

Many child victims in Afghanistan are punished by the juvenile justice system – victims of sexual abuse, forced marriage, or underage marriage these children are victimised by the justice system as they are prosecuted for having committed crimes.

These children are essentially punished for having violated social, behavioural and religious norms, while they are victims in need of care, protection and justice. The present system results in the underreporting of sexual abuse and exploitation because victims are afraid to come forward as their testimony may be used against them.

The law and its present implementation lack protective measures for victims of crimes and children are particularly vulnerable to being targeted with charges of ‘moral offences’ as a means of social control.

The prosecution of these children goes against international standards of juvenile justice as well as those rights guaranteed children in the Juvenile Code (2005). No consideration is taken of the circumstances of the offence, the ability of the child to give consent, the use and abuse of children by adults, and the use of the juvenile justice system for punitive not rehabilitative purposes.

Special measures need to be put in place to protect children from:

- **Re-Victimisation** – where children are the victims of crimes and/or abuse they should not be victimised again by the juvenile justice system;

- **Penalisation for ‘Status Offences’** – any conduct not considered an offence or not penalised if committed by an adult should not be considered an offence and not penalised if committed by a young person;
- **Entry into the formal juvenile justice system when they are not in conflict with the law** – children who are not in conflict with the law but in need of care and protection should not enter the formal juvenile justice system (i.e. prison, court or juvenile centre).



Photo: Sebastian Rich/UNICEF AFG/2008

Children’s rights are weakly represented in national law and its implementation.

While the Civil Code (1977) states that the marriage of a girl below the age of 15 years is not permissible, from this age until the age of 18 years fathers are given the authority to exercise full decision-making power on the marriage of their daughters.

The Juvenile Code (2005) while developed with the aim to protect the interests of children, including children in need of care and protection, is conspicuous in the absence of any articles relating to the situation of children who are victims of sexual abuse, exploitation, or forced marriage.

Although the Juvenile Code states that the situation and circumstances of a juvenile who is accused of an offence should be taken into account, the reality is that for ‘offences’ which challenge social norms this is rarely the case – a child victim of rape may be accused of adultery.

The failure to develop and implement appropriate legislation and policies to protect child victims of abuse and exploitation is resulting in the *systematic re-victimisation* of children in the justice system.

Who is the Victim?

A **14 year old boy** was arrested on a charge of pederasty after allegedly spending 6 months as a passive sodomite with a man in a nearby village. The boy reported that he was forced to stay with the man and while the man was released the boy remained in a juvenile rehabilitation centre awaiting disposition.

A **14 year old girl** was arrested when trying to run away from her home as she would not accept her fiancé. She had been in detention for 3 months in a juvenile rehabilitation centre as part of a 1 year sentence. She was below the legal age for marriage yet had been sentenced. Her father has threatened to kill her when she is released.

A **14 year old girl** was sold for marriage for \$2000 and then was sold on to another person for \$5000. When this person forced her to have sexual intercourse she went into a coma and was transferred to hospital. Her case was registered in court. She was held in a juvenile centre for over 3 months with the judge insisting she should marry the man to whom she was sold.

CHILDREN AS VICTIMS

A survey of children in juvenile rehabilitation centres conducted during 2007 found 247 children. 12% of boys were charged with cases of adultery or sodomy. In many cases the boys were clearly victims of sexual abuse or exploitation by adults. 32% of girls in juvenile rehabilitation centres were charged with adultery or sodomy, while 24% of girls were in detention for running away from home, and 14% of girls were in the centres because they were lost or without shelter.

Many of these children should not have been in detention and had been victimised by the justice system:

- **BREAKING OF SOCIAL/CULTURAL NORMS**

The underlying aim of juvenile justice is the rehabilitation and reintegration of children coming into conflict with the law, but in cases related to moral and social issues the justice system continues to act as a tool for the punishment of children who have broken social and cultural norms.

'Moral Crimes' represent a significant proportion of charges brought against children in Afghanistan in the juvenile justice system. While some of these crimes, such as adultery, are defined in national law processing of such cases does not take into account the circumstances of the incident, the issue of consent, and the right of a child to have these issues taken into account (the principle of proportionality).

While many children are taken into custody for their alleged protection it is apparent that there is no procedure for addressing these cases and for the use of deprivation of liberty as means of last resort.

'Protective Detention'

A 17 year old girl was detained by police and put into an adult prison for running away from home with her boyfriend. The girl shared about her relationship with the boy and her hopes to marry him and requested support from Child Protection Action Network (CPAN) to allow her to be moved to a juvenile rehabilitation centre. She explained that being detained with adult prisoners she was exposed to disturbing cases.

After securing her transfer to a juvenile rehabilitation centre, community workers made a visit to the girl's family to discuss the release of the girl and the possibility of marriage with the boy. The girl's family were not satisfied and stated that their daughter should remain in jail indefinitely as she had brought shame upon her family. The community workers also visited the boy's family who agreed to support the marriage of the boy and the girl.

CPAN continues to work on this case with the girl, boy and their families. However both remain in detention for their protection due to fears for their safety.

DEFINITIONS: Sexual Abuse and Exploitation of Children

Many cases brought against children are for sexual and moral crimes involving incidents which contradict social and cultural norms and practices and for which the child is held equally responsible even when he or she is a victim:

CHILD SEXUAL ABUSE – Child sexual abuse is the involvement of a child in a sexual activity to which he or she is unable to give informed consent (and may not fully comprehend), or for which the child is not developmentally prepared and cannot give consent, or which violates the laws or social taboos of society. (UNICEF)

CHILD SEXUAL EXPLOITATION – Sexual abuse becomes sexual exploitation when a second party benefits – through making a profit or through a quid pro quo – through sexual activity involving a child. (UNICEF)

FORCED MARRIAGE – Any situation in which boys or girls are coerced, enticed, induced or tricked into marriage is wrong. Forced marriages are sometimes used to justify the sexual exploitation of children, especially young girls. (World Vision International)

- **SEXUAL ABUSE AND EXPLOITATION OF CHILDREN**

In a large number of cases children who are the victims of sexual abuse or sexual exploitation are punished in the justice system. In many cases involving moral issues such as refusal of forced marriages, out of marriage sexual relations, or sexual abuse of minors by adults, children are treated as the perpetrators of sexual or moral crimes. Little consideration is given to whether the child is a victim and national legislation is overlooked (for example, the minimum age for marriage) in favour of the use of customary law.

- **CHILDREN IN NEED OF CARE AND PROTECTION**

Many children in juvenile rehabilitation centres are there because they are at risk and in need of care and protection.

While the Juvenile Code identifies children in need of care and protection as a group which should be supported through the juvenile justice system, this does not justify the detention of children who have not been accused of a crime in centres for children in conflict with the law.

Children who are lost or without shelter should be supported by social service institutions (e.g. Ministry/Departments of Labour, Social Affairs, Disabled and Martyrs and Child Protection NGOs) with priority placed on reuniting and reintegrating the child with his/her family whenever this is possible.

THE VULNERABILITY OF GIRLS

Girls are particularly vulnerable to coming into contact or conflict with the juvenile justice system in relation to 'moral crimes' and as victims of sexual abuse and exploitation. Many of these cases enter the juvenile justice system because girls have limited access to protection services outside of the family (for example, in cases of forced or under-age marriage) and once in the system they face risks of further abuse.

LIMITED ACCESS TO JUSTICE AS VICTIMS

Girls have few choices to challenge forced marriage and sexual abuse or exploitation and must be aware of the risk that they will be treated as offenders by the justice system.

Facing abuse and exploitation, girls may run away from home and this is only possible if they have a male companion resulting in accusations of adultery and the girl having to prove her virginity to prove she has not committed adultery.

Suicide to Stop Abuse

An 18 year old girl tried to commit suicide, setting herself and her 1 year old child on fire. The child died as a result and the girl was hospitalised with severe burns.

She had been married at the age of 15 years to a 55 year old man who then left the country leaving her alone with his sons. The sons repeatedly raped and physically abused her. With no way to protect herself, the girl felt she could only stop the abuse by ending her life.

NEGLECTED AND AT RISK IN THE JUSTICE SYSTEM

Girls are also more at risk within the juvenile justice system – they are more likely to be detained with adult female prisoners (as in many regions juvenile facilities exist only for boys) and they do not have the same access to rights (e.g. education) as boys in detention have in the juvenile facilities.

Those involved in alleged sexual offences have to undergo what are often humiliating or abusive examinations as part of the legal process with little measures for their protection. This is the case whether they are accused of a crime (such as adultery) or registered as a victim. All under suspicion will be ordered to undertake a virginity test. The test is being done automatically – without the girl's consent.

In addition it appears to be a common practice that pregnant girls are kept in confinement and only brought to a hospital for the delivery of their children and then sent back to prison – risking the health and survival of both mother and child.



Photo: Shehzad Noorani/UNICEF AFG/2008

AT RISK IN THE 'INFORMAL JUSTICE' SECTOR

There has been much discussion about the merits of the informal justice sector, especially in areas where people have limited access to formal juvenile justice mechanisms. The idea held is that the *shura* or *jirga* (types of village council) provide speedy decisions to resolve conflicts that are respected by the participants.

It has however been argued that the informal justice sector encompasses and uphold many discriminatory practices against women and children. As highlighted in the case study below, the rights of the child may not be taken into account in the proceedings and decisions of *jirgas* and children would benefit more from recourse to the formal justice system. The best interests of children, in particular of girls, are vulnerable to being sacrificed for the perceived benefit of the community. At the same time efforts to address cases of abuse and injustice face many challenges.

Children as Compensation

In one village a *jirga* meeting decided that a family should marry their 3 year old daughter to a boy of another family to resolve a conflict. Local organisations became aware of the case and started discussions with the village elders with the aim of nullifying the decision.

The elders agreed that the decision to marry a three years old girl is harmful and against *Sharia* and Islam, but that it was difficult to break a *jirga* decision as it would create problems and fighting in the community. However the family of the girl felt the decision had been forced upon them, and was in addition to financial compensation.

The family who claimed the girl said that they could not go against the decision and that they needed the compensation otherwise the boy could not get married.

A further meeting took place. After long discussions the *Jirga* reluctantly agreed to nullify the decision. Included in the agreement was that the girl's father should pay a fine and six cows to the boy and his family.

The use and misuse of the justice system for social control and the victimisation of children who are victims of sexual abuse and exploitation are sensitive issues. However these cannot be ignored. This means challenging normalised social practices (for example, forced marriage) and the way that the juvenile justice system addresses these cases (for example, the prosecution or detention of child victims of sexual abuse) which can only be done through open discussion and dialogue.

In many cases organisations and individuals have been successful in identifying solutions and mediating between victims, their families, the police and the legal system. However, real lasting change will only result from addressing these issues on the wider level of legal and policy reform:

- National law concerning child protection (i.e. a Children's Act) needs to be developed and address issues concerning children in need of care and protection including victims of child sexual abuse and exploitation;
- Different stakeholders (in particular police, prosecutors, judges, health workers and doctors) must be made aware of their responsibilities in order to prevent and respond to child sexual abuse and exploitation;
- Procedures and policies must be developed for justice agencies (i.e. police, prosecutors, judges, health workers, and social workers) dealing with cases of sexual abuse and exploitation including cases involving the forced marriage of children;
- As identified in the National Justice Programme, Special Victims Units (within the AGO) and Family Response Units (within the police) need to be put in place urgently to provide child victims with appropriate support and protection;
- Protection facilities and services (outside of the juvenile justice system) need to be provided for children who are victims of abuse and exploitation, including emergency shelters, counselling, legal support, family/community mediation and reintegration support;
- Increased efforts must be made to challenge public perceptions about the situation of children accused of moral and sexual crimes to promote awareness that in the majority of cases children are victims in need of care and protection.

Justice Delivered for Victim of Sexual Abuse

An 11 year old girl was kidnapped and raped by a military commander in one province. After the case was reported by the family of the victim, the perpetrator was arrested. The case was reported to the CPAN and members expressed their concern whether there would be a fair trial and the victim would receive justice.

CPAN members expressed their concern in writing to Ministry of Labour, Social Affairs, Martyrs and Disabled (MoLSAMD) requesting them to follow up the case from Kabul so that the case would get attention from high ranking officials in the justice departments.

The issue was also referred to human rights organisations as a result of which the case was closely followed by a deputy minister of MoLSAMD. The primary military court sentenced the perpetrator to 15 years imprisonment. The case was followed up at the appeal court which confirmed and endorsed the sentence.

In order to ensure that child victims of abuse and exploitation are protected and not re-victimised, changes have to happen in families, communities and society at large. Parents, service providers, local child protection organizations and government institutions all have a critical role to play to realize this change in Afghanistan.

The government must ensure that perpetrators of child abuse and exploitation are brought to justice. A persistent culture of impunity for forced/child marriage must be brought to an end.

This has begun to happen in small but positive steps:

"A 16-year-old girl and an 18-year-old boy were arrested for running away to get married. Police informed a social worker who convinced the police to meet with their parents before transferring them to the juvenile centre. The social worker tracked down both families and discussed possible solutions. The families agreed that the girl and boy could marry once they reached adult age. The families gave guarantees to the police and within 3 days the boy and girl were released and reunited with their families."

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