

Justice for children in humanitarian action: Impact of the armed conflict in Afghanistan

SUMMARY

Children in Afghanistan face a wide range of protection issues, including poverty; lack of government services and corruption; low levels of birth registration; child marriage; honour killings of girls; health problems and drug addiction; restricted access to education, especially for girls and at secondary level; sexual exploitation and abuse including the traditional practices of baad (offering a girl in payment of an offense) and bacha bazi (the tradition of dressing young boys as girls and using them in dancing ceremonies, often with sexual undertones); child labour and economic exploitation; child trafficking, and forced recruitment and use by armed groups.

Number of children in detention doubled between 2008 and 2014

Between 2008 and 2014, the number of children in detention more than doubled: predominantly street and working children. In 2014, the Ministry of Justice reported that 196 boys were in juvenile rehabilitation centres due to charges related to national security and alleged association with armed groups.

Years of conflict and collapse of the judicial system present major obstacles to implementation of laws to protect children

The judicial framework for children in Afghanistan is reasonably strong: the country has passed major laws in recent years that are in line with the UN Convention on the Rights of the Child and other international norms and guidelines. However, implementation is limited. Evidence suggests this can be largely attributed to the collapse of the judicial system during the armed conflict. Major challenges include police behaviour towards boys and girls, reliance on the informal justice system and the absence of specialised centres to host different categories of juvenile offender.



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Withdrawal of 130,000 NATO-led forces in 2014

Several recent juvenile justice laws passed that are in line with the UNCRC

Implementation remains a challenge due to decades of conflict

The humanitarian context

The history of Afghanistan has been marred by conquests and invasions. The Taliban controlled most of the territory from 1995 to 2001, when a US, Allied, and anti-Taliban Northern Alliance military campaign toppled the regime and the UN-sponsored Bonn Conference established a framework for reconstruction. The following 13 years saw the largest deployment of North Atlantic Treaty Organisation (NATO) military forces in the history of the Alliance, and billions of dollars of bilateral and multilateral aid.¹

By December 2014, approximately 130,000 NATO-led forces withdrew from Afghanistan, although the United States and NATO retain a presence in the country following an agreement with the newly elected government. Since then, a resurgence in the number of attacks by Taliban and other armed groups has led to the highest number of casualties in recent years, and the coming years are likely to present an immense challenge for Afghan security forces.

Impact of the crisis on the judicial framework for children in Afghanistan

With encouragement from the international community, Afghanistan has recently passed several laws relating to the juvenile justice system that are in line with the UN Convention on the Rights of the Child (CRC), its additional protocols and international norms and guidelines.² Of particular note are the Juvenile Code (2005) and the Juvenile Justice Department Rules (2008).³ In addition, child labour is restricted through provisions of the Labour Code and the Constitution (2004), which also recognises the presumption of innocence (article 25), equality before the law (article 22), the child's right to education (article 43) and prohibitions on torture and other forms of ill treatment (article 29), among other provisions. In 2009, the government amended the Shiite Personal Status Law on women's rights,⁴ based on recommendations from the UN Committee on the Rights of the Child.⁵ Finally, a committee of experts (including UNICEF and other child protection agencies) has been mandated by the President to draft a new Child Act that should constitute encompass all child rights.

The responsibilities of each actor in the juvenile justice system are outlined in the Letter of Agreement, a policy document signed by nine State institutions (government ministries and the Supreme Court) in 2008.⁶ It constitutes an effective framework for the collaboration of State institutions. In practice, capacity varies significantly.

Despite the quality of the laws, implementation remains a challenge, owing to decades of conflict. For example, there should be various centres to host juvenile offenders, including separate ones for preventive detention and separate spaces in detention centres for first offenders. However in practice, there only exist Juvenile Rehabilitation Centres, which resemble detentions centres in which all juveniles are detained together.⁷ Another example is article 35 of the Juvenile Code, giving judges seven sentencing alternatives to detention. The full range of options is not



Afghanistan's numerous challenges attributed to collapse of the judicial system in the conflict

used because there are no proper community structures to support them.⁸ Other severe challenges relate to police behaviour towards girls and boys, especially in terms of treatment at the time of arrest and respect for legal rights.⁹ While similar problems exist in countries that have not experienced an emergency situation, anecdotal evidence from research and interviews suggests that these challenges in Afghanistan are mostly due to the collapse of the judicial system in the conflict years. They seem to have received comparatively limited donor attention. The exception has been the development of infrastructure in the Juvenile Rehabilitation Centres, which has been sponsored by the US government for several years. More recently, the Ministry of Labour and Social Affairs has undertaken efforts such as coaching and mentoring social workers, educational support and livelihood opportunities.¹⁰ This has apparently improved the situation in many centres.

In terms of security sector reform, many international donors have provided the Afghan Security Forces with equipment, training and institution building, in particular the US, the European Union (through EUPOL and Germany bilaterally) and other NATO members.¹¹ However, most of these programmes did not have a specific component on child rights. Support to the National Police has mostly focused on training officers in counter-insurgency tactics, border control and drug enforcement (especially through UNODC and the US), and only quite recently on community policing, aiming at bringing the police back to a more traditional law enforcement and protection mandate.¹² UNICEF has been working with the Ministry of Interior Affairs on child protection issues, including by building the capacity of the police.¹³

Reliance on the informal justice system

The partial collapse of the formal justice system during the conflict years has led communities to rely on the informal system; this is strongly based on customary tribal law. This normative framework is drawn from ethnically based moral standards which, in some cases, such as the Pashtun community's code (Pashtunwali) and Islamic legal traditions (Sharia), have been codified. Criticisms of the informal system have primarily focused on human rights issues and the undermining of the right to due process, such as proper participation of women and children¹⁴ and the prioritisation of community cohesion over individual rights.¹⁵

There have been calls for the formal system to recognise informal processes in a more coherent manner. For example in 2007, UNDP commissioned a report, which "advocated for a hybrid system, under which minor civil disputes and criminal incidents would be decided first by local mechanisms, while major incidents would be handled by the formal system",¹⁶ but was subsequently rejected by the representatives of the formal justice system." In 2009, a working group was created by the Ministry of Justice and international actors. The group sought to "draft a policy on the relationship between the state justice system and informal mechanisms".¹⁷ The policy attempted to "address individual rights issues, such as providing all members of the community (children, women, vulnerable groups) equal access to informal mechanisms".¹⁸



Wide range of child protection issues

Major justice-related issues affecting children during the emergency

Due to the on-going conflict, children face a wide range of challenges, including poverty, lack of government services and corruption, low levels of birth registration; child marriage; honour killings of girls; health problems and drug addiction; restricted access to education, especially for girls and at secondary level; sexual exploitation and abuse including the traditional practices of baad (offering a girl in payment of an offense) and bacha bazi (the tradition of dressing young boys as girls and using them in dancing ceremonies, often with sexual undertones); child labour and economic exploitation; child trafficking, and forced recruitment and use by armed groups.¹⁹

Children continue to be involved in armed conflicts across the country. Child casualties increased by 30% in 2013 compared with 2012. In 2014, 545 children died and 1149 were injured in 790 reported armed conflict-related incidents.²⁰ The year 2014 has seen a 25% increase in the number of child casualties²¹ and an 80% increase in the number of children casualties due to suicide attacks.²² It is difficult to assess how many of them have been involved with armed groups but in 2014, the UN reported the use of 97 boys (the youngest 8 years old) for military purposes. The majority were recruited by the Taliban and the Haqqani Network.²³ These two groups presumably “use children as suicide bombers and to plant improvised explosive devices”.²⁴ These children, both boys and girls, are often “bought” from their families by insurgent groups, typically for about 10 million AFN (around 170,000 USD).²⁵ The police (primarily the Afghan Local Police) remain on the list of organisations recruiting children, despite recent efforts by the government to address that issue.²⁶

UN reported “widespread impunity for grave violations against children by government security forces”.

In 2014, the Ministry of Justice reported that 196 boys were in juvenile rehabilitation centres due to charges related to national security and alleged association with armed groups.²⁷ The UN also reported that 44 boys reported being tortured or submitted to ill treatment during detention, as well as “widespread impunity for grave violations against children by Government security forces, including against children in detention for alleged association with armed groups”.²⁸

Number of children in detention doubled between 2008 and 2014

Between 2008 and 2014, the number of children in detention has more than doubled. These are predominantly street and working children, with 76% of boys and 32% of girls reporting that they were working before their arrest and detention.²⁹ Running away from home is considered an offence, as it amounts to adultery, which is a crime under Afghan laws (zina). The following case study describes the experience of an Afghan girl accused of an illicit relationship after being found with a man inside her room in her paternal uncle’s house.³⁰



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“My first few days in the Juvenile Rehabilitation Center were the most scary time of my life. I didn’t know anyone. I didn’t know who to trust. I was lost and my head was swirling with so many thoughts...of the worst things that could happen to a child who had violated the law.”

Mina was admitted to the Juvenile Rehabilitation Centre in the first week of April 2014. Her alleged involvement in an illicit relationship was both controversial and challenging for War Child UK social workers. She was found one morning with a man inside her room in her uncle’s house. However, for Mina’s social worker, Rahima, it was like many cases - the result of the absence of social protection mechanisms for young girls.

Rahima’s role was to prepare Mina’s case file, to meet with the Multi-Disciplinary Team and then to follow up on Mina’s further care recommendations including a Social Inquiry Report. While Rahima handled Mina’s case, she provided monthly counselling sessions with a focus on problem solving, coping with stress and social stigma and building resilience. She also assessed the progress in Mina’s case, and ensured Mina’s reintegration into her family.

Mina stayed at the Juvenile Rehabilitation Centre for only three months and this short duration was attributed to the skillful development of her Social Inquiry Report by Rahima, which the judge considered to be factual and comprehensive and with data double-checked for credibility. By first week of July 2014, Mina was freed. She is now 18 and happily engaged, has her own beauty parlour in her husband’s home and works part time in a beauty salon.

Initiatives by humanitarian and development actors on justice for children

Many humanitarian actors have supported elements of the juvenile justice system. For example, War Child UK, Children in Crisis, the Aschiana Foundation, UNICEF and Save the Children³¹ have provided training on child rights to various sections of the Afghan National Police. In addition, War Child UK has a capacity building project with social workers who intervene with street and working children, children with disabilities and children who have experienced abuse. It functions to develop basic social work competencies, such as interviewing, making assessments, developing care plans, writing case reports, case management and referrals. In 2013, War Child UK extended the project to the police, defence lawyers, prosecutors and judges.³²



Donors overlooking justice for children

Lack of consultation with Afghan authorities means programming is often out of touch.

Security Sector Reform programming lacks child rights perspective

Donors and child protection actors need to consider facilities managed by National Directorate of Security as well as Juvenile Rehabilitation Centres

Conclusions

Afghanistan has received international funding on an unprecedented level in the last decade. However, much of this funding has been bilateral, with little coordination between donors and considerable overlap. In addition, monitoring and evaluation has been sporadic at best, leading to unclear links between the funds invested and actual results.³³

There has been a lack of consultation with Afghan authorities on the design and implementation of programmes, leading to projects being out of touch with the reality on the ground, especially in the area of funding for security forces and the judicial system.³⁴

The focus of interventions with the security forces has been on fighting the insurgency and not on law enforcement and civilian protection. This has led to a militarisation of the police and a lack of public trust in the security forces.³⁵

Most Security Sector Reform programmes have not had specific components on child rights. This is probably related to the previous challenge, as donors and organisations have primarily focused on the conflict-related capacity building of the security forces.

When funding and programming for children in detention, donors and organisations seem to focus on the Juvenile Rehabilitation Centres rather than the facilities managed by the National Directorate of Security, who is in charge of crimes related to State security. While evidence is not easy to obtain, it can be assumed that access to National Directorate of Security facilities, a lack of will to cooperate by the Afghan authorities and the lack of information on detained children were important obstacles to the inclusion of these facilities in programming. Children associated with armed groups continue to be treated as “national security threats” and “terrorists”.³⁶



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