

# **Child Rights Advocacy Forum (CRAF)**

## **Afghanistan**

### **Joint NGO UPR Submission**

Submitted on behalf of the following child rights focused civil society organizations forming the Child Rights Advocacy Forum (CRAF):

- Aschiana
- Child Fund
- Children in Crisis
- Family Welfare Focus
- Human Rights Research and Advocacy Consortium
- Save the Children
- Terre des Hommes
- War Child Holland

The report has been signed off and is being supported by the following NGOs:

- Accessibility Organization for Afghan Disabled
- Equality for Peace and Democracy
- Medica Afghanistan
- Norwegian Refugee Council
- PARSA
- War Child UK
- Women for Afghan Women

# Consultation Process

This submission has been prepared by a coalition of child rights focused organizations operating in Afghanistan. A total of eight organizations working in rural and urban settings contributed to the collection of information and preparation of this report.

Children in Crisis and Save the Children were selected to be the lead organizations to provide recommendations, edit and write the different sections, and coordinate the process for the joint submission from November 2012 to May 2013.

During the consultation process, four child rights issues were prioritized by CRAF members:

- Children's right to Justice
- Children's right to Health
- Children's right to be Protected – Child Labor and Early Marriage

The submission includes consultations with 69 boys and girls, aged 8 to 18, from provinces in the South, North and Central regions of Afghanistan who expressed their opinion on the child rights situation in their region and presented recommendations to the Government of the Islamic Republic of Afghanistan (GoIRA).

## Findings from the children's consultations

Regarding **access to justice**, children consulted agreed that the government should improve conditions in the Juvenile Rehabilitation Centers by providing more educational and recreational activities and allowing families to visit more often. Many of the children, both boys and girls, did not understand the reason why they were arrested or why they had been detained for long periods of time. They encourage the government to raise awareness about the legal system so that families and children know their rights and are aware of the laws. Girls urge the government to reconsider their notion of a crime and allow girls to make decisions about their own lives.

Concerning their **right to health**, children requested that the Afghan government improve access for women and girls to health care services. They pointed out that in rural areas, clinics are very far away from their homes and take hours of walking to get to. They also stated that there is a need for more female health staff to take care of women and girls. In the conservative rural society, women and girls are not allowed to be treated by male health workers.

On the topic of **child labor**, children asked the government to increase the number of daycare centers for street working children that provide education and medical care. They also requested improved monitoring of families who send their children to work, particularly raising awareness about the importance of education. Furthermore, they insisted that relevant government bodies punish employers who force children to do hazardous work.

Children's recommendations on **early marriage** included a request to the government to enforce existing legal measures and punish parents who marry their daughters before the age of 16. They encourage religious leaders to use their significant influence to advise parents against early marriage.

They also request improved economic support and social services to families at risk of marrying their daughters to settle financial problems.

## Introduction

Afghanistan continues to be one of the toughest places in the world to be a child. Significant progress towards improving child rights has been made over the past ten years, particularly in the areas of education and health for children. Nevertheless, huge challenges remain. Children regularly become victims of the armed conflict and continue to be recruited into armed forces. Despite significant achievements, 21% of boys and 60% of girls of school-going age are not in school.<sup>1</sup> One in ten children die before reaching their fifth birthday, mostly due to preventable causes, such as birth complications, diarrhea or pneumonia.<sup>2</sup> Millions of children are forced to work, often in hazardous circumstances, to contribute to their families' survival, shattering any opportunities for healthy development. Girls' rights are continuously violated by harmful traditional practices that lead to abuse and exploitation.

Particularly, child protection lags far behind in comparison to the progress made in other areas such as education or health. The members of the Child Rights Advocacy Forum are deeply worried about the lack of importance given to issues such as early marriage or child labor, where legal provisions are still not being implemented effectively and there is little emphasis placed on tackling the conservative attitudes towards traditional harmful practices. A group of experts in the Ministry of Labor, Social Affairs, Martyrs and Disabled (MoLSAMD) assessed the child protection focused activities in the 22 National Priority Programs and discovered that child protection is not even mentioned in the scope of national planning.<sup>3</sup>

Child rights NGOs warn that the achievements made in the past ten years might stagnate or even regress with insecurity and poverty on the rise in most provinces. Shrinking aid and increasing rates of unemployment and under-employment contribute to aggravate children's situation and families' capability to care for them. Furthermore, donors who used to prioritize and fund child protection interventions have recently withdrawn the majority of their support, leaving ministries and NGOs with little or no financial support to protect children.<sup>4</sup>

During the Tokyo Conference, the most recent and probably the last great opportunity to highlight the development needs of Afghanistan, children were not even featured on the government delegations' agendas. The Afghan government seemingly lacks not only the resources but also the capacity to make systematic changes that improve the situation for children. A recent analysis conducted by Save the Children shows that only one percent of the national budget is invested on social protection<sup>5</sup>, where many child-focused activities originate. Only 3.7% of the 2013 national budget is allocated to health. Other indicators include the extensively debated Children's Secretariat

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<sup>1</sup> GIRoA, Ministry of Education (2010) Draft National Education Strategic Plan for Afghanistan (1389-1393/2010-2014)

<sup>2</sup> Afghanistan National Mortality Survey 2010

<sup>3</sup> Analysis of Child Protection in 22 National Priority Programs, Ministry of Labor, Social Affairs and Disabled, April 2013

<sup>4</sup> UNICEF reported a 50% decrease in their child protection budget, the European Union have withdrawn all social protection funding, foreign embassies budgets have been reduced significantly leading to a reprioritization and children's rights being forgotten.

<sup>5</sup> Child-Focused Analysis of the National Budget of Government of the Islamic Republic of Afghanistan, Save the Children 2013

at MoLSAMD that remains an empty building for over two years now. Government officials have yet to come to an agreement on its reach, focus and responsibilities.

The lack of interest in securing Afghan children's physical and psychological well-being is also reflected in the lack of updated and comprehensive data encompassing the situation of children in Afghanistan. This makes it difficult to design projects or advocate for child rights with donors and government officials.

## Access to Justice

### 1. Children deprived of liberty

Positive steps have been taken by the Afghan government in recent years to improve the juvenile justice system. The Juvenile Code 2005 and the Law of Juvenile Rehabilitation and Correctional Centers 2009 were enacted. Furthermore, in 2010, government bodies<sup>6</sup> signed a Letter of Agreement whereby the signatories agreed to contribute to a child-oriented and rights-based juvenile justice system.

However, there is marked difference between what is required in law and what occurs in practice. The weak enforcement was recognized by the Committee on the Rights of the Child (CRC Committee) in its Concluding Observations to Afghanistan in 2011.<sup>7</sup> This is further evidenced by the continued increase of children being held in detention. In *An Assessment on Juvenile Justice in Afghanistan 2010*<sup>8</sup> it was reported that there were 455 children deprived of liberty in 2008. In January 2013, the Ministry of Justice reported that 1,050 children were deprived of liberty and this figure continues to rise on a monthly basis<sup>9</sup>. Out of the 34 provinces in Afghanistan only three juvenile rehabilitation centers exist (in Herat, Kabul and Helmand). Children in the other provinces are deprived of liberty in rented – and inadequate – buildings. In Mazar-i-Sharif, North Afghanistan, currently as many as 33 boys share one toilet.

Article 35 of the Juvenile Code lists alternatives to deprivation of liberty such as community service and special social service institutions. However, in practice, there is no system of community service and no special social service institutions in Afghanistan, a situation aggravated by the lack of social workers. Article 8 of the Juvenile Code states that confinement should be used as a measure of last resort in accordance with article 37(b) of the Convention on the Rights of the Child (UNCRC), but a joint AIHRC and UNICEF report<sup>10</sup> states that at least 41% of children in juvenile rehabilitation centers in Afghanistan are awaiting trial or delivery of the verdict from the court. While comprehensive data is still missing on the worrying increase of children detained, the trend seems to show that the juvenile system in general is not prepared for processing children under legal time recommendations, thus creating a backlog of cases.

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<sup>6</sup> Ministry of Justice, Ministry of Labour, Social Affairs, Martyrs and the Disabled, Attorney General's Office Supreme Court and Ministry of Interior, Ministry of Education

<sup>7</sup> Committee on the Rights of the Child 56th Session 8 April 2011

<sup>8</sup> *An Assessment of Juvenile Justice in Afghanistan* prepared by Kimberley Motley and supported by Terre des homes as part of the Child Rights Consortium

<sup>9</sup> Ministry of Justice website: <http://moj.gov.af/en>

<sup>10</sup> Afghan Independent Human Rights Commission and UNICEF joint report on Justice for Children, 2007

Current practices show that the juvenile justice system does not comply with the principle of the “best interests of the child” (article 3, UNCRC), nor does it comply with the relevant international norms and standards.<sup>11</sup>

## Recommendation

- The GoIRA must support the implementation of alternatives to deprivation of liberty, including the funding of resources for the training of qualified social workers and the establishment of community-based monitoring systems to support the implementation of Article 35 of the Juvenile Code; in particular to facilitate oversight by parents and social workers, the use of social services and the use of community resources and national organizations as special social services institutions by 2013.

## 2. Gender discrimination and treatment of child victims in the Juvenile Justice System

Gender discrimination permeates the Afghan juvenile justice sector. Child victims of sexual abuse are often held responsible for the crimes committed against them. The Committee on the Rights of the Child has reported in 2011 that as many as 50% of girls deprived of liberty are charged with crimes of “running away” and “moral offences”<sup>12</sup>. Child rights organizations working on the ground consider this a conservative estimate. A study by the Afghan Independent Human Rights Commission (AIHRC) and UNICEF<sup>13</sup> reports that “high numbers of children in juvenile rehabilitation centers” are victims of sexual abuse and are held equally responsible for the act perpetrated against them. A 2012 report by Human Rights Watch<sup>14</sup> on the imprisonment of girls for moral crimes even claims that the situation is deteriorating as “almost all girls in detention” are charged with “moral crimes”.

These “moral crimes” involve women and girls fleeing from unlawful forced marriage or domestic violence. Some girls have been convicted of “*zina*” - sex outside of marriage - after being raped or forced into prostitution. They also include cases of “running away” which involves cases of girls leaving their homes, often after being raped, physically abused or forced into a marriage.

Although, “running away” is not identified as a crime in the Afghan Penal Code, the Supreme Court issued statements in 2010<sup>15</sup> as well as 2011 saying that “running away” should be treated as a crime whenever a woman leaves her home with anyone other than a legal intimate. Following these recommendations, judges and prosecutors use Article 130 of the Afghan Constitution to charge and sentence girls for “running away”; a non-specific article stating that “if there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner”.

The Supreme Court also advised that girls who run away from sexual abuse, forced marriages or other domestic problems should resolve their problems using official government channels such as

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<sup>11</sup> Beijing Rules, Riyadh Guidelines

<sup>12</sup> Committee on the Rights of the Child 56th Session 8 April 2011

<sup>13</sup> Afghan Independent Human Rights Commission and Unicef joint report on Justice for Children, 2007, AIHRC reference is page 13 third paragraph 3 [http://www.unicef.org/media/files/Juvenile\\_Detention\\_Study\\_engl.pdf](http://www.unicef.org/media/files/Juvenile_Detention_Study_engl.pdf)

<sup>14</sup> “I had to run away” The imprisonment of Women and Girls for “moral crimes”, Human Rights Watch 2012

<sup>15</sup> Letter from the General Administration Directorate of the Judiciary

example addressing the police and asking for help<sup>16</sup>. Victim reports, though, show that there is not much trust in the Afghan law enforcement. There are numerous reports revealing that girls reporting rape have been raped again by police officers<sup>17</sup>.

Girls put into detention are also at risk of being killed or otherwise harmed by family members after their release<sup>18</sup> as they are considered to have tainted the family's honor.

## Recommendations

- The GoIRA must immediately cease prosecution of moral offences and “running away” and issue instructions to prosecutors not to charge individuals with criminal offences under article 130 of the Constitution of Afghanistan 2004.
- The GoIRA must immediately issue instructions to law enforcement agencies and prosecutors that child victims of any form of abuse or exploitation are considered and treated as victims and no longer charged and detained as offenders, in compliance with article 34 of the UNCRC and the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes.

### What are children saying ?

“Our liberty is restricted here in the JRC, it is boring and tiring. The government should improve the conditions by providing us access to recreational and education activities and sport facilities.” – Amahdullah, 14.

“I really want to go back home. I miss my family and they miss me. I have experienced many difficulties in detention and I understand my mistakes.” – Zarifa, 15.

“No investigation should be made without a defense lawyer or social worker present. Access to a defense lawyer should be provided as soon as possible.” – Habibullah, 17.

## Child Labor

Child labor is an issue of growing concern in Afghanistan. More than 90% of jobs in Afghanistan can be classified as vulnerable employment – employment that does not secure stable and sufficient income.<sup>19</sup> This means that children can be involved in child labor even if family members have a job. Child labor affects particularly vulnerable children, including children from single-headed households, children with one or more family members with a disability and returnee or displaced children due to the ongoing conflict.

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<sup>16</sup> Letter no. 1005/656 General Administration Directorate of the Judiciary

<sup>17</sup> One example: Tolo news January 2013, <http://tolonews.com/en/afghanistan/9114-two-girls-seek-justice-in-multiple-rape-cases>

<sup>18</sup> Human Rights Watch 2012 report please include title

<sup>19</sup> The National Strategy for Street Working Children (2011), pp. 6, MoLSAMD

According to the *National Risk and Vulnerability Assessment* conducted in 2007/08, approximately 1.9 million children from the age of 6 to 17 are involved in child labor.<sup>20</sup> Less than one third of those children are enrolled in school.<sup>21</sup> In 2009, the Afghan Independent Human Rights Commission stated that 38% of families confirmed that their children under the age of fifteen work and 24% of the children constitute the primary source of income for the family.<sup>22</sup> Current numbers on child labor are likely to be higher due to widespread poverty, increasing unemployment and underemployment rates and the deteriorating security situation causing displacement and loss of livelihoods.

Children face immense risks of being forced to work to support their families for basic survival needs. Child labor is likely to harm children's physical, emotional and mental development. Moreover, these children are exposed to a number of other child rights violations, including trafficking, recruitment by armed forces or armed groups, physical harm and abuse of all types. There are no current figures available but child protection agencies have also recently noticed a remarkable increase in the number of street working and begging children in urban areas.

Progress has been made, mostly on the legal side. The GoIRA ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1994, ILO C138 on Minimum Age of Employment and ILO C182 on the Worst Forms of Child Labor in 2010. Article 49 of the Constitution of Afghanistan, ratified in 2004, prohibits forced child labor. The Afghan Labor Law, adopted in 2007, states that a child may be employed to work at the age of 14 for 'light' work if he or she is hired as an apprentice. It further specifies that recruiting children less than 18 for work that is physically arduous or harmful to their health is not permitted.<sup>23</sup> In 2011, the National Strategy for Street Working Children was developed to outline short, medium and long-term actions to ensure a programmatic response to address child labor.

Despite these efforts, the GoIRA seemingly lacks the capacity and will to enforce the child labor laws and implement these legal frameworks. The Afghan Labor Law still fails to define which sectors are considered hazardous for children, resulting in no legal repercussions for those who employ children to work under these dangerous conditions. Furthermore, donors have not given any attention to child labor. The current high estimate of child laborers in Afghanistan clearly demonstrates the systematic inefficiencies to provide a multi-sectoral, consolidated approach that both prevents and reduces child labor. The GoIRA must take effective action against child labor and facilitate access to education, especially in remote areas.

## Recommendations

- The GoIRA must improve research and data collection on child labor in order to apply this data to a multi-sectoral approach tackling child labor. This includes a countrywide assessment by the end of 2013 on the nature of the problem in Afghanistan, particularly focusing on factors that influence families to send children to work.
- The GoIRA must strengthen the policy, legal and regulatory environment for reducing child labor. This particularly means to revise the 2007 Labor Law by incorporating provisions of

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<sup>20</sup> The National Risk and Vulnerability Assessment (2007/2008), pp. 5, MoLSAMD & EU

<sup>21</sup> Afghanistan Multiple Indicator Cluster Survey (2010-2011), pp. 129, UNICEF & CSO

<sup>22</sup> Report on the Situation of Economic and Social Rights in Afghanistan, AIHRC, December 2009

<sup>23</sup> Afghan Labor Law (2007), Article 13

the ILO Convention on Worst Forms of Child Labor and the ILO Convention on Minimum Age of Employment into appropriate national legislation.

- The GoIRA must finalize the Youth Employment strategy by the end of 2013 to improve livelihood and employment opportunities for young people, and engage communities in changing norms and attitudes towards child labor by implementing nationwide campaigns and community awareness raising programs.

### **What are children saying ?**

“Children that work feel weak and they don’t eat enough food during the day to develop like other children.”- Zabi, 12.

“The government should create shelters for street working children and provide them with education and food.” – Zarmina, 10.

“The government should not allow children to work until they are 18 to 22 years old and should provide support to families that make their children work.” – Nader, 15.

## **Access to Health Care**

Dramatic improvements in mortality rates show the impact of investment in public health over the past ten years. In 2000, more than one in four children died before the age of five. Recent data show, while the rate is still the worst in Asia, a significant decrease to one in ten.<sup>24</sup> There has also been a decrease in the rate of maternal mortality.<sup>25</sup> Much of this can be credited to improvements in the health system, particularly the introduction of the Basic Package of Health Services (BPHS). Central to this achievement is an increase in the number and capacity of health workers.

Despite the progress made, many of the child health indicators are still among the worst in the world. Important tools and initiatives to help improve Afghan children’s health have not been developed, are neglected or not implemented. One major underlying cause for child mortality is widespread malnutrition that further decreases children’s ability to resist and recover from illnesses.

### **1. Malnutrition**

Afghanistan’s malnutrition rates are among the highest in the world.<sup>26</sup> Malnutrition is also a major underlying cause for the high rates of child mortality in Afghanistan. It contributes to one third of all child deaths<sup>27</sup> and thus poses one of the biggest challenges for the survival of children as well as a heavy burden on the public health system. It impairs children’s mental and physical development, their ability to learn in school and adult work capacity.

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<sup>24</sup> Afghanistan Mortality Survey 2010

<sup>25</sup> Afghanistan Mortality Survey 2010. Trends in Maternal Mortality: 1990 to 2008, WHO, Geneva 2010.

<sup>26</sup> Nutrition Action Framework, MopH 2012

<sup>27</sup> Maternal and Child Undernutrition I, The Lancet series 2008

Surveys<sup>28</sup> show that:

- 55% of children under the age of five are chronically malnourished (stunted)
- 7% of children are severely and moderately acute malnourished
- 70% suffer from micronutrient deficiencies.

However, nutrition has not been prioritized by the Afghan government over the past years. A nutrition component was included in the revised BPHS in 2010, but is still not being fully implemented. Crucial initiatives such as the training of health workers or awareness raising campaigns tackling the significant lack of knowledge about nutrition and child feeding practices were neglected. Policies such as the “Infant and Young Child Feeding Policy and Strategy” and the “Public Nutrition Policy and Strategy” in 2009 are not being fully implemented. Malnutrition rates have not seen significant improvement<sup>29</sup>.

In May 2010, the Committee on Economic, Social and Cultural Rights noted in its Concluding Observations<sup>30</sup> “with concern of the high level of malnutrition and hunger”. It recommended to “revise existing policies” and “envisage [...] a more comprehensive approach to address food security and malnutrition”.

Little progress has been made since. In 2012, the “Nutrition Action Framework” (NAF), a multi-sectoral approach to tackle malnutrition and food insecurity, was developed. It is a comprehensive approach eligible to reduce malnutrition significantly. Yet a clear and supported implementation plan is yet to be developed.

## **Recommendations**

- The GoIRA and international donors must set and deliver against a clear implementation and monitoring and evaluation plan for the Nutrition Action Framework.
- The GoIRA and international donors must support and fund the nutrition component of the existing Basic Package of Health Services, to ensure full and effective implementation.
- The GoIRA must increase national level experts by including nutrition as a topic in school and university curricula as well as pre-service and in-service training of health staff.

## **2. Health Workers**

Frontline health workers such as community health workers, midwives, doctors, and nurses are critical to children’s survival. Progress is visible, however, numbers are not where they need to be in order to reach all children and mothers with quality services.

There are too few health workers to meet current and future demands for improving child and maternal survival. In order to deliver basic healthcare to all, the World Health Organization estimates

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<sup>28</sup> National Nutrition Survey, MopH 2004; Multiple Cluster Survey 2010; Nutrition Cluster 2011/2012 SMART Nutrition Survey

<sup>29</sup> See footnote 4

<sup>30</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights, Geneva, May 2010

that at least 23 doctors, nurses and midwives are needed for every 10,000 people<sup>31</sup>. The Afghanistan Public Health sector has 4.8.<sup>32</sup>

Afghanistan needs to increase the female workforce. Females currently make up only 25% of the workforce.<sup>33</sup> Increasing the female health worker workforce is one important way to continue to improve the inclusion of women in decision-making about maternal health (as referenced in recommendation 82 of the 2009 UPR report for Afghanistan).

Furthermore, a disproportionately large number of healthcare workers are concentrated in urban areas. There are 4.5 health workers per 10,000 people in rural provinces, compared with 16 per 10,000 in larger, more urban provinces.<sup>34</sup> Conflict and insecurity in many parts of the country cause further challenges to recruiting and retaining staff.

## Recommendations

- The GoIRA must increase the enrollment rates for midwives to train at least 6300 midwives by 2016.
- By 2014, the GoIRA must develop and implement deployment plans six months prior to midwife and nursing graduation to ensure positions are available and that security is sufficient at deployment sites. GoIRA must also pilot and introduce rotation schemes with the clear aim that professional health workers spend part of their time in rural or remote areas.
- The GoIRA must improve professional development opportunities including cadre management, career pathways, recruitment, training, and deployment, particularly for skilled birth attendants, as is outlined in the Reproductive Health Strategy 2012-2016.

### What are children saying?

“Our village doesn’t have any female doctors so our female patients visit Tirin Kot when they become sick.” Enayatullah, 10.

“I visit the doctors, but some people don’t visit the doctors because they don’t have the money and also the clinic is too far away from our village.” Bilal, 13.

“The government has the responsibility to build hospitals and hire good, expert female doctors, keep a good supply of medicine, have modern equipment and give mother’s healthy food. – Malalai, 16.

<sup>31</sup> The World Health Report 2006 – Working together for health. WHO 2006

<sup>32</sup> Investing in Health Workers to Save Children’s Lives, Save the Children Afghanistan Briefing, March 2013

<sup>33</sup> Ministry of Public Health (MoPH) Strategic Plan 2011-2015

<sup>34</sup> Human Resources database , MoPH 2012

# Early Marriage

Early marriage continues to be a severe problem in Afghan society, with significant consequences for girls' health and education. Little progress is visible as highlighted by the UN Committee on Economic, Social and Cultural Rights in its Concluding Observations noting "the persistence of stereotypes and customary practices that marginalize women and girls" as well as "discriminatory legal provisions with regard to [...] under age marriage [...]".<sup>35</sup>

There is no new data on early marriage since the last comprehensive survey in 2006. Smaller scale surveys indicate that the problem remains at the same high level. In 2006, MoLSAMD stated that over 50% of girls under 16 years were married and 60 to 80% of all marriages in Afghanistan were forced.<sup>36</sup> In March 2013, Medica Afghanistan NGO reported that 65% (442 cases) of their female clients in 2012 were married before aged 16, while 70% (495 cases) of these women had also been forced into their marriage, including cases of *badal* or *baad*.<sup>37</sup> A study conducted in 2012 by Action Contre la Faim, involving 210 women in Kabul Informal Settlements, revealed that 99 of the women interviewed - nearly 50% - were married before they turned 15. 75 women were married between 16 and 18 years of age. Only 36 of the 210 women interviewed were married when they were older than 19.<sup>38</sup>

Measures that could help decrease the number of child marriages, such as the establishment of a "comprehensive registration system for child births and marriages"<sup>39</sup> have not been taken. In addition, awareness raising campaigns to tackle the traditional attitudes towards early marriage, have not been implemented.

Another obstacle is the nationwide confusion regarding legal provisions. In 2010, the UN Economic and Social Council called upon Afghanistan to harmonize the domestic law, including the Shia Personal Status Law with human rights standards".<sup>40</sup> However, little progress has been made in this direction. Contradictory provisions in national laws and policies persist on the issue of marriage, particularly child marriage; other related laws are not being implemented properly.

With respect to the legal age for marriage, Article 70 of Afghanistan's Civil Law, sets the minimum age for marriage for girls at 16 but it still competes with regulations in Sharia (religious) law by which a father can marry his daughter after she reaches puberty and how he deems fit. Sharia Law is often the preferred tool to regulate marriage affairs, particularly in rural areas. Furthermore, members of the Afghan Parliament still express the view that "in Islam, a father decides when to wed his daughter".<sup>41</sup> Similarly, the Shia Personal Status Law fails to protect the rights of Shia women and married girls in marital affairs, for example giving their husbands priority in court".<sup>42</sup>

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<sup>35</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights. Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant

<sup>36</sup> A better future for Afghanistan's vulnerable children and their families, Ministry for Labor, Social Affairs and Disabled 2006

<sup>37</sup> Medica Afghanistan, interview March 2013 on 2012 figures

*Badal*, practice by which two families exchange children for marriage, also to avoid having to pay the dowry. Exchange of girl against a debt as well.

<sup>38</sup> Survey of Mental Health and Child Care Practices in the Kabul Informal Settlements, Action Contre la Faim 2012

<sup>39</sup> Situation of Human Rights, Afghan Independent Human Rights Commission 2009

<sup>40</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights. Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant

<sup>41</sup> The Afghan battle over a law to protect women, NPR, February 20<sup>th</sup> 2013

<sup>42</sup> Elimination of Violence Against Women - Still a long way to go, UNAMA 2012

On the other hand, the Elimination of Violence Against Women (EVAW) law which was signed by the Presidential Office in August 2009 has not been approved by the Parliament yet. Child rights and women's rights experts state that this law fails to address most cases of violence against women, including forced marriage and under-age marriage. Cases of harmful practices are still often<sup>43</sup> referred to traditional *jirgas* and *shuras*<sup>44</sup> for advice and mediation instead of being referred to official government channels. This reinforces impunity and under-reporting and undermines the legal system in place.<sup>45</sup> The Afghanistan Gender Review by NORAID from 2011<sup>46</sup> and a UNAMA report on the status of the elimination of violence against women<sup>47</sup> show that of 4012 recorded cases of violence from March to October 2012 only 52 resulted in conviction of perpetrators by using the EVAW law.

## Recommendations

- The GoIRA should harmonize the legal provisions concerning girls' and women's rights, child marriage and age of marriage age in the Shia Personal Status Law with human rights standards and immediately start to draft and conduct a nationwide awareness campaign about the consequences of early marriage for girls, aiming to create better acceptance of related provisions of the Civil Law (particularly regarding the marriage age in the Civil Law) as well as the Elimination of Violence Against Women Law against the religious law, by 2014.
- The GoIRA should establish comprehensive registration processes – birth and marriage (civil, legal and traditional) - to help law enforcement officials detect cases of underage-work or underage-marriage by the end of 2014.
- The GoIRA should immediately launch public awareness campaigns and work with religious leaders to raise awareness of the legal rights of women and girls guaranteed in Afghanistan's legal framework, including the legal age of marriage.

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<sup>43</sup> Comprehensive data is not available; however, NGOs working in the field state that this occurs regularly. Indicated for example in War Child Holland documentary on Early Child Marriage, April 2013, and Interview with Medica Afghanistan Legal Dpt, April 2013

<sup>44</sup> Traditional gatherings for resolving conflicts and local governance within communities

<sup>45</sup> Elimination of Violence Against Women - Still a long way to go, UNAMA 2012

<sup>46</sup> Afghanistan Gender Review, NORAID 2011, p. 40 "Remains nearly total impunity around forced marriage, honour crimes, sexual abuse".

<sup>47</sup> Elimination of Violence Against Women, still a long way to go, UNAMA Report, Dec. 2012

### **What are children saying ?**

“When girls get married at an early age and get pregnant they face too much pain and sometimes die. Early marriage causes families to fight and even divorce. If married before 18, girls face health problems and sexual disease too and they may die. Parents have the responsibility to stop early marriage.” – Aashna, 14.

“The government is responsible to punish people involved in child marriage and parents should avoid child marriage so that the mother doesn’t die and leave kids without mothers.” – Arif, 16.

“Baad and badal is forbidden in Islam. Mullahs have to raise awareness about this to make people aware of baad and badal being forbidden. It is the worst action that some people can do because it will damage a girl’s future. It sometimes causes families to fight with one another and this will cause someone to die.” – Delaram, 17.