express their views in front of their parents. They also mentioned that children, especially girls, were being forced into marriage.

D. Freedom of thought, conscience, and religion

124. Subsequent to the establishment of the new political system in 2002, the freedom of thought, expression, and other individual and social freedoms have considerably improved.

²² SCSN and SCUK, 2005, a Child Rights Based Situation Analysis, Save the Children – Sweden - Norway and Save the Children UK, p. 51.

This is one of the most positive developments which have occurred in recent years, benefitting both adults and children.

125. Other laws such as the Mass Media Law and the Law of Social Organizations, ensures these freedoms in accordance with social requirements.

126. The freedom to practice ones religion has been supported by law since the first Constitution of the country in 1923. Article 2 of the current Constitution determines Islam as the sacred religion of Afghanistan and states, '*Non-Muslim citizens shall be free to perform their rituals within the limits determined by laws for public decency and public peace*'.

127. Beside the mainstream schools open for all citizens the MoE, at the request of nomads, has established separate schools. Private schools have opened for Hindu students. Currently, there are 2,396 Hindu children (1,630 boys and 766 girls) in private schools. The Department of Curriculum Development of the MoE has published and made available grade one and two school books in Uzbeki, Turkmeni, Pashae, Baloochi, and Noristani.

E. Freedom of association and peaceful assembly

128. The right to freedom of association and peaceful assembly is expressly ensured in article 36 of the Constitution and other laws for men, women, and children. Article 35 of the Constitution provides that the citizens of Afghanistan have the right to form social organizations for the purpose of securing material or spiritual aims in accordance with the provisions of law. Furthermore, it states that political parties can be formed provided that the mandate of the party is not contrary to the principles of Islam and the provisions and values of the Constitution. Clause 35.3-4 states that a party should not have political affiliations with foreign political entities or have military or paramilitary aims and structures. The formation and functioning of a party based on ethnicity, language, religious sect, or region is not permissible.

129. Presently the GoA, in collaboration with civil society organizations active in the field of child's rights, have established nine associations and social organizations for supporting and ensuring children's rights. The following are the associations that have been established to support the mother, father, and child: Association of Women and Children; Association of Cultural Rehabilitation of Children and the Youth; Guardian Angel Association; Special Education Association for Shy Children; Cultural Center for the Mental Development of Children and Youth; Social Association of Parents of Mentally Challenged Children; Social Association for the Support of Women and Children of Baghlan; and Sina Association of Women and Children.

130. Article 34 of the Education Law encourages the establishment of voluntary associations such as scouts, clubs, and committees to strengthen the quality, security, and environment in schools. Children in schools can form literary, cultural associations, and sports teams which can be supported by the school administration in line with the MoEs policies.

131. Though the Constitution does not make direct reference to right of association and peaceful assembly for children it is implied that it is inclusive of children since it states 'Afghan citizens'. Girls are not discriminated by law in participating and establishing associations but in practice there are some restrictions imposed on them due to insecurity and local customary practices in the society that limit their full participation.

132. Legally any Afghan is able to join a trade union, which includes children. But since they are not of legal age they are not able to head it. There is no information on children with respect to trade unions.

F. Protection of privacy

133. Under the Constitution and other laws neither the Government nor other persons have the right to interfere in one's privacy. According to article 37 of the Constitution confidentiality and the freedom of correspondence and communications, whether written in the form of letters or through telephone, telegraph, and other means, is inviolable, unless authorized by the provisions of the law. Article 38 of the Constitution states that that an individual's residence is immune from intrusion and citizens are prohibited to enter private places without the permission of the owner or the decision of the court in regards to observing this right in educational institutions, rehabilitation centres and other related centres, there is no specific mention of privacy. However, article 38 of the Constitution covers all aspects of accommodation. The observance of this right within the family environment is highly dependent on individual family setting. Most live in extended families where the decision of the elders or majority overrides individual needs. Individuality is overridden by family matters and honor.

134. According to article 26 of the Juvenile Code (2005) the Special Juvenile Court addresses crimes committed by children. According to article 32 of this law regarding the protection of privacy in matters related to court proceedings, proceedings on children's prosecution is closed to the public. Documents pertaining to children's trials, including the testimony of witnesses and views of the experts are not permitted to be aired as well as any other information that could lead to the discovery or exposure of the child's identity. According to article 34, to protect the privacy of the child and the best interest of the child, the attendance in these trials is limited to the child, his/her legal representatives, the defense attorney, legal aid, witnesses, the judicial panel, and the prosecutor. If the presence of the legal representative of the child is not in the best interests of the child then he/she will not be allowed to attend.

135. In case any provisions of the above laws or other laws violates the right of children to privacy, a complaint or lawsuit can be lodged through the Attorney General's Office, the Public Attorney's Office for Children, or through the AIHRC. Recently, a commission for addressing children's issues has been set up headed by the President's Advisor on Children and the Youth. Currently the development of the bylaws of this Commission that will regulate its roles and responsibilities is under progress.

G. Child's access to information and the role of mass media

136. According to article 16 of the Education Law, in order to disseminate information on education, recreation, sports, and other public awareness programmes, the MoE regulates and broadcasts programmes on Education Radio and Television for children and adults. The children have a major role in producing and presenting the programmes. According to article 28 of the Education Law, an agency called Center for Science and Technology was established in 2005 within the framework of the MoE. One of the aims of this agency is to provide access for students of all fields and from different educational courses to quality education in modern science, mathematics and information technology. Recently, with the cooperation of this centre, education laboratories were set up in a vast number of schools in the capital and provinces of the country. Educational seminars on natural sciences, mathematics, and other subjects were held for the purpose of enhancing the professional and practical knowledge of teacher and students.

137. The MoIC publishes and makes available The Kamkiano Anis, a magazine providing information for children about education, culture, arts, literature and sports. The National Radio and Television of Afghanistan have a special weekly programme broadcast for children. In addition, all directorates of the MoIC in the provinces are instructed to

publicize educational programmes for children through publications, television, and radio. For further information see section, 'Children's Access to Information and Role of the Media'.

138. Since 2007 the MoIC, in cooperation with UNICEF, has created 13 Information and Contact Centers for youths in 14 provinces of the country. At the district level, these centres are in touch with the provincial youth federations. Until now, 4,000 boys and 2,500 girls (from 14 to 25 years of age) have received guidance and advice from these centres. The main aim of these centres are to create relations between the youth of the country, provide new information in different areas on social, cultural, economic, artistic, language and computer training, build the professional skills of the youth, assist in finding jobs, and provide health and legal advice. Nevertheless, due to economic and security conditions, there are limited resources and facilities available in this area for the children.

H. Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

139. In light of the guidance by Sharia law and the principles of human rights the Constitution and other laws of GoA expressly prohibits all forms of physical punishment and torture of human beings (art. 29). No one is allowed to resort to or give instruction to torture even for the purpose of extracting information from another person who is under prosecution, arrest, and detention or convicted to be punished. Punishment contrary to human integrity is expressively prohibited. According to article 30 of the Constitution any statement, confession, or testimony which is taken under duress is not valid. Articles 2 and 4 of the Penal Code also prohibit any punishment which is discordant to human dignity.

140. However, during the consultation with children, children stated that they were often tortured or threatened for confessions, beaten for speaking or other small infractions when they were in conflict with the law.

141. According to article 7 of the Juvenile Code (2005) any degrading punishment of children, even if it is for the purpose of correction and/or education, is prohibited. Article 8 states that the deprivation of the liberty of the child is the last resort for his rehabilitation and education and is limited to situations where there is a risk of the child absconding, risk that the child might harm others, or the risk of the repetition of the crime (art. 10).

142. Article 39 states that children cannot be subjected to life imprisonment or capital punishment. It further elaborates the limitations on the punishment to children. It states that children who have not completed 12 years of age cannot be given more than a third of the punishment given to an adult for the same crime as provided for under the Penal Code. Solitary confinement is not applied to children. If a child under the age of 12 commits a felony, even if it is regarded as a serious crime, the child cannot be prosecuted but should be handed over to their parents or legal guardians. If damage was inflicted owing to the negligence of parents, the parents will be obliged to pay for the damage.

143. The GoA ratified the Convention against Torture in 1987 and is obligated to implement this Convention. The provisions of the Convention have been implemented in national laws, but there is still more work still to be undertaken in raising awareness.

144. In line with the Convention against Torture, the Government has introduced a number of reforms in the judicial system. The Office of the Attorney General is responsible to address complaints against the police of torture and to investigate and address cases where there are medical proof and signs of torture. Security and prosecution offices have also undergone awareness programmes on the prohibition of torture and degrading

treatment of suspects or convicted persons and the awareness programmes will be held more extensively in the future for more impact.

VI. Family environment and alternative care

A. Parental guidance and the child's evolving capacities

145. According to article 54 of the Constitution of Afghanistan, family is the pillar of society and is supported by the Government. In order to ensure the physical and psychological well being of the family, especially of the mother and child, children's education, and to eradicate customs which are against the provisions of the holy religion of Islam, the Government has taken appropriate measures. In accordance with article 56 of the Civil Code of Afghanistan family is made up of kinship derived from a common forebear. In accordance with the provisions of article 57 of the Civil Code, family is formed from kinship divided into direct kinship (mother and father), and indirect kinship (grandparents, aunts, uncles). The definition of the family in the Constitution is a general one and emphasizes supporting the mother and child within the family environment. The Civil Code also provides, in detail, the responsibilities of parents to their children and family. However, regarding the best interests of the child and the evolving capacities of the child the provisions of the Civil Code and the Constitution is silent since the provisions protect the interest of the family which the child is seen as a part of rather than protecting the individual social rights of the child.

146. In Afghanistan the formation of a family by a marriage between a man and a woman is not only provided by law, but social norms and customs put great emphasis on it. Extended families are still very much the norm with very strong ties. Sometimes, despite the family's interest in the best interest of the child, the economic limitations, local customs, low levels of literacy, and security result in early or forced marriages of girls. Approximately 40 per cent of marriages are premature or forced.²³

147. For the purposes of the growth and development of children in early childhood the MoLSAMD has established residential and work place kindergartens and nurseries in the capital and provinces of the country catering to children six years of age and below. In accordance with article 54 of the Constitution, these education centres aim to promote the emotional, physical, and mental well being of the children: *'...the state shall adopt necessary measures to attain the physical and spiritual health of the family, especially of the child and mother, upbringing of children, as well as the elimination of related traditions contrary to the principles of the sacred religion of Islam'*. However, kindergartens lack facilities and space, and have a shortage of resources and qualified personnel to receive all children and are mostly concentrated in cities. In addition, the kindergartens are only for those children whose mothers are working outside of homes. Up to now there are more than 370 workplace and residential kindergartens supporting 25,300 children all over Afghanistan. The Government has held specific workshops for raising awareness of these employees. Though much work has been undertaken in early child development there is still a great need to raise awareness among parents, to develop and strengthen expertise to implement more effective and qualitative services for children, and to adopt and implement national strategies in early child development.

²³ Afghanistan's Universal Periodic Review submitted to the Human rights Council, 24 February 2009, p. 17.

B. Parental responsibilities and State assistance

148. The State has the responsibility in preserving the psychological and physical well being of children. In accordance with article 256 of the Civil Code, maintenance of children is the responsibility of the father. The article provides that the maintenance of a young son should be until the son is capable of working and of a daughter until she is married. Article 257 of the Civil Code provides that the maintenance of an adult son who is not able to work also falls on the father. According to article 258 of this law, the expenditures of the working son or daughter shall be borne by themselves from their income, unless the income is insufficient, whereupon the father contributes. The responsibilities of the mother is not clearly mentioned in the laws but Sharia law and local customs regard a number of responsibilities to be shared by both parents including the education and upbringing, preservation of health, sanitation, breastfeeding, food, clothing, and in giving suitable names.

149. In accordance with article 57 of the Law of the Juvenile Code (2005) if a child under the age of 18 years, his parents are considered as his legal guardians. If the child does not have parents the court shall appoint a legal guardian for him/her.

150. The MoLSAMD has specific procedures for orphaned children without parental care which aims to develop children to their full potential. The best interests of the child is considered in this procedure while realizing that the education and upbringing of the child is best achieved in a family environment and attempts to provide for the child such an environment as far as possible. Absence or death of a father is one of the main reasons that children are placed in orphanage. When institutionalized children are being reintegrated into the family the views of the child and his/her agreement is crucial for integration. If the child agrees, social workers first attempt to find the mother. If the mother is not traceable then contact is made with the next closest relative of the child (grandfather, paternal uncle, maternal uncle, parental aunt and so forth). Social workers study the feasibility of integrating the child with the extended family and after thorough review, and being completely assured of the proper care for the child, he/she will be placed with them. For further information see section, 'Alternative Care'.

151. Poverty is one of the main factors driving the placement of children into residential care. Many of these children have extended family and all efforts should be made to facilitate their return to their families and communities. The MoLSAMD, in cooperation with UNICEF, launched a pilot project in 2006 aimed at reunifying and reintegrating 400 children from two State-run Kabul orphanages over a one-year period. The MoLSAMD social workers were responsible for identifying children as candidates for reunification and reintegration, linking children with their families, and providing ongoing support during and after the process of returning children to family care. For each child returning home, families were provided with 12,000 Afs to establish a micro-business enterprise of their own choosing, and 500 Afs to provide basic school supplies. Since the start of the project 660 children have been returned to their families. 554 are boys and 106 are girls (12 children between the ages of one and five years, 175 children between the ages of 6 and 10 years, 181 children between the ages of 11 and 12 years, 167 between the ages of 13 and 15 years, and 115 children between the ages of 16 and 18 years.²⁴

Day-care centres

152. Civil society organizations in collaboration with the MoLSAMD have established day centres for children without family support, children working on the streets, and

²⁴ Figures provided by MoLSAMD on 15 April 2009.

children without education. To date, these organizations have supported up to 854,777 children.

Table 3

Children in day centres (2008)

<i>Children supported in day centre</i>			
<i>No.</i>	<i>Name of the institution</i>	<i>Total number of children supported</i>	<i>Location of the centre</i>
1	Aschiana	14 500	Kabu, Balkh, Parwan, Herat
2	Children in Crisis	140	Kabul
3	AMDH	466	/
4	Afghanistan Farda	473	/
5	Oyek	485	/
6	Save the Children UK	11 921	All over Afghanistan
7	Save the Children USA	293 115	Afghanistan
8	Save the Children Norway Sweden	102 665	/
9	Terre des Hommes	700	Torkham
Total		424 665	

Source: MoLSAMD.

Safe playgrounds

153. Regarding social programmes for children based on the provisions of the National Strategy for the Protection of Children at Risk, to date 46 playgrounds safe from the risk of landmines have been established for children all over Afghanistan.

154. Many of the children with disabilities are a product of three decades of war and need special assistance in different areas. However, there are no systematic, specific, or sufficient programmes to assist the parents of children with disabilities. There are only a limited number of centres and schools for children with hearing, visual, and speech disabilities.

Maternity and paternity leave

155. According to article 54 of the Law of Labor female workers benefit from 90 days of paid maternity leave, one third of which is before child birth and two thirds after child birth. In case of an unnatural birth or the birth of twins, 15 more days of leave shall be granted, with other benefits, upon certification by a hospital. There are no provisions mentioned in relation to paternity leave. Civil society organizations active in Afghanistan have their own specific rules and regulations regarding maternity and paternity leave and these need to be in conformity with the laws of Afghanistan, especially the Law of Labor.

C. Separation from parents

156. Articles 236 and 237 of the Civil Code of Afghanistan provide mothers with the priority for the protection and upbringing of children when they are in need of care upon the resolution of marriage or the separation of parents. In accordance with articles 239, 240, and 241 of the Civil Code, in cases where the parents of the child are not available or do not have the capacity to care for their children, the custody of the child shall be transferred to the next of kin of the child as the law provides.

157. In accordance with article 56 of the Law of Prisons and Detention Centers the Government is responsible in ensuring that children up to the age of seven years are able to stay with their father or mother who is in prison in a special location. After the age of seven or till the end of the prison sentence of the parent, the said child shall be transferred to a Government orphanage. Accompaniment of a child with his/her father is only permitted when the father is the sole custodian of the child.

158. In accordance with article 55 of this Law if a female prisoner is pregnant then the said law holds the officials of the prison responsible to transfer the pregnant prisoner in due time to a doctor. The proceedings of the matter should be reported to the related Public Prosecutor and the overall head of the prison. The female prisoner patient should remain in hospital as long as the doctor deems necessary for her health. The time that the female prisoner spends in the hospital should be counted in her sentence.

159. In relation to regulating the affairs of the rehabilitation centres the Law of Rehabilitation Centers has recently been adopted. It addresses the operation and regulations of the protective custody of juveniles in correction and rehabilitation centres. In addition, the Regulation of Correction Centers (2009) has recently been submitted to the Council of Ministers for approval. For more information, see section, 'Rehabilitation and Reintegration of Child Victims'.

D. Family reunification

160. In accordance with article 39 of the Constitution every Afghan has the right to travel and reside in any part of the country. All Afghans have the right to travel outside of Afghanistan or to return within the provisions of the law. There are no specific problems regarding the travel of children to be reunited with their parents in Afghanistan, but problems could arise when travelling outside the country to meet their parents. There are mechanisms for legal support for the reunification of families through Afghanistan's consular offices outside the country and from the MoFA which provides support for family reunification. However, except for a few neighboring countries, for those children or parents who want reunification with each other there are many restrictions for visas and the process is slow.

161. For those children who are trafficked or smuggled outside the country for unlawful purposes, in accordance with National Plan of Action against Trafficking and Kidnapping of Children adopted in 2004, the MoLSAMD is obligated to ensure the return of these children to their families. Some children are trafficked or smuggled by their families due to the dire economic situation of the family. The MoFA has been able to reunify 438 trafficked children deported from Saudi Arabia back with their families. The children and families are supported by social workers and the children were reunited after having received guarantees from families that their children would not be smuggled again.

E. Illicit transfer and non-return

162. In 2008 the Law on Counter Abduction and Human Trafficking was adopted aiming to prevent and punish the crimes of abduction and trafficking of humans, especially women and children. One of the main objectives of this law was to protect the victims; observe the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; ensure mutual cooperation in countering abduction and trafficking; and to punish the perpetrators of these crimes. Decree No. 47 of the President of the Islamic Republic of Afghanistan regarding the abduction and trafficking of children attempts to address the issue in more concerted efforts by calling for a series of measures. In order to implement the provisions of this law the Commission on Combating and Trafficking of Humans, headed by the MoJ, is working with law enforcement agencies, other concerned ministries, and civil society organizations. The Commission aims to provide legal and rehabilitation support to victims of human trafficking. Actions have also been incorporated and implemented in the National Strategy for Children at Risk in cooperation with UNHCR, UNICEF, and AIHRC for border monitoring in three main vulnerable points, namely, Torkham, Islam Qala, and Zarang.

F. Recovery of maintenance for the child

163. In accordance with articles 6 and 13 of the Constitution the Government is responsible for creating an enabling environment to ensure the growth of the standard of living for its people. According to article 24 of the Law on Health, the MoPH is responsible for ensuring the physical, mental, and psychological wellbeing of children. It is obligated, in cooperation with the MoE, to supervise the volume of lessons and the sanitation in kindergartens, schools, and orphanages.

164. The MoLSAMD adopted the National Strategy for Children at Risk in 2006. One of the Strategy's objectives is to build a supportive environment for children at risk by creating conditions for: adequate income and livelihoods for the maintenance of children; suitable and affordable shelters; access to basic healthcare; awareness on importance of nutrition; access to quality education; enabling a secure environment; preventing underage and forced marriages; social protection; awareness on respecting the rights of children; and access to safe drinking water. The Strategy also supports children who are at risk due to armed conflict and tries to secure a standard of living that is in line with the Convention's standards.

165. In cooperation with the GoA, agencies, and international organizations assistance is provided within limits to the most vulnerable groups of population living in areas with limited resources and prone to natural disasters. This process is under the authority of the Commission consisting of Government ministers, and the supervision of the Second Vice President of Afghanistan.

166. Afghanistan has had three decades of disastrous wars resulting in the destruction of most of its agricultural, industrial, and other infrastructures and facilities. This has compromised not only the availability of many basic services but has affected the economic and social structures as well. Services, infrastructure, and technical experts are literally starting from scratch in many cases. In order to create facilities compatible with international standards there is a need for serious and more systematic measures. According to estimates reached by the MoLSAMD in the sectoral Strategy on Social Security, half the population (12.25 million) of Afghanistan²⁵ needs social protection from the Government.

²⁵ Afghanistan Central Statistics Department, 2008, estimates the population to be around 24.5 million.

However, in the year 2006 only 2.5 million people have been able benefit from social protection. The following table presents the support provided to a number of vulnerable sectors of society:

Table 4

Afghanistan's population covered by social protection (2008)

Families of the martyrs	224 850
The disabled	87 717
Orphans	10 500
Children in kindergartens	25 000
The retired	54 000
Development of public utilities and skills	1 750 000
Microloans	340 000
Total	2 492 067

Source: MoLSAMD.

167. The Ministry's sectoral Social Protection Strategy has divided the management of social risks into three groups: informal measures, market based measures, and public measures. It emphasizes the continuation of children's education in schools, prevention of underage or forced marriage of girls, micro-loans for poor families, direct transfer of money to poor families, support to orphanages, programmes of cash for work, programmes of food assistance, and promotions of skills.

Maintenance of the child

168. In accordance with articles 257 to 260 of the Civil Code the maintenance of the child in all its forms is the responsibility of the father. The maintenance includes accommodation, food, clothing, medicine, sanitation, education, safety, and other basic needs of the child. Primary needs of the child are the responsibilities of the father/ family and the Government does not have a direct intervention. However, in the last few years the Government has implemented a number of public awareness programmes on the health of the child, sanitation, and the rights of the child through the media, seminars, and workshops in most areas of the country. It has attempted to make families aware of their responsibilities.

G. Children deprived of their family environment

Foster parents

169. According to article 57 of the Juvenile Code (2005), if a child does not have a guardian the Court shall appoint a custodian for him/her. In accordance with article 58 of this law, a person who is interested in the welfare of the child can apply for custodianship to the court and receive information about the requirements. Persons seeking custodianship should provide information on the application to the Special Court for Children about their relationship with the child and state their reasons for being qualified to exercise custody over the child. The Court shall then forward the information to specialized social services institutions to verify the information provided. According to article 59, the legal custodian of the child is thus appointed and shall have all the powers and responsibilities as the

parents of the child, including the responsibility for maintenance and the best interests of the child. At present, no provisions have been made to provide training to persons wanting to become custodians of children.

Alternative care

170. The MoLSAMD has the mandate to provide, manage, regulate, and monitor social services for children and families at the national level. However, the mechanisms and systems necessary to successfully accomplish this mandate are weak. Based on the MoLSAMD, civil society organizations, and the Strategy on Children at Risk effort has been made to reintegrate children in orphanages with their families or close relatives as much as possible. The MoLSAMD and UNICEF initiated a pilot project where two state run orphanages provided support to families and close relatives in dire economic situations and a limited amount of money as financial assistance to enable them to start a local business. For further details see section, 'Parental Responsibilities and State's Assistance'.

171. There are Government orphanages²⁶ in the capital and the provinces of Afghanistan. These orphanages operate on the basis of Bylaws of Orphanages²⁷ which include conditions, responsibilities, duties, and related services. In most of the orphanages there are schools for children up to grade 8 and the curriculum of the MoE is implemented there. Teachers, administration, and service employees of these institutions attend to the teaching process, feeding, accommodation, and the recreation needs of children. In all orphanages there are classrooms, bedrooms, kitchens, bathrooms, and sports areas for children's use. According to the related Bylaws all orphan children in orphanages should wear special uniforms.

172. Children in orphanages are able to interact with their families once a week. The monitoring process in the orphanages is carried out by AIHRC, Afghanistan Aid Organization, and other human/child rights organizations. The food menus of the orphanage are prepared by the MoLSAMD and children receive three meals a day. Nevertheless, due to limited economic capacity of the Government, the standards are not being implemented. During Children's Consultation, children complained of the lack of basic hygiene needs such as soap and water, cramped rooms, education centres are not available, inaccessibility to higher education, lack of appropriate clothing for different seasons, lack of electricity, lack of nutritional food, and absence of medicine in the clinic. According to the 2008 MoLSAMD statistics there are 64 orphanages in the capital and provinces which shelter a total of 10,500 children (1,380 girls and 9,120 boys).²⁸

173. In the private sector 20 orphanages exist, each of which has branches in the capital and provinces. In total there are 5,896 orphans being cared for by private orphanages. The private orphanages are regulated by a separate protocol under the MoLSAMD which has the control to supervise their performances.

²⁶ Available data suggest that the vast majority of children living in institutional care have at least one living parent. Poverty constitutes the background for almost all alternative care placements. However, recent studies indicate lack of access to basic services, especially education, as the primary reason for children to enter care.

²⁷ The Government is presently in the process of reviewing and developing a new regulation which will meet more of children's rights and needs.

²⁸ In UNICEF's 2008, *Orphans Reunification Project Evaluation Part 1: Social Work Timing and Process*, the number is estimated at between 6 to 11 thousand children living in institutional care again highlight the Government's administrative body neither possesses recent or reliable data on the total number of orphanages, their condition or the number of children living in residential care.

Table 5
Children in private orphanages

No.	Institution name	# of orphanages	# of male children	# of female children	Total # of children	Location of the orphanage
1	Wami	15	/	/	3 363	Kabul, Logar, Maidan Wardak, Kunduz
2	Mahbooba Proms	2	/	/	134	Kabul, Takhir
3	Hefazat Atfal Afghan	1	42	32	74	Kabul
4	Mermon	1	/	/	27	Kabul
5	Life	2	/	/	1 058	Nangarhar
6	Haiatul Ghasia	1	/	/	860	Nangarhar
7	Ghozhi Koor	1	/	/	70	
8	Private Badakhshan Orphanage	1	/	/	120	Badakhshan
9	Herodit Koria	1	/	/	49	Kunduz
10	Lee Pelican	1	/	/	141	Kabul
Total					5 896	

174. There is a major lack of social workers necessary to carry out critical functions in all parts of child protection work, including alternative care. Although the title of “social worker” is often used for staff working with vulnerable groups in Afghanistan, there is significant disparity in the quality and the types of roles, responsibilities, and activities they conduct. Social work does not yet exist as a ‘profession’ in Afghanistan. There is no school of social work or other accredited training programme in Afghanistan at the present time. There are no standardized tools, quality benchmarks for service delivery, or established minimum standards of care. Relevant legislation and policy need revision and further development.

175. The MoLSAMD, UNICEF, and non-governmental partners are planning activities towards the development of a formal social worker training programme focusing on the role of social work in child protection services as well as nation-wide occupational standards for social work. These activities are being developed within the framework of the National Strategy on Children at Risk and the broader efforts of the GoA, World Bank, and bilateral donors to build a vocational education and training system in Afghanistan.

Child street workers

176. In Afghanistan there are no street children, but there are child street workers who resort to working in the streets because of their families’ poor economic conditions, conflict-related problems (internal displacement and weakening of community support networks), and lack of educational opportunities.

177. According to the estimate from 2003 there are 37,500 street working children in Kabul. The recent study in Kandahar province estimates that there are 7,373 street working children (7,252 boys and 121 girls).²⁹ Children working on the streets are predominantly boys between the ages of 11 to 14 years. While some girls can be found working on the streets they remain mostly within the domestic sphere. In Afghanistan, there remains a

²⁹ UNICEF and Action Aid Afghanistan, 2008, *Child Protection Assessment of Street Working Children in Kandahar City and Spin Boldak*, p. 2.

pressure on girls to stop working once they have reached puberty in order to preserve the family's reputation. According to UNICEF's *State of the World's Children (2007)* girls tend to perform a greater level of domestic work than boys and due to traditional gender roles are more likely to be denied their right to education or may have to juggle school attendance and domestic responsibilities.³⁰

178. The existence of child street workers is a big challenge for the Government and civil society. The Government, in cooperation with international organizations, has established drop-in day centres to support these children. The children come to the centres daily at specific hours. Here they have access to schooling, learning skills of their interest, and food, after which they go back to their work. These centres have teachers, social workers, and other service personnel. For instance Aschiana has established day centres in the provinces of Kabul, Balkh, Parwarn, Herat, and Kandahar and also provides support to the children's families. In the last two years around 10,000 children have received professional and technical training, while 14,500 children have received shelter, and support. Further information can be found under section, 'Parental Responsibilities and State's Assistance'.

H. Adoption

179. Adoption does not have a Sharia or legal basis in Afghanistan. Therefore, in accordance with article 228 of the Civil Code, when a parentage of an adopted person is known, the legal consequences such as maintenance, custodian fees, inheritance and marriage between close relatives is not enforced on the adopted children. However, if the child is an orphan or their parents are destitute then such children can be put into the care of individuals who have the qualifications and capacity for the custody of the child.

180. The GoA has not ratified the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption but has ratified the Optional Protocol to the Convention on the sale of Children, child prostitution, and child pornography.

I. Periodic review of placement and treatment

181. According to article 61 of the Juvenile Code (2005) assessment of children who are in custody and who are younger than 12 years of age are addressed by the court once a month and once every three months for older children. The aim of the assessment is to ensure the social welfare of children and to provide required facilities where necessary. If the requirements and responsibilities of parents/custodians, according to article 59 of the mentioned law, are not met the Court is authorized to suspend the continuation of the custody.

182. The MoLSAMD and the MoJ have signed a protocol in 2006 for better implementation of the Juvenile Code (2005) to facilitate social workers of the MoLSAMD to be outsourced to the rehabilitation centres. Further details on the protocols can be found under subsection, 'Children in the Judicial System' and 'Rehabilitation and Reintegration of Children in Conflict with the Law'. The MoLSAMD is also obligated to reintegrate children to their families and relatives whose custody period is completed. According to this protocol, if young children are with their mothers in prison, the Ministry shall place them in the prison kindergarten.

183. AIHRC is monitoring and assessing the situation of children in orphanages, care institutions, correction and rehabilitation centres, and prisons. Nevertheless, for regular and

³⁰ UNICEF, 2007, *State of the World's children*, p. 48.

systematic monitoring of these institutions and also for monitoring the situation of children who are being cared for with families, there is a need for more resources and capacities in order for the Government to be able to better ensure and protect the rights and welfare of children.

J. Protection from all forms of violence

184. Under article 29 of the Constitution the torture of human beings is prohibited. No one is allowed to resort to or give instruction to torture even if for the purpose of extracting information from another person who is under investigation, arrest, or condemned. Punishments contrary to human dignity are prohibited. This article has a broad meaning and prohibits all forms of violence and torture by any name.

185. The Juvenile Code (2005) was adopted for the purpose of correction and the rehabilitation of child violators of the law. According to article 7 of the law, the punishment of children in an extreme and degrading manner is not allowed, even if it is deemed necessary for their correction or rehabilitation. In the laws of Afghanistan there are no exceptions allowed for physical or psychological violence against children. Currently, the Government is working on the formation of a commission which will investigate sexual violence against women and children. There are also efforts to review and amend the Penal Code of the country to include provisions to address violence against children.

186. Under article 407 of the Penal Code of Afghanistan beating is a crime and the perpetrator shall be punished. In cases where children beat other children or use other forms of physical violence, the first step is to care for the victim and simultaneously prevent the recurrence of the offense committed while rehabilitating the child in conflict with the law. The case shall be addressed in accordance with the Juvenile Code (2005).

187. For information on corporal punishment see section on 'Right to Education'.

188. In accordance with the Interim Law on Criminal Procedures the cases of violence against children are submitted to the relevant police station of the district. In accordance with article 33 of the Law on Juvenile Rehabilitation Centers of the country, suspected or accused children under detention have the right to personally, or through their parents or guardians, submit a written or oral complaint to the responsible authorities of the rehabilitation centres, public prosecutors, CPAN, AIHRC, or the National Assembly. The said authorities are obligated to address the complaints and take appropriate decisions as per the provisions of the law.

189. CPAN is critical in identifying, reporting, and responding to the cases of sexual abuse, physical violence, trafficking, kidnapping, *baad*,³¹ underage marriage, forced marriage, heavy child labor, children in conflict with the law, separation of children, misuse of drugs, and other forms of violence. In 2007 363 cases of child rights abuses were reported to CPAN. In 2008, CPAN reviewed a total of 1,459 (851 boys and 608 girls) cases of different forms of violence and took necessary measures for the referral of these cases to concerned authorities as well as providing legal support, family support, and psychological counselling. The following table presents cases which have been monitored and addressed to in 2008.³²

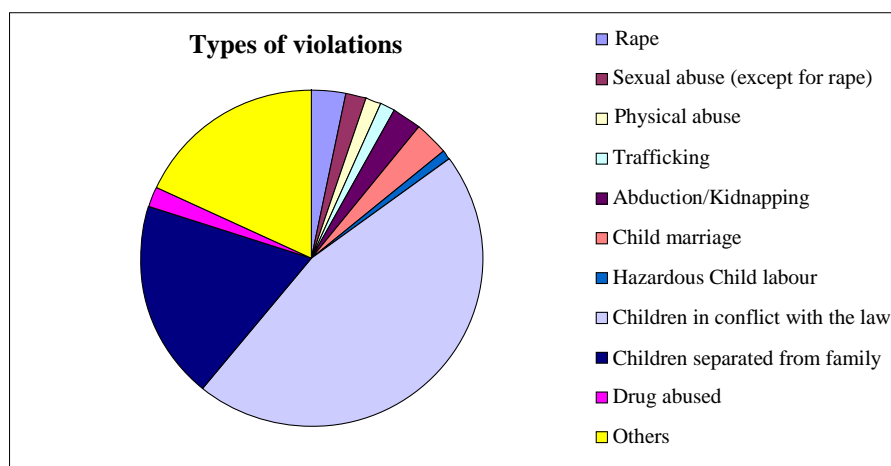
³¹ *Baad* refers to the practice of giving girls in marriage to resolve disputes between families through the traditional justice system.

³² All information from CPAN Case Monitoring Data January–December 2008. [http://www.cpan.gov.af/html/index\(Eng\).html](http://www.cpan.gov.af/html/index(Eng).html).

Table 6
Reported cases of abuse against children (2008)

Months	Total # of cases reported	Boys	Girls	Age range	Rape	Sexual abuse (except for rape)	Physical abuse	Trafficking	Abduction/kidnapping	Child marriage	Hazardous child labour	Children in conflict with the law	Children separated from family	Drug abused	Others
January	80	62	18		0	0	2	0	4	0	1	30	12	0	31
February	87	60	27		2	4	1	0	2	0	2	49	8	1	18
March	92	58	34		2	1	2	7	4	3	1	28	13	3	28
April	159	68	91		6	1	1	0	1	5	0	71	30	1	43
May	117	54	63		12	7	1	0	5	4	1	37	11	1	38
June	114	78	36		4	1	0	1	0	1	0	60	36	1	10
July	172	110	62		7	2	7	0	5	7	2	84	34	2	22
August	132	115	17		6	4	0	0	8	4	0	65	30	0	15
September	113	63	50		4	1	0	5	3	4	0	60	21	0	15
October	98	35	63		3	5	0	0	3	3	1	43	15	18	7
November	164	75	89		4	0	3	8	4	15	2	61	44	1	22
December	131	73	58		0	2	1	0	2	4	0	82	25	1	14
Total	1 459	851	608	0–18	50	28	18	21	41	50	10	670	279	29	263

Sources: Child Protection Action Network/MoLSAMD.



K. Rehabilitation and reintegration of victims of violence

190. According to article 18 of the Law on Counter Abduction and Trafficking of Humans, if the victim is a child then he/she will be returned to the parents, and if the parents or legal custodian is not available, then the victim will be kept at a specialized rehabilitation institution. In accordance with article 19, the investigating authorities are obligated to send the victim to the hospital for treatment as quickly as possible. Further information can be found under section 'Special Protection Measures'.

191. With regard to children addicted to narcotics, under article 2 of the Law on Combating Drugs, one of the aims is to establish health centres for the treatment of poisoning, physical, and psychological rehabilitation. Another aim is to reduce further vulnerability to drugs and reintegrate children into society. The provisions of this law are broad and include children. Further information can be found in section, 'Drug Abuse'.

192. In accordance with article 48.2 of the Law of Juvenile Code (2005), the special institutions of social services are obligated to monitor the behavior of children and provide necessary facilities to reintegrate children to normal society.

VII. Basic health and welfare

A. Right to life, survival and development

193. In accordance with article 23 of the Constitution, life is a gift from God and is the natural right of humans. Article 54 obligates the Government to take necessary measures to ensure the physical and psychological well being of the family, especially the child and mother. Articles 23 and 24 of the Law on Health establish the support for the development and survival of the child.

194. Afghanistan has a low life expectancy rate of 47 years for men and 45 years for women³³ and one of the highest child mortality rates in the world. Child mortality rate has dropped from 257 in every 1000 births in 2001, to 191 in every 1000 births in 2006; the maternal mortality rate of 1600 in every 100,000 births is still a very high rate in the world. The deaths of children in the country are attributable to: acute respiratory infectious disease, diarrhea, and measles. Acute malnutrition in young children stunts growth and weight (40 per cent), and chronic malnutrition (54 per cent) of children is very common. Tuberculosis and malaria is widespread. Cases of HIV, currently at 556 could prove to be a very dangerous threat to the future of the country.

Table 7
Child and infant mortality rates

Year	Mortality rate of children aged under 5	Infant mortality rate aged under 1	Source
2003	257	165	MICS, government and UNICEF survey
2006	191	129	Afghanistan Health Survey (John Hopkins University)

Source: Ministry of Public Health.

195. Due to a number of factors such as: the existence of disease ridden mosquitoes, shortage of drinking water, lack of sanitation, insecurity, poverty, lack of national policies for prevention of harmful substances (cigarettes, unprocessed flour, and salt without iodine), lack of appropriate garbage disposal, air pollution, water pollution, drug abuse, destruction of infrastructure, and low food security the health situation in the country leaves

³³ Afghanistan National Development Strategy, 2008–2013.

a lot to be desired. Daily, hundreds of children are dying from malnutrition and curable diseases and 35 per cent of these losses emanates from waterborne diseases.³⁴

196. The MoH is committed to meet the Millennium Development Goals (MDG) to:

- Reduce by two thirds between 1990 to 2015 the under five mortality rate
- Reduce by three quarters between 1990 to 2015 the ratio of maternal mortality
- Attain universal access to safe and reliable contraceptive methods by 2015
- Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases
- Have halted by 2015 and begun to reverse the spread of HIV/AIDS

197. The MoH established the Child and Mother Health Centres to meet the MDG commitments and to improve health in three main areas to (a) reduce maternal, under-five and infant mortality rates, (b) improve the nutritional status among children; and (c) improve sector wide equity, effectiveness and efficiency.³⁵ The Child Health Task Force was established to develop policies to improve children's health by:³⁶

- IMCI (Integrated Management of Child Illnesses)
- Prenatal, infant and childhood care and development (prenatal and neonatal care, infant and childhood infections, child growth and development, psychosocial development, and toxins and poisoning)
- Prevention, promotion, disability and adolescent (nutrition; immunization (EPI); preventive and promotional measures – healthy environment, child friendly schools, school health; adolescent requirements and problems (sexually transmitted diseases, suicide, abuse; and child disabilities)

198. Under article 24 of the Law on Health the MoPH is obligated to ensure the physical, mental, and psychological health of children in orphanages.

199. The Public Health and Nutrition Policy of Afghanistan adopted for 2008 to 2012, puts the improvement of healthcare with a focus on reproductive and child health as one of the main programmes of the health sector. The reduction of the child mortality rate and improvement of child health is one of the national objectives of this strategy.

200. The MoPH has initiated two effective prevention and treatment packages to reduce the mortality rate of children under five and the infant mortality rate since 2002. The first package is the Basic Package of Health Service (BPHS) and is implemented in collaboration with donors and civil society organizations. BPHS provides quality health care, inclusive of: mother and child health (antenatal, delivery, family planning, newborn care, postpartum); child health (expansion of immunization programme, integrated management of child illness); communicable diseases (TB, malaria, HIV); psychological well being; nutrition; disability services; and primary medicine. The MoPH is responsible for programming, implementing, controlling and monitoring the BPHS in collaboration with civil society organizations. Post health services are provided for 1,000 to 1,500 people, outreach teams of the Basic Health Centres for 3,000 to 15,000 people, Comprehensive

³⁴ Afghanistan's Universal Periodic Review submitted to the Human rights Council, 24 February 2009, p. 18. Health Management Information System.

³⁵ Islamic Transitional Government of Afghanistan, Ministry of Health, 2004, *National Child Health Policy*, Afghanistan (This policy is currently being edited to reflect current changes and needs).

³⁶ Ibid.

Health facility for 15,000 to 30,000 people, district hospitals for hospitals for over 100,000 to 300,000 populations.³⁷

Table 8

The coverage of vaccination programmes for the years 2003, 2005, and 2006

<i>Vaccines</i>	<i>2003 MICS</i> ³⁸	<i>2005 NRVA</i> ³⁹	<i>2006 AHS</i> ⁴⁰
BCG	56.5%	58.8%	70.2%
OPV3	29.9%	49.2%	69.7%
DPT3	19.5%	16.7%	34.6%
Measles	75.6%	52.8%	62.6%
Full immunization	15.5%	11.2%	27.1%
Vitamin A	90.3%	44.8%	79.5%

201. The second package is the Essential Package of Hospital Services (EPHS) offered through regional, district and provincial hospitals. According to the Multiple Indicator Cluster Survey (MICS) conducted in 2003, access to health services reached only 9 per cent of the population; whereas in 2006 this figure had reached 85 per cent according to the Afghanistan Health Survey. Child mortality rate was reduced by 25 per cent.⁴¹ Despite this, the MoPH faces extensive challenges. Eighty per cent of health centres in districts face a shortage of required resources such as medicine, medical equipment, and health workers, especially female medical professionals. For every 1,000,000 Afghans there are only 17 doctors and 48 medical assistants. The Adult Consultations reinforced the above challenges as well as identifying others such as distance to medical facilities and the security and attitude of medical professionals towards their patients.

Table 9

The distance of health centres from residence⁴²

<i>Travel time to nearest health facility</i>				
	<i>Average time required to travel from home with usual mode of transport</i>	<i>Cumulative (%)</i>	<i>Average time required to walk from community (%)</i>	<i>Cumulative (%)</i>
Travel time to nearest facility	n-7959		n-397	
<1 hour	35.5	35.5	32.1	32.1
1 to <2 hours	25.6	61.1	26.4	58.5
2 to <3 hours	18.1	79.2	14.4	72.8
3 to <4 hours	7.5	86.7	6.7	79.5
4 to <6 hours	7.2	93.9	8.7	88.2

³⁷ Information provided by the MoPH during the National Consultation on the initial report under the Convention on the Rights of the Child, 26 April 2009.

³⁸ UNICEF, 2003, Multiple Indicator Cluster Survey.

³⁹ National Risk and Vulnerability Assessment.

⁴⁰ Afghanistan Health Survey and John Hopkins University, 2006.

⁴¹ Ibid.

⁴² Ibid.

<i>Travel time to nearest health facility</i>				
	<i>Average time required to travel from home with usual mode of transport</i>	<i>Cumulative (%)</i>	<i>Average time required to walk from community (%)</i>	<i>Cumulative (%)</i>
≥ 6 girls	6.1	100.0	11.8	100.0

Source: Ministry of Public Health.

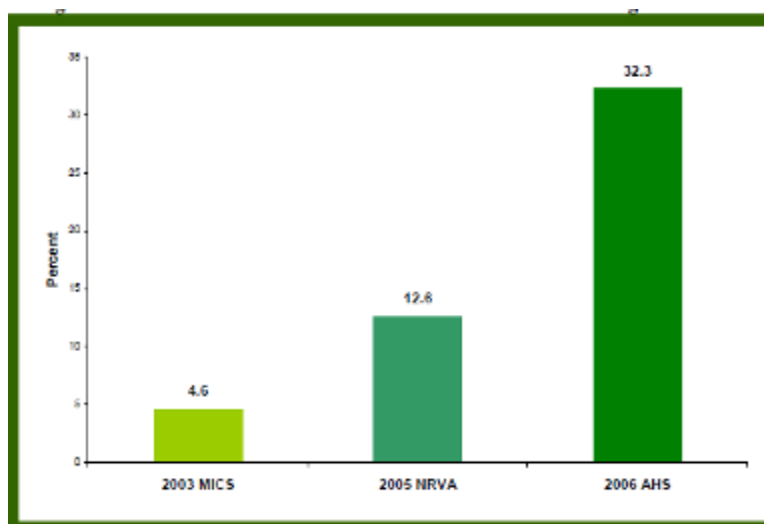
202. In 2008 the reported number of hospitalized diarrhea cases reached 32,668 and the mortality rate of children in hospitals was 559. The cases of outpatient department (OPD) diarrhea cases were 153,915. The programme attempts to control diarrhea by prescribing home made oral rehydration solution (ORS) and zinc tablets and by including oral rehydration in health centres to prevent diarrhea, pneumonia, and treat respiratory diseases in accordance with the Integrated Management of Child Illness (IMCI).

203. Malnutrition is considered one of the most serious public health challenges in Afghanistan. In 2008, there were 50,713 reported cases of malnutrition of which 5,462 were hospitalized and 302 died. The MoPH has established 44 malnutrition centres in 32 provinces to provide the following services:

- Enriching flour with vitamins, iron, and folic acid
- Distributing folic acid and iron tablets to pregnant and breast feeding women
- Distributing vitamin A capsules for children under five on National Immunization Days (NIDs)
- Supplementation of post partum vitamin A
- Awareness campaigns on the benefits of breast milk and iodized salt

Figure 5.2

Trends in skilled antenatal care utilization in rural Afghanistan



204. Afghanistan has one of the highest maternal mortality rates in the world. Afghanistan Health Survey (AHS) of 2006 reports that women that had received at least one time care before childbirth has increased from 5 per cent in 2003 to 32 per cent in 2006. In addition, pregnant women who have received at least two TT vaccines reached 66 per

cent. Another survey found that in 13 provinces, 26 per cent of women had received at least one post partum TT vaccine, but most of this is concentrated in the Kabul province.

205. Maternal deaths are primarily attributed to a lack of awareness and an inaccessibility to reproductive health services. Only 19 per cent of at risk births are transferred to hospitals and the rest take place at homes without skilled birth assistance. In 2008, the Routine Reporting System found that only 28 per cent to 32 per cent of births were conducted in hospitals.⁴³ The Health Management Information System (HMIS) reports that only 71 per cent of the BPHS and EPHS centres have a trained female birth attendant. At present, the number of midwives and nurses all over the country stands at 2,600, out of which 2,167 are midwives and the rest are nurses. Another 1,269 are being trained in the Institute of Health Education. The requirement of the country for midwives is 5,000 to 6,000.

206. Currently, two training programmes, the Community Midwifery Education and In-Service Capacity Building (Basic Quality Assurance, IP, Leadership, IMCI, Newborn Care, ETS, Family Planning, Eon) of medical personnel is underway aimed at the prevention of infectious diseases and emergency obstetric care. In 2006, the MoPH declared 24 Jawza as the National Safe Mother's Day and is celebrated every year. To date 100,000 posters and 40,000 booklets have been printed in two of the national languages (Dari and Pashtu) together with awareness campaigns. The following chart shows the utilization of midwives in rural areas.

207. Article 403 of the Penal Code states that abortion is a crime unless it is to save the life of the mother (art. 404) and is carried out by a medical person. The law makes no differentiation between a healthy and an abnormal fetus. Currently, a systematic means of collecting information on abortion is not available, however, the statistics from the Malalai Obstetrics Hospital provides the following figures:

- Forty per cent of abortions are due to cervical trauma
- Fifty per cent of abortions are due to malnutrition and anemia of mothers, displacements and conflicts
- Criminal abortions statistics are non-existent because according to the law abortion is illegal
- Ten per cent of abortions are spontaneous miscarriages

208. In accordance with articles 394 to 400 of the Penal Code, infanticide is considered as murder or manslaughter. There are no cases or reports of infanticide or the act of resorting to infanticide. Neither is there a reporting system for this. The MoPH has not yet introduced a life registration system, however, work is underway for the creation of a demographic surveillance system.

209. In Afghanistan early marriage is widespread. The general statistics indicate that 48 per cent of all marriages fall under 'early marriage'. Based on the above, it is assumed that the fertility rate of girls under 18 years of age is high. Since 2007, the MoPH has set up a gender department to review and undertake research on sexually motivated violence and it is foreseen as an important step in identifying interventions to reduce early marriages.

B. Rights of children with disabilities

210. Article 22 of the Constitution and article 8 of the Law on the Rights and Benefits of Disabled Persons, prohibits discrimination against children with disabilities and ensures

⁴³ In Health Management Information System.

they are entitled to the same rights and freedoms as other children. Duty bearers are obligated to provide appropriate facilities for disabled children to enjoy and access these rights. A deputy minister is assigned for disability issues under the MoLSAMD. The National Action Strategy for Children with Disabilities adopted in 2007 includes a national action plan and a National Disability Commission. Relevant ministries and civil society organizations are operating under its supervision to ensure that children with disability are able to: access their rights; collect information on violation of their rights; establish coordination among duty bearers; and implement more holistic laws which combat discrimination and support children with disabilities in line with the United Nations Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

211. Afghanistan has around 1,000,000 people who were disabled during the conflict years.⁴⁴ It is estimated that there are around 196,000 children with disabilities aged 7 to 18 years, of which 56 per cent are boys and 44 per cent are girls. Some 268 children with hearing impairment have been enrolled in special schools. Computer and English courses have been provided for 51 children with disabilities, six hearing impaired children have finished grade 12, and 105 ramps have been build for accessibility in different locations.

212. A disability law is currently with the parliament to be passed, which will support the implementation of the National Action Strategy for Children with Disabilities.

213. The National Action Strategy for Children with Disabilities obligates the Government to establish recreational and entertainment centres and facilitate transportation needs. Article 8.2 of the Law on Disabilities encourages relevant agencies to establish recreational and sports activities (and equipment) including a Paralympics event each year. Activities should also be undertaken to facilitate access to television programmes, films, theatre, and other cultural activities. According to the National Action Strategy for Children with Disabilities, the Government is obligated to adopt policies and regulations to create job opportunities, care standards, access to education, health care, rehabilitation, and the creation of mechanisms for addressing complaints. The MoLSAMD has to date provided a total of US\$ 80,937 towards the monthly stipend for parents of children with disabilities as financial support.

214. Under education, the Government is obligated to establish primary schools with appropriate materials and support such as: communication equipments, sign language, Braille, as well as supporting and training teachers and parents. The Government has, to date, established a limited number of schools for children with disabilities in Herat and Kabul. Private schools run by non-governmental organizations such as Family Welfare Foundation (FWF), National Association for Hearing Impaired, and schools for children with visual impairment currently exist in limited numbers. A range of financial aid is provided by civil society organizations to families with children with disabilities to enable children to attend special schools.

215. For children with hearing impairment, FWF has developed two 'sign language' books and has ensured the presence of news in sign language. A special magazine is published titled 'Sign'. Another magazine, 'Roshan Dilan' is targeted at visually impaired children. Issues of children with disabilities are also broadcast on national and education television.

216. However, though there are increasing opportunities for children with disabilities to participate in society, the scope of participation is highly dependent on their family's

⁴⁴ Afghanistan's Universal Periodic Review submitted to the Human rights Council, 24 February 2009, p. 18.

decision. Parents often express a lack of knowledge or information in supporting their children with disabilities.

C. Right to health and access to health services

217. Under article 52 of the Constitution and article 2.1 of the Law on Health, the Government is responsible in providing: free health services, primary health care, mother and child health, and maternity health (art. 23). Accessible health facilities should be established in the capital and provinces including health centres in kindergartens and educational institutions (art. 6). In Afghanistan the health services are offered through two packages, BPHS and EPHS (further information can be found in section, 'Right to Life, Survival and Development'). The mother and child health service is offered through 1,564 health centres.

218. The government supports and encourages the establishment and expansion of private health services and centres according to the provisions of the laws.

219. Though health conditions vary depending on geographical locations, overall there are significant positive changes. Child mortality rate of under-five children has decreased from 257 in every 1,000 live births in 2001 to 191 in 2006 and the infant mortality rate has fallen from 165 cases in every 1,000 live births in the year 2001 to 129 in 2006. Further information can be found in section, 'Right to Life, Survival and Development'.

220. Health programmes of the MoPH include children's nutritional health, reduction of child mortality, disability rate, breast-feeding, integrated management of child illnesses, and vaccination programmes. The programmes address problems stemming from addiction to narcotics, chronic diseases such as venereal diseases, HIV/AIDS, and providing information to parents on issues related to adulthood. Furthermore, the MoPH has expanded and strengthened reproductive health services including mother and child health, intervals between births, family counseling, and gender services.

221. In accordance with the Law on Disabilities, the MoPH should provide comprehensive medical services inclusive of physical and mental rehabilitation and take required measures with relevant stakeholders. (Further information can be found in section, 'Rights of Children with Disabilities'). Legally, there is no discrimination against girls to access medical services. However, girls from the Children's Consultation reported that a lack of female doctors and privacy were two reasons for not accessing the health centres. Plus, preference is given to boys over girls in many arenas including health.

D. Right to social security

222. Article 53 of the Constitution provides for the Government to take appropriate interventions for ensuring medical services, financial assistance to families of martyrs, rehabilitation of people with disabilities, and the active participation of all in the society. The Government is also responsible for ensuring pensions to the retired, appropriate assistance for the elderly, women without family support, people with disabilities, and orphans. The Government is supporting the care and custody of 9,312 children in 54 orphanages (for more information see section, 'Family Environment and Alternative Care'). There are 369 Government run kindergartens and special schools for children with disabilities (see section on 'Rights of Children with Disabilities'). The Government, in cooperation with private banks, provides micro-loans. In rural areas, the Government has taken initiatives to provide job opportunities through local councils.

223. Despite this effort, due to a shortage of resources, facilities and technical expertise, the Government is not able to provide comprehensive social security and services as required especially in rural areas. Currently the demand for social services far outweighs capacity and capability.

E. Right to an adequate standard of living

224. The primary responsibility for providing an adequate standard of living for children lies with their families, especially the father. Hence, the economic conditions of families have a direct impact on the physical, mental, social, and psychological development of the child. Afghanistan is one of the poorest countries of the world, and despite improvement in the lives and economy of the population the economic conditions of most of the families are quite abject. The findings of the 2006–2008 National Risk and Vulnerability Assessment (NRVA) survey indicates that 42 per cent of Afghans are living below the poverty line with a per capita income of US\$ 14 per month. In addition, 45 per cent of the population do not receive the required minimum international standard calorie intake of 2,100 per day.

225. The GoA has been making efforts to improve the standard of living through the National Development Strategy, Strategy on Reduction of Poverty, Social Security Sector Strategy, and the National Disabled Children Strategy. According to the National Development Strategy, specific economic and social policies have been adopted such as: programmes on stability of annual growth of 7 per cent–9 per cent of the economy, job opportunities, continuation of policies on health and education sectors, urban development, agricultural and development programmes, improvement of safe drinking water and canalizations, responsiveness to natural disasters, community based insurance schemes, improvement of energy and transportation, expansion of social justice, and reduction of official corruption.

226. The National Solidarity Program (NSP) operates towards the development of rural areas and villages in provinces. One of the challenges facing the Government is financial resources and expertise in providing access to education, health, social security and public services. However, in order to meet the Millennium Development Goals, Afghanistan has been trying to attract international aid in an attempt to reduce poverty and raise the standard of living for all, including children.

VIII. Education, recreation and cultural activities

A. Right to education

227. Under the Education Law – Article 6 the MoE is mandated to implement the Education Strategy adopted for the period 2006–2010. Both public and private schools (where a regulation has been adopted for private schools) exist in Afghanistan. The GoA has taken measures to enhance the quality of education through teacher training programmes, improvement of school infrastructures, development of curricula (teaching English, information technology, computer and life skills), expansion of professional and vocational training, and establishing new schools in the provinces. In line with this the education budget for the period 2006–2010 stands at US\$ 2.354 billion. This is inclusive of the core budget for five years at US\$ 833 million and the developmental budget at US\$ 1.512 billion. The table below provides information on the planned budget versus spent budget for the years 2006–2009.

Table 10
Educational budget (2005–2008)

No.	Descriptions	Development budget		Core budget	
		Total planned budget in US\$	Expenditure in US\$ by end of fiscal year	Total planned budget in US\$	Expenditure in US\$ by end of fiscal year
1	Development budget for fiscal 1385 (21.3.2006–20.3.2007)	61 180 000.00	16 421 548.00	163 486 506.70	
2	Development budget for fiscal 1386 (21.3.2007–20.3.2008)	122 170 000.00	30 335 612.00	175.671 220.30	174 300 567.20
3	Development budget for fiscal 1387 (21.3.2009–20.3.2010)	159 448 561.00	62 171 018.00	265 901 952.54	246 713 201.50
		342 798 561.00	108 928 178.00	605.059 679.54	421 013 768.70

Source: Ministry of Education.

228. In accordance with the Education Strategy, under the Basic Education Program,⁴⁵ the MoE is committed to improving girls school attendance by at least 60 per cent and for boys to 75 per cent by the end of 2010 and to establish 4,900 new primary and secondary schools and 4,800 new community-based schools.

Table 11
Some education statistics

Year	Number of teachers that attended seminars	Number of seminars organized	Number of laboratories to be prepared in future	Number of schools that already have laboratories	Number of schools that have buildings	Number of existing schools in 34 provinces including Kabul		
						High school	Secondary	Primary
2006	550	24						
2007	800	12						
2008	1 800	18						
Total	3 150	54	301	333	2 745	1 532	2 506	5 026

Source: Ministry of Education.

229. Article 43 of the Constitution states that all children have the expectation of compulsory education (up to completion of secondary education) and free public education up to and including undergraduate degree. This provision is reinforced under article 4.1 of the Education Law. Basic education in Afghanistan is free. Article 5 prescribes the age of compulsory education as between six to nine years. In addition, under article 5.3, children and adolescents who are over the age of nine years but are not in school fall under a separate regulation which facilitates their education through the accelerated programme. The MoE has recently been working on a new regulation to ensure the implementation of compulsory secondary education.

⁴⁵ Refer to paragraph 43 under education programme in Afghanistan.

230. Concerted efforts have been undertaken by the MoE to eliminate all forms of discrimination and to ensure accessibility to education by both “girls” and “boys” regardless of their ethnicity, race, religion, and social status. The Education Strategy, in order to ensure equality of education, has implemented an awareness strategy encouraging families to send their daughters to school, regulate a specific budget for the promotion of girls education including establishment of over 14,000 incentive scholarships for girls, enhancing enrollment of children with disabilities (45 per cent of girls and 30 per cent of boys) in primary schools, providing support centres for academically inclined children, improving attendance to at least 35 per cent of nomad children, and supporting and monitoring the attendance of Afghan refugee schools outside the country. Still half the school-age children are estimated to be out of schools and there are significant gender and provincial disparities.⁴⁶ To achieve the determined objectives the following steps have been implemented:⁴⁷

- Establishing 7,643 local schools in 30 provinces reaching out to 122,198 boys and 152,470 girls with 5,836 male and 2,655 female teachers. These schools have been established with the financial assistance of BRAC, ICRC, PACDE-A, Save the Children UK, Save the Children US, and UNICEF.
- Some 30,000–50,000 students graduate from high school every year; only one third of them are admitted to universities, the rest join the pool of unemployed.⁴⁸
- During 2008, around 60 million teaching textbooks for primary and secondary classes were printed and distributed.
- The MoE, in cooperation with relevant civil society organizations, has implemented a two phase accelerated education programme targeting children, especially girls, who were deprived of education during conflict and Taliban era and reintegrate them into mainstream education. From February 2003 to end of 2005, education was provided in 17 provinces in more than 6,800 classes to 170,000 primary students by 6,800 teachers. The second stage, which is currently continuing, supports students aged 10 to 15 years to complete two education years in one year upon which they are enrolled into basic mainstream education schools.
- Increase the attendance of children in primary and secondary schools from 1 million in 2000 to 6.2 million in 2008, of which 35 per cent should be girls.
- Presently, 4,475 schools are under repair and 1,096 schools are being built. But only 25 per cent of schools have usable buildings and thousands of communities have no easy access to schools.⁴⁹
- In 2001 only 2,680 male teachers were working in public schools. This figure in 2007 increased to 158,275 teachers, an increase of seven times of which 28 per cent (45,514) are female teachers. But only 22 per cent meet the minimum qualifications of Grade 14.⁵⁰
- In 2001 there were only 4 teacher training colleges with 190 students and 52 teachers. In 2008 the figure has risen to 34 teacher training institutions, one in each province with 32,171 students taught by 821 teachers.

⁴⁶ Ministry of Education, *National Education Strategic Plan for Afghanistan 2007–2008*.

⁴⁷ All information from the Ministry of Education and UPR report unless otherwise stated.

⁴⁸ Ministry of Education, *National Education Strategic Plan for Afghanistan 2007–2008*, p. 11.

⁴⁹ Ibid.

⁵⁰ Ibid.

- Currently there are 511 religious schools taught by an academic board of Islamic studies, with 106,156 students of which 5,299 are girls.
- In vocational and technical training schools, a total of around 17,168 students have been trained of which 2,969 are girls. There are around 48 vocational and technical schools in Afghanistan out of which four are for girls.
- In 2008 a total of 219,625 students were educated in literacy classes, of which 75 per cent were women and girls, in 10,673 classrooms around the country.
- To date, 333 laboratories have been established and 301 are being planned.

231. Since 2008 three new types of projects are being piloted: special education (persons with vision and hearing problems); early child education (ECE), and inclusive education. These projects are currently being run by civil society organizations but will eventually be handed over to the MoE. The ECE projects are aimed for children aged between four and six years. A number of NGOs, especially Save the Children USA, are implementing the project but the exact number of ECE centres and the number of children enrolled has not been provided for inclusion in this report. UNICEF is willing to provide technical and financial support for ECE for future work. Special education is provided to children with specific needs such as children with mental disabilities or children who are academically talented.

Table 12

Information on Early Childhood Development (ECD) playgroups in Afghanistan

<i>Save the Children USA</i>					
<i>Location</i>	<i>Playgroup</i>	<i>Girls</i>	<i>Boys</i>	<i>Total</i>	<i>Facilitators</i>
Kabul	99	743	772	1 515	198
Maimana	81	765	602	1 367	162
Saripul	9	58	50	108	18
Parwan	10	57	89	146	20
Total	199	1 623	1 513	3 136	398
PACE-A/impact areas: (Paktia – Nangarhar – Laghman– Heart – Ghor – Mazar – Ghazni – Logar – Wordak provinces)					
CARE					
international	18	156	138	294	36
CRC	33	259	188	447	66
IRC	68	175	127	243	136
Total	119	590	453	984	238

Total: 4,120 children, 2,213 girls and 1,966 boys are inclusive ECD play groups in Afghanistan.

232. One hundred and twenty children from various backgrounds, including children with hearing disabilities, from community based schools have entered ten mainstream schools in the capital after completing grade 6⁵¹ under the inclusive education project. These schools

⁵¹ Information conveyed during the Thematic Group Meeting on Education at the Ministry of Education. 11 April 2008.

have trained teachers to work with children with different needs. However, the project is only at 5 per cent–10 per cent of its implementation stage.⁵²

233. The Education Strategy on children with disabilities aims to ensure that at least 45 per cent of boys and 30 per cent of girls will have access to education by the end of 2010. Currently, almost 90 per cent of children with disabilities do not have access to education⁵³ and work with children with visual disabilities is even more limited. A new regulation is being developed for ‘inclusive education’, which would allow children with disabilities to enter mainstream schools after a certain grade has been completed. Recently, an article has been included to ensure that children with disabilities are able to enter mainstream education. Further information can be found in section, ‘Rights of Children with Disabilities’.

234. The civil society has been running a number of Community Based Schools (CBS) in hard to reach rural areas throughout Afghanistan. To bring uniformity in curriculum and for improved monitoring, the MoE has provided guidelines for CBS locations, distributed policy and monitoring forms, and implemented a uniform curriculum guideline. UNICEF, SCSN, Care, and others have supported both technically and financially. A total of 312,597 children (200,140 girls and 112,457 boys) are attending 9,136 CBS schools.

Table 13
Community-based schools 2008⁵⁴

Agencies supporting CBS	Number of CBS	Number of teachers		Total number of teachers	Number of students		Total number of students
		Male	Female		Male	Female	
PSA	1 756	1 243	574	1 817	14 010	31 869	45 879
SCA	340	238	102	340	4 743	7 369	12 112
BRAC	2 250	0	2 250	2 250	11 784	59 370	71 154
SCA	1 276	1 122	401	1 523	17 851	31 417	49 268
UNICEF	3 331	2 614	482	3 098	61 545	66 609	128 154
SC-UK	183	179	80	259	2 524	3 506	6 030
Total	9 136	5 396	3 889	9 285	112 457	200 140	312 597

Source: MoE.

235. Under the five year strategic plan of the MoE, all children have the right to benefit from the slogan ‘education for all’. But there are some regional, linguistic, and gender (boy and girl) discrimination existing around the country. For instance, according to the figures of 2005 the ratio of admittance of boys in primary education is almost twice as much as girls, with figures increasing to three times that in the secondary school and four times in tertiary courses.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Data provided by the Thematic Group Meeting on Education in the Ministry of Education, 11 April 2008.

Table 14
Gender parity ratios in the education system of the country (2004)

No.	Level	General gender parity	Gender parity ratio in rural areas	Gender parity ratio in urban areas
1	Primary	56.1	47.4	75.2
2	Secondary	33.3	11.9	53.6
3	Tertiary	28.0	6.8	41.8
4	All grades 1–12	52.5	43.5	69.3

Source: MoE.

236. The current education system has been able to absorb 60 per cent of school age children, while the remaining 40 per cent of the children, mostly girls, are deprived of education due to insecurity, poverty, gender discrimination, remoteness of schools, shortage of teachers (especially female teachers), and shortage of other educational facilities (such as school buildings). The following table shows the enrollment of children and educational facilities in public and private schools:

Table 15
Existing public schools in the country (2009)

1	Total number of public schools	Number of girls' schools	Number of boys' schools	Number of mixed schools
	10 998	1 622	4 093	5 283
2	Total number of students	Number of girls attending schools	Number of boys attending schools	
	6 112 453	2 182 380	3 930 073	
3	Total number of general education teachers	Number of female teachers	Number of male teachers	
	158 275	45 514	112 761	
Private schools in the country				
4	Total number of private schools	Number of students	Number of teachers	
	144	34 666	1 844	

Source: MoE.

237. In order to reduce absenteeism in schools, the Policy of the MoE has been addressing the reasons for absenteeism through parents and teachers' association with six committees in each provincial and municipal district. Students who have been expelled due to frequent absenteeism, if their age is suitable and they hold no criminal record, can be readmitted at their parents' request.

Health and hygiene in schools

238. To encourage families to send their children to school and to address nutritional needs, the MoE, in cooperation with World Food Programme (WFP), has been implementing a food for education programme for a few years. The programme has distributed enriched biscuits to over 1.6 million children (both boys and girls) in districts

facing food shortages and low education indexes. Another 823,000 families have benefited in regions facing severe cold and food shortages where food has been distributed before and after the winter season. To encourage the attendance of girls, cooking oil has been distributed to 450,000 girls and 13,000 teachers of community-based schools. Furthermore, the MoE, with support of donor countries, provides scholarships for students who are academically gifted to study abroad.

239. In 2006, the GoA, through the MoE, MoPH, and MoRRD with the support from the United Nations organizations initiated a joint programme of Healthy School Initiative towards creating a safe and healthy environment in 40 per cent of provincial schools by the end of 2009. Currently around 132 toilets and 315 safe drinking water pipes have been established in schools and 21,000 children have benefited. Around 3,500 teachers have been trained on key messages of this package that include hygiene, health, child protection, and girl's education issues and 12,000 copies of a teacher's guidebook have been printed and distributed in schools. The International Day of Hand Washing was celebrated in 2008 in the schools in which 70,000 students participated.

240. Education of teachers is a priority for the MoE. Concerted measures have been taken to establish teachers' training institutions inside schools in 34 provinces complemented with seminars on pedagogy teaching organized by the Ministry and civil society organizations to enhance the capacity of teachers in providing quality education.

Vocational and professional training

241. In accordance with article 23.1 of the Law on Education, the technical/professional, vocational, and artistic education courses are offered to graduates of Basic Education from grades 10 until the completion of grade 14, including the nomadic population. The courses under the above programmes include short term courses aimed at promoting vocational skills according to social needs. The Education Strategy has set the following priorities for completion by the end of 2010: reforms in the curriculum of professional and vocational education inline with world trends including appropriate teaching aides based on international standards; establishment of 16 new schools and one school for students with special needs; and, increasing enrollment in these schools to 46,000 students. Currently there are 49 professional and vocational schools, including the agriculture school, in the capital and provinces. These schools have admitted 12,967 students (12,714 boys and 253 girls) taught by 995 teachers (768 male and 227 female). The shortage of technical equipment is one of the main problems of these schools.

242. Despite the improvement in recent years, the MoE still faces challenges and problems in shortages of: experienced teachers, especially women; shortage of school buildings; lack of proper classrooms; shortage of textbooks; stationary; blackboards; chalk; desks; and chairs. The Adults' Consultation identified these same challenges as well.⁵⁵ However, the MoE, in cooperation with civil society organizations, has been trying to provide the above mentioned supplies and needs. In 2008, around 60 million textbooks for primary and secondary courses were printed and distributed.

⁵⁵ The Adults' Consultation Sessions were involved in Afghanistan's initial reporting process to the Committee on the Rights of the Child. These were undertaken as a joint collaboration with the Government Ministries, civil society organizations and UNICEF. The Consultation had an equal gender balance with a total sample of 350. A total of 6 one day Consultations were held from November–December 2008.

Violence in schools

243. Studies conducted by concerned civil society organizations indicate the existence of different kinds of violence against children in schools including beatings, insulting individuals and groups, sexual abuse (especially towards boys), and peer violence for which the government has taken measures.

Corporal punishment

244. Under article 39 of the Law on Education, all kinds of physical and psychological punishment of students, even for the purposes of discipline, is prohibited. The MoE has also distributed circulars to all schools and parents in the capital and provinces on the prohibition of corporal punishment.

245. Physical punishment is often used as a form of discipline in many Afghan families and the education system.⁵⁶ Parents struggling with the economic hardships often resort to excessive use of force and violent behavior to discipline children. It is also perceived as a 'cultural' aspect of bringing children up. Similarly, children themselves refer to physical abuse and violence as one of their main concerns. The MoE has sent special circulars to provincial education departments on the prohibition of corporal punishment in schools.

246. CPAN and other organizations have been raising awareness on corporal punishment through a number of educational programmes and through the media. For instance, in 2008, the MoWA, in cooperation with the MoLSAMD, CPAN, and other civil society organizations initiated a campaign on eliminating violence against children in schools in most of the provinces. In this campaign 1,500 children took part and expressed their views against violence.

247. In cooperation with UNICEF, the MoE has so far trained around 25,000 teachers on eliminating violence against children in schools. Monitoring committees have been established in the MoE to monitor schools and teachers in the implementation of this provision. Under article 48 of the Law on Education, SMCs consisting of parents, teachers, community members, and students have been established to monitor quality education, and also the monitoring, protection and elimination of corporal punishment and other forms of violence against students. The MoE has also been encouraging student participation and non violent behavior. It has been working with the Teaching Directorate, school administrations, and monitoring teams to regularly visit all schools and make recommendations to students, administrations, and teachers.

248. Alternative approaches to corporal punishment are being tested through 'parents committees' and dialogues with children. Educational Radio and Television are producing and broadcasting programmes opposing violence against children, including corporal punishment. The MoE reports that working through parent's committees, dialogues, and media information has contributed to a reduction of corporal punishment by around 50 per cent.⁵⁷ Another improvement has been moving towards a more 'child centered' teaching methods of teaching and active participation of students in the teaching process.

249. Article 40 prohibits all forms of political entities and exploitation by persons and organizations in educational institutions. Article 41 regulates the affairs of the schools including special uniforms for students and teachers.

⁵⁶ Both the Adults and Children's Consultation stated that physical punishment were still quite prevalent in both family and education environments.

⁵⁷ Information conveyed during the Thematic Group Meeting on Education at the Ministry of Education, 11 April 2008.

250. Estimates indicate that 30 per cent to 35 per cent of people in Afghanistan are literate. Many reasons can be attributed to the low illiteracy rate, three decades of war, extreme poverty, insecurity, lawlessness, geographical difficulty, and the existence of strict customs among some families restricting girl's education. Targeting schools according to needs is further exasperated due to the lack of a systematic data collection method that is disaggregated beyond just gender. The National Education Strategic Plan for 2007–2008 states that nearly 6 per cent of schools have been burned or closed down due to terrorism between 2007 and 2008, in a period of 18 months.⁵⁸

B. Aims of education

251. The aims of education is to contribute to the physical, mental, emotional, religious, and moral development of children in the spirit of national solidarity, assistance, peace, patriotism, respect to elders and neighbors, and the respect of the rights of others. A new curriculum is in transition towards becoming more student focused and textbooks will emphasize the role of every child in classroom activities. The mentioned curriculum will include human rights, AIDS, narcotics, and environmentally friendly needs. Examinations will be based on the merits of the examinees and religious spirit will be created among children through the teaching of religious subjects. In the new curriculum subjects such as peace, respect of parents, gender equality, and equality among different races and cultures will be included. It is an objective that in 2010, 75 per cent of children will have been admitted to schools and the gender disparity and discrimination in terms of provinces will have been reduced.

252. In line with the Education Strategy (2006–2010), a new curriculum will be prepared for teacher training programmes targeting the primary education curriculum for specific grades.

253. For the physical and mental development of children, recreational and sports opportunities are provided within the limits of available resources in schools. In accordance with education policies and strategies the MoE has built gymnasiums, sports grounds, and sports equipments for some of the schools in the country. In order to promote the participation of children and harness their cultural and artistic talents, competitions in lessons, poetry, painting, and publication of magazines are encouraged to develop the talents of the students.

254. The new curriculum which has recently been introduced by the MoE includes some key provisions of the Convention on subjects such as: health (hygiene, physical growth, first aid, and disease preventions), abuse of hazardous substances, right to education, right to select one's profession, right to information, and more. The curriculum of grades 1–3 includes life skills that such as: cooperation and teamwork, interpersonal communication skills, problem solving skills, negotiation skills, and social interaction.

C. Right to recreation, leisure, and cultural activities

255. In accordance with the National Strategy on the Protection of Children at Risk, article 71, safe play areas have been established throughout the country to facilitate the healthy physical and emotional development of children and preserve them from the risk of landmines and unexploded ordinances.

⁵⁸ Ministry of Education, *National Education Strategic Plan for Afghanistan 2007–2008*, p. 11.

256. At present, plantation and gardening programmes are being implemented in 87 schools with the active participation and collaboration of students. The students are given seeds and tools to participate in the 'greenery' of the schools.

257. A number of sports grounds in schools in different provinces have been built by civil society organizations. Sports competitions, artistic exhibitions, quiz shows, education programmes, and cartoon films are a few activities that the Government and civil society are supporting to provide opportunities for recreation, leisure, and cultural activities for children. Further details can be found in paragraph 166.

258. However, there are still a vast number of children deprived of these opportunities because of limited facilities and related challenges facing the Government, especially children in rural areas and with girls education. (See section, 'Rights of children with disabilities').

IX. Special protection measures

A. Children in emergency situations

Refugee children

259. The GoA ratified both the 1951 Convention on the Status of Refugees and its 1967 Protocol, on the 30 August 2005. The MoRR works closely in joint efforts with civil society organizations and United Nations agencies, in particular with UNHCR, for the coordination, support, and provision of services to returnees and refugees in line with international standards. However it has not yet implemented a national asylum legislation nor mechanisms and procedures to receive asylum-seekers and determine their refugee status.⁵⁹

260. Afghans are the single largest concentration of refugees in the world. The Afghan refugee flow began in April 1978 and by the end of 1989 the number of Afghan refugees is estimated at 3.2 million in Pakistan, 2.2 million in Iran, and several hundred thousands settled in scattered communities throughout the world.⁶⁰ Today the remaining Afghan refugee populations in Iran and Pakistan are estimated to be about 2.3 million, mostly in Pakistan. The highest return locations are in Kabul Province (27 per cent), Nangarhar (19 per cent), Kunduz (6 per cent) and Baghlan (5 per cent). 57 per cent of returnees are Pashtuns, followed by Tajiks (25 per cent), and Hazara (8 per cent).

261. Between 2002 and 2008, UNHCR, in cooperation with the MoRR, has facilitated the voluntary return and reintegration of 4,291,302 refugees (2,247,891 males (53 per cent) males and 2,026,733 (47 per cent) females) mainly from Pakistan and Iran. Twenty-eight per cent are children under the age of 18 years disaggregated to ages: 0 to 4 (M/F) 9.1 per cent/8.9 per cent; 5 to 11 (M/F) 13 per cent/12 per cent; and 12 to 17 (M/F) 7 per cent/6 per cent. Another 1,302,136 Afghans have returned spontaneously with 977,647 forcibly returned from Pakistan and Iran.⁶¹ From 2002 to November 2008, UNHCR and its partners have identified 4,880 unaccompanied returnee and forcibly returned children who have

⁵⁹ Document provided by UNHCR Afghanistan, 9 October 2008.

⁶⁰ IOM, 2008, *Trafficking in Persons in Afghanistan: Field Survey*, p. 22.

⁶¹ UNHCR, Operational Information Monthly Summary Report – July 2008, *Statistical Overview of Returned Afghan Refugees from Pakistan, Iran and Neighboring Countries, IDPs Caseload and Movements and Reintegration Activities 02 March 2002–31 July 2008*, Operational Information Unit Branch Office Kabul, p. iii.

been reintegrated with their families. Unaccompanied refugee children approaching UNHCR offices in countries hosting Afghans seeking voluntary repatriation are assisted to return safely only after their families are traced inside Afghanistan.

262. Refugee children returning to the country have the same rights and benefits as other Afghan children. The services may include housing assistance to returnee's families in their original place of residence, humanitarian assistance to vulnerable families, job opportunities, accommodation, legal support, and education for school age children.

263. The support to Afghan refugees in host countries is based on international conventions and the principles of human rights. There are no specific policies in the Ministry regarding the status of foreign refugees inside the country.

264. In recent years, a number of educational seminars have been held by UNHCR, on the 1951 Convention on the Status of Refugees, in close cooperation with the MoRR.

265. UNHCR adopted a guideline in May 2008 to identify the best interest of the child. It offers guidance on how to apply the best interest principle in practice in three situations:

- Identification of sustainable solutions for unaccompanied and separated refugee children
- Temporary care decisions for unaccompanied and separated children in exceptional cases and
- Decisions that may involve the separation of a child from parents against their will

266. According to UNHCR 2008 statistics, around 3,900 refugee families (20,000 persons) have been displaced from Bajaur, Pakistan to the Kunar province of Afghanistan. Their status has not been classified as of yet but UNHCR, the GoA, and other civil society organizations are providing aid and assistance to them.

Internally displaced persons

267. In 2002, a MOU was signed between the GoA, UNAMA, and UNHCR giving UNHCR a lead support role in relation to IDPs. In 2005 a National Policy was formed with emphasis on durable solutions and affirming the lead role of the Afghan Government represented by the MoRR, with the support of UNHCR. The policy aims at assisting IDPs in term of protection, meeting their basic daily needs, and in finding durable solutions for IDPs through voluntary return and/or local integration.

268. There are no accurate estimates of the number of IDPs in Afghanistan. The Afghanistan National IDP Taskforce, co-led by the MoRR and UNHCR, estimate that there are 235,833⁶² (115,558 females and 120,275 males) still internally displaced living in camps or camp like conditions, of which number of them are concentrated in Afghanistan's southern region (but also in all other regions of the country). The displacement is mainly due to 'conflict, ethnic tensions or human rights violations, and natural disasters such as drought, or secondary displacement'.⁶³

269. In 2002, during the fall of the Taliban regime, 1.2 million people were displaced. The majority of them returned spontaneously while 500,000 IDPs returned with the

⁶² UNHCR, Operational Information Monthly Summary Report – July 2008, *Statistical Overview of Returned Afghan Refugees from Pakistan, Iran and Nine Neighboring Countries, IDPs Caseload and Movements and Reintegration Activities 02 March 2002–31 July 2008*, Operational Information Unit Branch Office Kabul, p. iv.

⁶³ IMDC, Afghanistan's Increasing Hardships and Limited Support for Displaced Population, 28 October 2008.

assistance of UNHCR. In 2006 alone, UNAMA reported that around 80–90,000 people fled due to fighting in the Helmand, Kandahar and Uruzgan provinces in southern Afghanistan.⁶⁴ Some 99,035 families (490,459 individuals) were assisted between 2002 and July 2008 based on the MOU signed by GoA, UNAMA and UNHCR.

270. There are several reports about returning refugees being displaced again on their return because of the lack of economic opportunities, unresolved land and property disputes, lack of shelter and/or basic services such as healthcare and education in their respective places of origin. This situation is of particular concern in eastern Afghanistan.

271. Conflict-induced displacement remains a concern to National authorities, with a particular focus on the situation in the south and the west portions of the country, where UNHCR has been registering and assisting IDPs.

Children and armed conflict

272. Afghanistan ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2003. In 2007 Afghanistan, together with 58 other states, endorsed the Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups and the Paris Principles and guidelines on children associated with armed forces or armed groups.

273. It is increasingly reported that children are being targeted for use by armed groups, including the Taliban, as combatants, porters of munitions, informants, and in some cases as carriers of improvised explosive devices.

274. After the establishment of the new Government in 2002, compulsory service in the army has been changed to voluntary service and recruited is for a period of three years. This issue has been reflected in the Council of Ministers Directive No. 30 issued in 2008. Also in accordance with this directive, the age of conscription to the armed service is a minimum of 18 years of age.

275. The MoD has prepared policies on international laws of armed conflict and has instructed the armed units of the National Army for its implementation. The said Ministry and the Red Cross has also presented ‘lessons learnt’ and experiences on the law of armed conflict for soldiers and officers of the army and cases of human rights abuses.

276. However, during the Adults Consultation, adults highlighted the risk to children, noting the vulnerability of boys aged between 15–17 years, to recruitment by anti-government armed forces.⁶⁵

Rehabilitation of child victims of violence

277. Article 48 of the Juvenile Code (2005) provides for specialized services to assess and monitor children in order to facilitate sustained reintegration with their families and community. (For further information, see section ‘Separation from Parents’).

278. According to UNICEF’s report⁶⁶ there are 6.5 million children at risk in Afghanistan. The Government, while considering the limited resources, has been able to support more than 2 million children, leaving another 4 million children at risk who need urgent social services. To address this, the MoLSAMD has adopted the Strategy on Children at Risk and provides for the living expenses of children, accommodation, access to

⁶⁴ UNAMA, 30 October 2006; UNHCR, 5 October 2006; September 2006; AFP, 23 October 2006 as cited in <http://www.internal-displacement.org>.

⁶⁵ Adult’s Consultation, Reporting Process to the initial report to the Committee, p. 7.

⁶⁶ Figures taken from ‘Children at Risk Strategy Paper’.

primary healthcare, nutrition awareness and importance of food, access to quality education, security, prevention of forced and early marriages, social protection, awareness on respecting the rights of others, and safe drinking water.

279. According to this strategy, day centres are replacing orphanages. The strategy emphasises shifting the current centre-based approach to care and protection where it prioritizes family and community support. The objective is to prevent the unnecessary institutionalization of children by enabling families, extended families, and communities to care for their children.

280. The Government has ratified both the Optional Protocols of the Convention, on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography.⁶⁷

B. Children under prosecution in the judicial system

Implementation of the law on children

281. The majority of children in conflict with the law have experienced neglect, exploitation, and social and economic hardship. These children have a right to and need of proper care, guidance, protection, and opportunities of social reintegration – needs of which the juvenile system in Afghanistan is trying to meet. Many children in the juvenile justice system are in fact victims in need of care and protection. These children end up in the justice system because of a lack of protective/social services and because of the penalization of moral and status offenses.

282. The Constitution, the Juvenile Code (2005), as well as the traditions and Sharia law respects the rights of the child. Articles 53 and 54 of the Constitution provides for the support of mothers, children, and the disabled. Under article 5.1 of the Juvenile Code (2005), children aged 12 or below do not have criminal responsibility, but during the Children's Consultation, some children said that, *'if you do not pay a bribe they (police) can write 16 years old for a child who is 12'*. Article 8 of the Juvenile Code (2005) states that the deprivation of liberty should also be used as a last resort and for the shortest time possible.

283. In accordance with article 7 of this law, punishment of children, even for the purpose of correction and reprimand is prohibited. The law states that police can only undertake initial inquiry. The authority to review and conduct full investigations into a case can only be undertaken by the Special Court of Children and Special Prosecution Office for Children. It is the responsibility of the prosecution to decide whether or not to refer a case to the courts.

284. Furthermore, the law provides for the creation of juvenile police, prosecution offices, and courts in the capital and provinces. Children's cases are addressed in private and in three stages: primary, appeals, and the final stage at the Supreme Court. At present, due to limited resources, the Special Juvenile Court functions only in 6 large provinces (Kabul, Herat, Balkh, Kandahar, Jalalabad, and Kunduz), with each of the courts having one chief judge and four other judges. In provinces where the special courts do not exist, children's cases fall under the ordinary courts. Lawsuits can be brought in before the

⁶⁷ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2002 and Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2003.

Special Juvenile Court in three cases: crimes by children, abnormal behavior by children, and where children are at risk and need care and support.

285. The Special Juvenile Prosecution Office for Children has been established in 34 provinces and each province has one special prosecutor with their administrative staff. More than 250 professional staff (judges, prosecutors, police, and social workers) working with children has been trained through workshops and short courses in the last few years. However, these trainings are limited and do not meet the needs of the number required. The 2008 National Judicial Sector Strategy has determined the following reforms on addressing juvenile justice. They are to be reached by the end of 2010 to improve the quality and responsiveness by the justice system:

- Developing regulations, protocols, and guidelines to implement the Juvenile Code (2005) in accordance with international norms and standard
- Strengthening and expanding the approach for reintegration of children with their families in cooperation with the MoLSAMD
- Increasing the number of child social workers and justice service specialists and
- Strengthening and expanding facilities and justice services for children with special attention to non-custodial measures such as family/community based approaches

286. The MoJ, in order to ensure the rights of children in conflict with the law in rehabilitation centres and to standardize management and operations of centres, to date has signed the following six cooperation protocols:

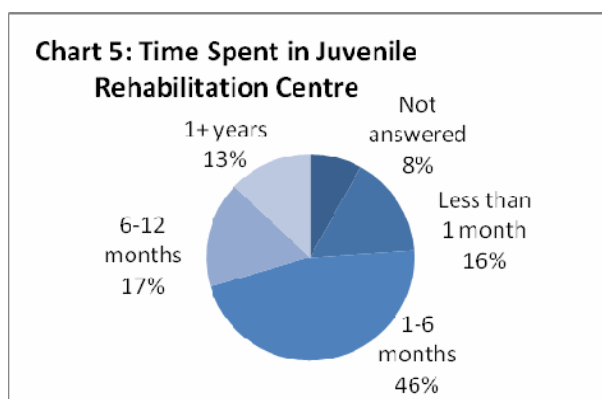
- Cooperation Protocol between the MoJ and the MoE on sending schoolteachers, literacy training teachers and sports trainers and also supplying books and teaching materials, sports and other required materials for children under custody in Kabul and provinces
- Cooperation protocol between the MoJ and the MoIC on sending books, publications, educational films, and cultural materials for the purpose of enhancing the knowledge and cultural awareness of children under detention
- Cooperation protocol between the MoJ and the MoPH on sending doctors, nurses, and other medical professionals, and supplying medical equipment for the treatment of children in detention
- Cooperation protocol between the MoJ and the MoLSAMD on sending social workers to correction and rehabilitation centres to help facilitate job opportunities for children without family support after being released
- Cooperation protocol between the MoJ and the MoRA on providing religious clerics and Islamic books and publications with the aim of preventing violation of law
- Cooperation protocol with War Child UK, Save the Children, and Afghan Women's Network on the training of social workers, provision of social reports, improvement of vocational training, and reintegration in the provinces of Herat, Balkh, Nangarhar and Kandahar

287. In 2008,⁶⁸ AIHRC and UNICEF's research on the situation of children in the justice system undertaken in 22 provinces indicate and highlight the plights of children in conflict

⁶⁸ All figures from: AIHRC & UNICEF, *Justice for Children: The Situation for Children in Conflict with the Law in Afghanistan 2008*, Kabul.

with the law and the responsiveness of the justice system. A total of 247 children (210 boys and 37 girls) in rehabilitation centres participated.

288. The research indicated unsuitable living conditions. The study revealed that at least 41 per cent of the respondents were waiting for a decision by the court while 45 per cent were serving their detention period. Three per cent of the children reported that they had no money for bail and were in custody, which contradicts the Law of Investigation of Children in Conflict with the law, which states that the maximum amount of time a child can be kept in custody for completion of trial is 40 days.⁶⁹ Two per cent of the respondents were in centres that were below the age of criminal responsibility, 46 per cent between the ages of 12 to 15 years and 43 per cent between the ages of 16–17 years.⁷⁰ Less than 30 per cent of females were charged with a serious offence where they posed a threat to others. Fourteen per cent of the girls were in detention centres as they were lost or without shelter and detention has been used as a tool for protection and social control.



289. In accordance with the laws, especially the Juvenile Code (2005), children have the right to make complaints at different stages of investigation, detention and decision of the court. Article 42.1 states that a child or his/her legal representative has the right to appeal to the decision of the primary court if he/she is not satisfied with the decision of the court. Article 33 of the new Law of Juvenile Rehabilitation Centers states that children have the right to submit their complains orally or in writing to the officials of the above centres, its general director, the prosecutor, the MoJ, AIHRC, or the National Assembly. In accordance with the Presidential Decree, a commission on addressing the complaints of juveniles was established in 2008 under the office of the President's Advisor on Juvenile Affairs and work is continuing on adopting a regulation and scope of work.

Prohibition of capital punishment and life imprisonment

290. Article 39 of the Juvenile Code (2005) prohibits capital punishment or life sentence of children. Article 76 of the Penal Code states that if a minor commits a crime for which the penalty is capital punishment or life sentence, the court can place the child in detention, provided that his custody period should not exceed five years. If the penalty for the felony is long imprisonment, the custody period cannot be less than one year or more than than years. The Law on Combating Terrorist Crimes includes a provision exempting children.

⁶⁹ Table taken from: AIHRC & UNICEF, *Justice for Children : The Situation for Children in Conflict with the Law in Afghanistan 2008*, Kabul, p. 8.

⁷⁰ AIHRC & UNICEF, 2008, *Justice for Children: The situation for Children in Conflict with the Law in Afghanistan*, p. 10.

The Juvenile Code (2005) will be applied in the cases of underage persons detained for their participation in anti-government armed groups.

Protective custody as a last resort

291. Article 8 of the Juvenile Code (2005) states that the detention of the child will be used as the last resort. The court should decide on the duration of the child detention and for the shortest time.

292. The Juvenile Code (2005) does not fully institutionalize diversion systems and lacks guidance on diversion mechanisms. Diversion is the process by which children are diverted away from the formal justice system and held accountable for their actions through alternative means such as community service, victim-offender mediation, etc. It can happen at different stages of the judicial process: police, prosecution, and court.

293. Article 21 of the Juvenile Code (2005) provides juvenile prosecutors with the power to settle a case through victim-offender mediation. Article 35 provides juvenile judges with a variety of sentencing options in addition to the deprivation of liberty. The options include house arrest, issuance of warnings, and performance of social services.

294. In accordance with the law, children committing minor offences should not be under detention, but rather it should be the last resort. In accordance with article 40 if the protective custody sentence is not longer than 2 years, the court can suggest that the child spend the custody period in a special social services institution. Furthermore, the court can impose one or all of the following limitations as well:

- Staying in Juvenile Rehabilitation Centers for specific periods
- Performing specific community service
- Travel restriction
- Registration with one of the institutions which has social rehabilitations programmes
- Asking for forgiveness and paying compensation
- Placement of child with one of the parents/legal guardian with guidelines issued by the court for the care of the child. In case where the guidelines are not adhered, the court can place the child in one of the special social service institutions

295. In addition, in article 40.2, if a child has committed a crime whose penalty is more than two years but less than three years, the court can issue a suspended sentence. If the child does not commit another crime within the custody period the child's criminal record will be deleted. The abolition of the decision on the suspended sentence can only be issued by the same court that issued the original decision. If the child abuses the conditions of the suspended sentence and commits another crime, then the child can be sent to a special social services institution for community service during the custody period. According to article 40.3, the court is authorized to postpone the court proceedings for further investigation. The maximum period of trial postponement in cases of a felony is three years and in case of minor crimes is one year. In this case the child will be introduced to a special social services institution for rehabilitation and support.

296. Despite these provisions, decision-makers in the justice system (i.e. police, prosecutors and judges) rarely make use of diversionary options. A punitive approach to juvenile justice remains predominant, with key decision-makers still believing that detention is the most effective way to deal with children in conflict with the law.

297. The GoA is committed and willing for the continued monitoring of detention and juvenile rehabilitation centres by the civil society. AIHRC in October 2007, in cooperation with UNICEF, monitored the conditions of juvenile rehabilitation centres in 12 provinces of

the country. Since January 2008, the Legal Aid Organization of Afghanistan (LAOA), in cooperation with UNICEF, has been monitoring the conditions of police custody, juvenile rehabilitation centres, adult's prisons, and NSD detention centres in ten provinces with regard to access to legal aid in the primary stages of the child's trial. Since 2008 to date, daily monitoring of 1,319 children (117 girls and 1,202 boys) in 52 detention facilities was undertaken.

298. In order to prevent and revoke cases of illegal detention and to reduce the overall time spent by children in incarceration the Government, in cooperation with UNICEF and non-governmental organisations, has supported the provision of legal aid to children placed in detention. In 2008, 973 children in conflict with the law (72 girls and 901 boys) benefited from legal aid services in 10 provinces. In 2009, UNICEF is supporting LAOA to expand its reach to a total of 20 provinces. Furthermore, another 670 children in conflict with the law have been provided with medical assistance and psychological and other social support in 28 provinces through CPAN.

299. Based on an agreement with the Government (see Section 'Pretrial Detention and Deprivation of Liberty after Conviction'), UNICEF and partners developed a screening tool (Social Inquiry Report), the official instrument for social worker input into the juvenile justice process. The agreement, building on article 17 and 36 of the Juvenile Code (2005), stipulates that prosecutors are to use the findings of the Social Inquiry Reports to determine a child's eligibility for diversion during the initial stages of the investigation process.

300. The MoI has established an Office of Human Rights. This office has been active in raising the awareness of law enforcement agencies on human rights and security in all provinces through various strategies. The Office of Human Rights also monitors the locations and detention centres including the conditions of the suspect, and if there are any signs of torture, the issue will be reported to higher authorities for further action. For information on torture of suspects, refer to section, 'Right not to be Subject to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment'.

301. Despite all the work that has been undertaken in developing legislation and raising awareness with law enforcement officials and the judiciary on the rights of the child in conflict with law, day to day implementation has been slow. During the Childrens Consultations, children reported that physical force and torture were often used to get confessions from children in custody or when they were being arrested. As a child victim said, *'when the police arrested me, they took my confession by beating me up, I did not confess, but they kept beating me up'*.

Pretrial detention and deprivation of liberty after conviction

302. Under article 10.1 of the Juvenile Code (2005), the police have the authority to arrest a child if the following conditions are met: risk of flight and/or repetition of crime. Article 10.2 bans putting handcuffs on individuals less than 18 years of age, except in situations where the child would abscond or when the child is deemed harmful to others or to him/herself. Article 10.3 authorizes the Special Court of Children, before issuing detention orders, to investigate other suitable options. Article 12 provides that the suspected child will be held in a special place and the authority is required to provide for the child in accordance with the requirements of the child's age, gender, social, educational, professional, and medical services.

303. Article 9.1 of the Juvenile Code (2005) requires that the initial enquiry of juveniles be performed by the police and investigation and prosecution be performed by the juvenile prosecutors. Article 11 requires that the detention and location of the detention centre be notified to the child's parent, guardian, or legal representative and to the special social service institutions within 24 hours of detention.

304. Presumption of innocence is an established principle of the judicial system of the GoA. Article 25 of the Constitution considers the presumption of innocence and provides that unless the accused is convicted, the child shall be considered as innocent.

305. However, the AIHRC and UNICEF study revealed a wide variety of rights infringements from the moment of arrest to the trial itself. Many juveniles involuntarily sign documents that they do not understand and without a legal advice. Only 8 per cent of juveniles were explained their rights upon arrest and 56 per cent reported they had not given their statements voluntarily while only 38 per cent of juveniles had seen their statement.⁷¹ While in detention, only 23 per cent had access to a lawyer (17 per cent boys and 62 per cent girls), which increased to 38 per cent in court proceedings. Only 7 per cent were presented before a children's court and only 8 per cent of children had a parent/guardian/social worker present when their statement was taken and 43 per cent had parent/guardian present during trial.

306. In case of the violation of these requirements without reasonable causes the violator (police) is subject to judicial prosecution. Article 11.2 provides that the legal representative of the child can request for the immediate release of the child on bail after his detention. Article 13 requires that police records compile the investigation report and other necessary information related to the suspected child within 24 to 48 hours maximum in agreement with the special juvenile prosecutor. Article 14 requires the special juvenile prosecutor to complete the file upon receipt within a minimum of one week and with the approval of the special juvenile court within three weeks and submit it to the specified court. The court is then required to announce its decision within 24 hours.

307. Assessments and studies indicate that the implementation of this article, in most cases, has not been implemented and there is need for further reforms in the judicial sector of the country.

308. In June 2008, a MOU was signed between the MoI, the Attorney General's Office, and the MoLSAMD on 'Referrals and Cooperation between Social Workers, Police Officers, and Prosecutors.

309. The agreement's main objective is to encourage the use of alternatives to the detention of alleged child offenders through the formal involvement of social workers in the administration of juvenile justice. It represents a key step in Afghanistan's efforts to build a child-oriented and rights-based juvenile justice system – one that avoids the destructive consequences of the uncritical use of deprivation of liberty and instead looks at alternative measures to secure both public safety and a response to child offenders that respects their rights and best interests. As stipulated in the agreement, social workers have a key role to play in assessing the current and past social circumstances of alleged child offenders and in making recommendations on their need and motivation for support with a focus on alternatives to custodial sentencing. This information, to be recorded by a social worker in the *Social Inquiry Report*, is to be considered by the prosecutor and/or judge when deciding a child's case.

310. The Special Juvenile Court addresses, in private, cases regarding juvenile delinquents and the decision are made public after the exhaustion of the three stages (primary, appellate, and at the Supreme Court). Lawsuits can be brought in before the Special Juvenile Court in three cases: crimes by children, abnormal behavior by children, and where children are at risk and need care and support.

⁷¹ AIHRC and UNICEF, 2008, Justice for Children: The situation for Children in Conflict with the Law in Afghanistan, p. 14.

311. In accordance with article 10.4, children in custody are to be kept separate from adults. Article 12 provides that the detained child is temporarily placed at a special location. During the Children's Consultation, children reported that they were often locked up with adults.

Rehabilitation and reintegration of children in conflict with the law

312. In provinces where there are no juvenile rehabilitation centres, children are processed in adult centres, especially girls, who are often processed in adult female detention centres. Administration and monitoring of these centres are carried out by the General Directorate of Juvenile Correction and Rehabilitation Centres of the MoJ. The GoA has established correction and rehabilitation centres in 30 provinces of the country with the aim of family reintegration and social rehabilitation of children in conflict with the law. According to the survey of the Directorate carried out in December 2008, there are 550 children (69 girls and 481 boys) under the care of these centres in 30 provinces of the country.

313. The Law of Rehabilitation Centers has recently been adopted and addresses the operation and regulations of the protective custody of juveniles in correction and rehabilitation centres. The Regulation of Correction Centers (2009) has recently been submitted to the Council of Ministers for approval.

314. The MoLSAMD and the MoJ have signed a protocol for the implementation of the Juvenile Code (2005) to facilitate social workers of MoLSAMD to be outsourced to the correction centres for the monitoring and follow up of the centres. Further details on the protocols can be found in section, 'Children Under in the Judicial System'. The MoLSAMD is also obligated to reintegrate children with their families and or extended families whose custody period is completed.

315. The role of social workers in the juvenile justice process, a new concept in the Afghan context, was reaffirmed in June 2008 in an agreement signed by the Ministry MoI, the Attorney General's Office, and the MoLSAMD on "*Referrals and Cooperation between Social Workers, Police Officers, and Prosecutors*". As stipulated in the agreement, social workers have a key role to play in assessing the current and past social circumstances of alleged child offenders and in making recommendations on support for their social reintegration, with a focus on alternatives to custodial sentencing.

C. Children in situations of exploitation

Child Labour

316. Articles 48 and 49 of the Constitution states that all Afghans have the right to work but forced labor and imposing work on children is illegal. Article 4 of the Law of Labor also prohibits forced labor and article 120 further prohibits employment of women and children under the age of 18 years in heavy physical work and work that is categorized as harmful to health. The age of employment is 18 years of age (art. 13) but for light work, 15 years of age is required, and for interns 14 years of age is required. Youth (15 to 18 years of age) can be employed for 35 hours of work but are prohibited from night work or overtime (art. 31).

317. The GoA has ratified 15 international labor conventions, including the International Labor Organization (ILO) Convention (29) on Forced Labor, and is committed to their implementation. The MoLSAMD and stakeholder organizations have held workshops and public awareness campaigns in the capital and provinces on child labor and its related laws. The MoLSAMD has provided public awareness through CPAN.

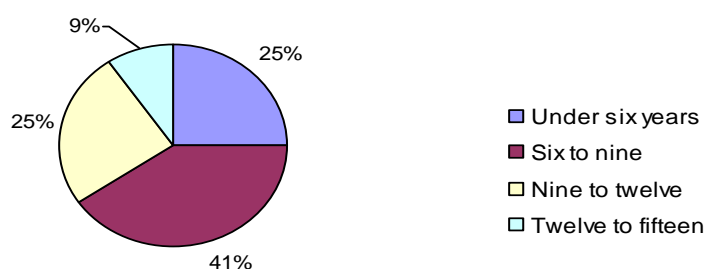
318. In recent years there have been a number of qualitative and quantitative studies conducted by civil society organizations. The outcome of these studies reflects that child labor is a national challenge and the dire economic situation is a major contributor to child labor. Lack of having an adult provider, especially a man in the family, has been another major cause of child labor. According to ILO statistics, 92.5 per cent of child workers in Afghanistan between the ages of 12–17 years work 42 hours per week and the majority are exposed to adverse working conditions such as: a polluted environment (73.3 per cent), risks of injuries (60.1 per cent), dangerous equipments (57.6), direct sunlight (54.9 per cent), and extreme temperatures and noise among others.⁷²

319. A child workers survey by Terre des Hommes (TDH) in 2002 showed that just in Kabul around 37,000 child workers were working on the streets (81 per cent boys and 19 per cent girls). A TDH and AIHRC survey in 2006 showed that the main areas where children were employed were: street vendors, car washers, cobblers, beggars, paper collectors, collectors of wood and other fueling materials, shop keepers, apprenticeships in motor repair shops, tailors, and carpet weavers.

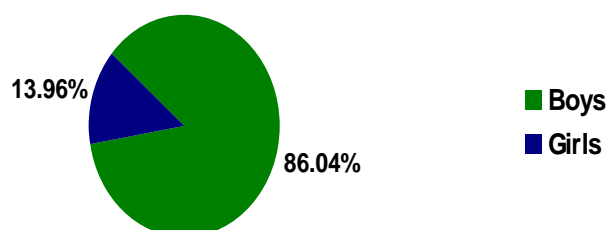
320. A survey of urban livelihood by the Afghanistan Research and Evaluation Unit (AREU) in 2004–2005 in three major cities of Afghanistan indicated that families in Kabul are twice as vulnerable to their children becoming street workers than the other cities.

321. The following table and charts show some statistics and figures about the situation of child workers in 34 provinces of the country based on the survey of AIHRC (2006):

Age of children



Gender



⁷² ILO/Altai Consulting, *A Rapid Assessment of Child Labourers in Kabul, 2008*.

Table 16
Types of employment of children

	Type of employment	Percentage	Number
1	Street vendor	13.42	2 474
2	Handcraft	0.86	158
3	Car repair	2.71	499
4	Ironsmith	4.79	883
5	Carrier	1.98	365
6	Wood selling	0.42	76
7	Farming and orchard	3.72	685
8	Shop keeping	20.97	3 867
9	Footboy	3.47	637
10	Restaurant	2.69	495
11	Carpet weaving	7.47	1 414
12	Collecting rubbish	2.24	413
13	Street works	8.19	1 509
14	Factories	0.44	81
15	Workshops	12.45	2 296
16	Cobbling	0.26	126
17	Begging	0.32	59
18	Tailoring	6.23	1 149
19	Animal husbandry	4.51	831
20	Washing cars	0.59	108
21	Manual helpers	0.16	29
22	Miscellaneous	1.57	288
23	Total	100.00	18 443

Child migrant workers

322. An IOM assessment at Torkham,⁷³ on the border with Pakistan, found that the majority of children crossing the border were smuggling food and other goods. Many children between the ages of 10 and 16 years had been placed into bonded labor to pay family debts that had arisen from crop failures brought on by drought.

323. A recent UNICEF study on vulnerable children in border areas suggests that migration to Iran or Pakistan is a livelihood strategy for Afghan families, and in general boys migrate because they have simply become 'old enough' to take part.⁷⁴ In one study in rural Herat the average age of single male migrants was 18.5 years (the youngest was 14).⁷⁵

⁷³ IOM, 2008, Trafficking in Persons in Afghanistan, Field Survey Report.

⁷⁴ Situation Analysis of Vulnerable Groups of Children in Three Border Areas: Islam Qala, Zaranj and Torkham, UNICEF, 2008.

⁷⁵ Transnational Networks and Migration from Herat to Iran, Elca Stigter, AREU 2005.

Usually the parents have relatives or a trusted member of the community abroad, making them feel more secure about sending their son.⁷⁶

324. It is likely that the vast majority of unaccompanied migrant children are boys as girls cannot easily travel without a male companion. Children deported from Iran, who are almost exclusively migrants, are all boys. The majority is aged 14–16 years; most of them have been in Iran less than a year. The number of children aged 13 and below is twice as high as the number aged 17 years. This suggests the boys are *young* adolescents when they travel to Iran.⁷⁷

325. There is no official record on the number of children migrating to overseas since most of it bypasses border controls. There has also not been any youth migration study done in Afghanistan that could help estimate the size of this group. One small study found that 11 per cent of labor migrants going to Iran were 11–20 years old; this could mean that almost one in ten Iran-bound migrants is a child (though not necessarily unaccompanied).⁷⁸

Drug abuse

326. In accordance of article 7 of the Constitution the Government is committed to eliminating the cultivation and trafficking of narcotics. Afghanistan has ratified the eight international conventions on banning the production, trafficking, cultivation, and use of intoxicating materials (see annex for full list), including the 1971 Convention on Psychotropic Substances.

327. Afghanistan is the world's largest producer of opium, contributing to 92 per cent of the world's supply of heroin and morphine.⁷⁹ Narcotic cultivation is a major challenge for Afghanistan. In 2006, the Government adopted the Law on Combating Narcotics and the Ministry of Counter Narcotics (MoCN) has been created as the coordinating, monitoring and evaluation agency for combating narcotics and implementation of the law. The MoCN is in charge of the National Counter Narcotics Strategy working with relevant administrative agencies and is required to take necessary measures in central and provincial agencies.

328. Considering that Afghanistan is an Islamic country, articles 349 to 352 of the Penal Code prohibits the buying, sale of, and use of any unlawful material or substance. Anyone found in the above activity will be sentenced for three to six months or penalized to pay 3,000 to 6,000 Afs. In accordance with the Juvenile Code (2005), children's penalty will be reduced to one third of the adult's sentence and efforts will be undertaken for their rehabilitation. The laws of Afghanistan are silent on the buying and selling of tobacco.

329. According to a survey conducted by the MoCN and United Nations Office on Drugs and Crimes (UNODC), there are 60,000 children addicted to narcotics. The Government has taken concerted efforts for the protection, prevention, and rehabilitation of drug addicts, including of children, through the following strategies: the National Strategy on Children at Risk; the National Strategy on Controlling Narcotics; the Strategy on Banning the Use of Narcotics; the Strategy on Rehabilitation of Drug Addicts; and the Strategy on Reduction of Harmful Substances.

⁷⁶ Child Trafficking in Afghanistan, UNICEF 2004.

⁷⁷ Situation Analysis of Vulnerable Groups of Children in Three Border Areas: Islam Qala, Zaranj and Torkham, UNICEF, 2008.

⁷⁸ The Kandahar Bus Stand in Kabul: An Assessment of Travel and Labor Migration to Iran and Pakistan, Elca Stigter, AREU 2004.

⁷⁹ UNODC, http://www.unodc.org/afg/news_and_events_2007-06-25.html.

330. The MoCN, in collaboration with the MoE and concerned civil society organizations, has undertaken public awareness programmes on the harm of narcotic use. The awareness programmes focus on children and have also been included in the curriculum of schools. The MoCN and other stakeholder organizations have printed large numbers of promotional material about the harms of drug use at national level. These messages have also been broadcast through films and dramas on national television and radio on a continuous basis.

Sexual exploitation of children

331. The Government ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in 2002.

332. Children have the right to make an oral or written complaint to the court and accordingly, the Government established the Commission for Addressing Children's Problems in 2008 that is mandated to address the complaints of child victims of sexual violence and abuse.

333. The Strategy on Children at Risk has been adopted to address the overall challenges facing children, including combating sexual exploitation as a priority. This strategy provides recommendations on the adoption and implementation of laws through child sensitive policies, supporting mechanisms for families, rehabilitation, and public awareness.

334. Article 427 of the Penal Code makes sexual intercourse outside the marriage (*zina*) or adultery punishable by "long term" imprisonment. Those who sexually abuse children are currently jailed and sentenced according to this article, which can bring a jail sentence of six to ten years. Article 426, however, provides that *zina* shall be punished under article 427 only if it is not punished as *hudud*. *Hudud*, not defined in the Penal Code, thereby refers to another source of law (Sharia Law) for the harshest punishment of *zina* (including whipping and stoning).

335. Article 429 arguably criminalizes rape by providing for punishment, not exceeding seven years of imprisonment, for anyone who "through violence, threat, or deceit violates the chastity of another". The crime of statutory rape, which protects girls under the age of consent, is unknown in Afghan law. The Penal Code does not contain provisions regarding domestic violence.

336. Article 517 of the Penal Code provides that "a person who gives in marriage a widow or girl who is 18 years or older against her will or without her consent" shall be punished by a short term of imprisonment. Paragraph 2 of the article provides that where this is done as compensation for a wrong doing (i.e. as *baad*), the defendant shall be sentenced to up to two years' imprisonment.

337. Victims of rape are often reluctant to complain to the authorities for fear of being further shamed and for being prosecuted for unlawful sexual activity. There are no facilities for forensic investigations that are essential for the collection of evidence in rape cases. Instead virginity testing is carried out on rape victims. Results of virginity tests and witness statements when they exist are currently the only supporting evidence that can be produced before the court in rape cases.

338. According to monthly data collected by CPAN from June 2007 to June 2008, 41 cases of rape and 36 incidents of sexual abuse against children of both sexes were reported in 20 provinces. Due to taboo and stigma associated with sexual abuse in the context of the Afghan society, only a limited number of complaints are officially filed.

339. A study conducted by the AIHRC and Save the Children Sweden-Norway,⁸⁰ with a sample population of 186 children and adults, shows that only 29 per cent of the victims approached law enforcement agencies for a number of reasons including the lack of trust in the justice system, the fear of consequences, and the lack of family consent. 18.2 per cent of child respondents reported that they had experienced sexual harassment (59.5 per cent of the victims were girls and 35.0 per cent were boys while the rest of the interviewees had not identified themselves).

Pornography

340. At present, there is no law on prohibition of pornography. However, the MoJ adopted a regulation on the Prohibition of Distribution, Production, and Maintaining Pornographic Material. In accordance with article 25 of the Law against Domestic and Foreign Security Crimes, a person who produces, exports, or imports written, visual or any other material which are in violations of public culture and customs for the purpose of trade, distribution or renting, shall be subject to imprisonment of one to three years. Article 25.2 states that if the actions provided in article 25.1 is for the purpose of immoral behavior, the perpetrator shall be subject to an imprisonment of one to five years.

341. The MoIC prohibits the broadcast of any type of pornographic picture and films. To prevent and reduce the effects of negative broadcasts it has taken the following measures:

- Met with governmental and non-governmental broadcasters and journalists to explain and create an understanding on refraining from broadcasting programmes, which may have negative effects on the morale of children
- Enhanced awareness among the media, public, parents, and children themselves about broadcasts which endangers children through various means such as interviews, round table discussions and publications on the responsibility of the people, parents and media in observing the rights of the child as outlined in the Convention
- Established a Commission within the framework of the MoIC to address media violations and complaints on the content of broadcasts which negatively effects the morals of children

Sale, trafficking, and abduction of children

342. The GoA has ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

343. The Counter Abduction and Human Trafficking Law criminalizes human trafficking, transfer, transportation, employment, keeping, or controlling another person for the purpose of exploitation or using that person's economic inability or compulsion through payment or receipt of money or advantage or other dishonest means to get the agreement of the victim or the person who has custody over the victim.

344. The Government has been undertaking measures to: prevent the abduction and trafficking of human beings; support victims, especially women and children; ensure international coordination and cooperation to stem the problem; and for the speedy prosecution of abductors. The Government introduced the Counter Abduction and Human Trafficking Law in 2008 and a Commission was established in 2008.

⁸⁰ Save the Children Sweden-Norway and AIHRC, Mapping Child Sexual Abuse in Afghanistan, 2006.

345. The Commission on Combating Human Trafficking and Abduction is established under the MoJ and includes representatives from the Attorney General's Office; the MoI, the MoFA, the MoLSAMD, the MoE, the MoIC, the Ministry of Haj, MoH, the MoWA, the MoRR, the General Directorate of Security, AIHRC, and representatives of civil society organizations. The Commission, through the different ministries and agencies mentioned above, are responsible for the prevention, protection, rehabilitation and repatriation of victims.

346. Article 17 of the Counter Abduction and Human Trafficking Law prohibits the prosecution of victims of abduction and human trafficking. Article 18 provides for the reintegration of children with their parents/legal custodian, and if they are not available, it requests for maintenance of the child in social services institutions. Article 19 requires the security and investigation agencies to immediately send the victims of abduction and trafficking to medical centres for treatment. However, this Commission presently has no coherent reporting system on human trafficking cases and the MoI is in the process of developing a database. Currently, female victims, trafficked for the purpose of forced prostitution, are criminalized and imprisoned.⁸¹

347. In line with the Counter Abduction and Human Trafficking Law, the Government has established border control and monitoring centres in Islam, Qala, Nimroz, and Torkham border crossings. It has used diplomatic channels with neighboring countries to get cooperation and assistance.

348. According to a 2008 IOM Study undertaken in Kabul and 9 border provinces of the country, from the 82 interviewees interviewed, 20 (24.4 per cent) were victims of trafficking and 43 (52.4 per cent) were victims of abduction. The other 19 (23.2 per cent) were people unlawfully smuggled to neighboring countries. From among the trafficked, seven were children (four boys and three girls).⁸² According to the 2008 figures of the MoI, 71 children from different provinces were abducted and security agencies were able to save 49 children (32 boys and 17 girls), while the remaining 22 children (20 boys and two girls) are to date untraceable.

349. Informants in the area claim child trafficking are increasing because boys in particular are considered ideal smugglers of food and illicit goods as they are more likely to be released when captured. Women and young girls, particularly widows, are also reportedly being forced into prostitution or baby selling so as to buy food for the family.

350. However, the exact figures or even an approximation of the actual number of trafficked children is difficult due to the poor understanding of trafficking and confusion in the identification of 'trafficked' children. A lack of coordination of work between agencies⁸³ contributes to the overlapping of reports and numbers.

Other forms of exploitation

351. The Constitution of Afghanistan is the highest legal mechanism for the rights of its citizens; other laws of Afghanistan, including the Law of Labor, the Juvenile Code (2005), the Temporary Penal Procedure, the Law on Combating Abduction and Human Trafficking, the Civil Code, and the Law on Combating Narcotics are adopted to provided protection to children from all forms of exploitation. Generally, these laws ensure the necessary legal protections for the support of children from all forms of exploitation and misuse and they

⁸¹ IOM, 2008, Trafficking in Persons in Afghanistan, Field Survey Report.

⁸² Ibid.

⁸³ UNICEF Afghanistan 2008. *A Discussion Paper on Child Trafficking in Afghanistan*.

have taken into account the Convention principles to a large extent. Further information can be found in section, 'Child's Access to Information and Role of Mass Media'.

D. Children belonging to a minority or an indigenous group

352. Under article 4 of the Constitution the ethnic groups of the country (Pashtun, Tajik, Hazara, Uzbek, Turkmen, Balouch, Pashae, Nooristani, Aimaq, Arab, Qerghiz, Qezelbash, Barahawi, and other ethnic groups) are recognized and have equal rights as citizens.

353. The MoPH has established a special department for ethnic minorities, especially the nomads, within its framework to provide medical services. Within the framework of the MoE, a Department of Education for Nomads has been established which is responsible for providing quality education for nomad children. The MoE has conducted comprehensive research on children of different ethnic groups on the basis of ethnic groups, tribes, language and other issues and has implemented specific measures according to their needs.

354. In accordance with article 43 of the Constitution, the GoA has attempted to ensure classes are taught in the mother tongues of regions where they are spoken. The Department of Curriculum Development of the MoE, in cooperation with some other relevant departments, has prepared textbooks in primary (grades 1 and 2) grades in local languages such as Uzbeki, Turkmeni, Pashae, Balouchi, and Nooristani.

355. But there are challenges. Minority groups have limited access to information and publications in their own languages. Most of the Hindu minority groups study in their own (private) established schools and their presence in government schools is not strong (as opposed to earlier when Hindu and Muslim children used to study together).

Translation of the initial report

356. Due to limited resources, the initial report under the Convention has been translated and published in the two official languages: Dari and Pashtu. The effort during consultations has been to speak with children in their mother tongues and also to have the provisions of the Convention translated in respective mother tongues.

X. Conclusion

357. The GoA considers initial reporting to the Committee on the Rights of the Child as a unique opportunity to highlight its achievements and existing challenges in observing human rights, particularly in the area of ensuring and institutionalizing child rights. This report can propose practical ways for tackling the problems to the international community active in the area of child rights, especially the United Nations agencies. This report is a clear manifestation of the will of the Government of Afghanistan for seriously dealing with the shortcomings in ensuring the human rights of children and is an indication that the Government is fully aware of its legal, national, and international obligations in the gradual realization of the human rights of this very important and vulnerable group of society. The Government strives towards fulfilling this set of commitments very seriously. The Government, in view of its commitments under the Convention, has focused on four principles of this Convention and has attempted to implement these rights: non-discrimination, the best interests of the child, rights to survival, and development and respect for child opinion.

358. In addition, this report provides a good opportunity for the United Nations agencies and other national and international organizations active in the field of human rights to see the situation of children of Afghanistan from a comparative, analytical and realistic point of

view and to help understand challenges and difficulties facing the Government. The focus of this report is based on the cogitation that despite significant achievements in the area of child rights over the past seven years such as: adoption of the laws on education; health; rehabilitation centres; dealing with the issue of children in conflict with the law; combating abduction and trafficking of humans; developing and approving the legal framework for the Rehabilitation Centers for children; adoption of the National Strategy on Children at Risk and the Strategy on Children with Disabilities; developing national policy on displaced people; adoption of strategies on health and social security; creation of the Secretariat of Children and Juveniles, Martyrs and Disabled Persons; establishment of the Commission on tackling Problems of Children and Juveniles; creation of a Commission on Banning Beggary; creation of the office of the Advisor to the President on Youth and Children; creation of Child Protection Action Network (CPAN) in 34 provinces; commencement of the process of public awareness and seeking children's views; creation of special offices of the Attorney General for children in 34 provinces of the country; establishment of daily open centres for children; creation of 46 safe play grounds in 34 provinces; establishment of a High Council to oversee Rehabilitation Centers for children; enrollment of more than 6 million children in schools (one third of them girls); endorsement of compulsory basic education by the laws of the country; creation of a modern centre for Islamic teaching with international standards for students under the grade 8; establishment of private schools; establishment of schools for nomadic children and the religious minority of Hindus; establishment of 9 associations for protection of child rights; creation of the Science and Technology Centre by the MoE for accession of students to the new developments; compilation and printing of books and magazines for children with hearing impairments; holding training workshops for people working with children; creation of educational publications for children; creation of 14 Youth Contact and Information Centers in 14 provinces; establishment of three control centres for child trafficking in the border crossing area of Afghanistan; creation of two centres for protection of children and their mothers; prevention of other infectious diseases; reduction in child mortality and morbidity compared to previous years; commencement of the process of birth registration at hospital and home levels in 15 provinces; launch of 3 rounds of public awareness campaigns on safe motherhood; improvement of public nutrition including children; increase in the coverage level of immunization; control of infectious diseases; expansion of activities on mental health; establishment of 44 nutrition centres for children in 34 provinces; establishment of a Unit within the MoPH for developing health policies; improvement of the situation of disabled people, particularly disabled children; provision of basic medicine for children in health centres; establishing kindergartens and day care centres in all provinces; creation of special schools for disabled children; establishment of Governmental and private orphanages in all provinces; establishment of Educational Radio-TV for children; establishment of 7,643 private schools in 30 provinces; creation of monitoring committees in schools by the MoE for prevention of violence against children; re-integration of 438 children trafficked to Saudi Arabia with their families; signing of a memorandum of understanding between the Government of Afghanistan and UNHCR; and dealing with 103 cases of sexual abuse of children.

359. Despite the achievements, many serious challenges still lie ahead on the path of ensuring and institutionalizing child rights such as: forced and early marriages of children, violence against children in the family, school and community; lack of public awareness on the laws on children; imposition of forced and harsh labor on children; sexual abuse and exploitation of children; absence or low participation of children in decision making processes that affect them; lack of respect for child views on social issues; shortage of school buildings and classrooms and shortage of professional teachers, particularly female teachers in the schools; shortage of technical equipment, textbooks and teaching materials; low capacity of the staff in rehabilitation centres; lack of defense lawyers for children; absence of the child legal guardian during the court sessions; victimization of children

during the armed conflict; child drug abuse; lack of segregation of children on the basis of their age in rehabilitation centres and in some cases placing children in detention centres with adults; contradictions of some of the laws with the provisions of the Convention; lack of appropriate buildings for rehabilitation centres; lack of access of children to standard living condition; presence of street children; high infant and maternal mortality rates; child malnutrition; shortage of skilled birth attendants; lack of regulations on refugees and use of children in armed conflicts; espionage; and transportation of ammunitions by children for armed groups, particularly Taliban which requires appropriate measures by the Government, in direct cooperation with the international community, in the area of adopting new laws and policies and amending existing laws that are inconsistent with the human rights values, as enshrined in the Convention.

360. Reformation of the judicial and legal system of Afghanistan, adoption of new laws, and modification of existing laws to bring them to par with the legal principles of Afghanistan and international standards of child rights undoubtedly should be implemented. Moreover, seriously considering the harmonization of the laws of the country with the provisions of the Constitution of the country, and enhancing the professional capacity of the judicial bodies, will eventually lead to guaranteeing the rule of law and gradually ensure the long term implementation of human rights of children.

361. Adoption of new national strategies concerning specific areas of the child rights and developing further supportive mechanisms for ensuring human rights of children are also part of the measures that the Government should implement in direct cooperation with the international community in order to significantly improve the situation of children, and to pave the way for the observance, protection, and monitoring of the child rights in Afghanistan. It should be emphasized that the aforementioned reforms cannot be achieved without the direct cooperation of the international community, especially international organizations active in the field of child rights. Therefore, mutual cooperation between GoA and international community will lead to a steadfast improvement of the situation of children in the country.
