



# Convention on the Rights of the Child

Distr.: General  
8 April 2011

Original: English

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## Committee on the Rights of the Child

Fifty-sixth session

17 January–4 February 2011

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

#### Concluding observations: Afghanistan

1. The Committee considered the initial report of Afghanistan (CRC/C/AFG/1) at its 1586th and 1587th meetings (see CRC/C/SR.1586 and 1587), held on 18 January 2011, and adopted at its 1612th meeting, held on 4 February 2011, the following concluding observations.

#### I. Introduction

2. The Committee welcomes the submission of the initial report as well as the written replies to its list of issues (CRC/C/AFG/Q/1/Add.1) and commends the frank and self-critical nature of the report. The Committee also welcomes the positive dialogue with a high-level and multi-sectoral delegation, which allowed for a better understanding of the situation of children in the State party.

#### II. Follow-up measures and progress achieved by the State party

3. The Committee notes with appreciation the adoption of:
- (a) Law on the Rights and Privileges of People with Disability and Martyrs' Families in 2010;
  - (b) Law on the Elimination of Violence against Women in 2009;
  - (c) Law on Juvenile Rehabilitation Centres in 2009
  - (d) Education Law in 2008;
  - (d) Law on Counter Abduction and Human Trafficking in 2008;
  - (e) Labour Law in 2007;
  - (f) Law on Public Health in 2006; and
  - (e) Juvenile Code in 2005.

4. The Committee also welcomes the ratification by the State Party of the following international human rights treaties:

(a) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 24 September 2003;

(b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 19 September 2002;

(c) Convention on the Elimination of All Forms of Discrimination Against Women on 5 March 2003;

(d) ILO Conventions No. 138 (Minimum age) and 182 (Worst Forms of Child Labour) on 7 April 2010; and

(e) Convention relating to the Status of Refugees (1951) and its 1967 protocol on 30 August 2005.

5. The Committee also welcomes the following institutional and policy measures:

(a) The establishment of the Inter-Ministerial Steering Committee on Children and Armed Conflict in 2010;

(b) The Afghan National Development Strategy of 2008, in particular its sub-strategies on education, children at risk, and children with disabilities;

(c) The adoption of the National Plan of Action against Trafficking and Kidnapping of Children adopted in 2004;

(d) The establishment of a Child Protection Action Network (CPAN) in 2003; and

(e) The establishment of the Afghanistan Independent Human Rights Commission (AIHRC) in 2002.

### **III. Factors or difficulties impeding the implementation of the Convention**

6. The Committee notes the continuing effects of over three decades of armed conflict in the State party that impede the implementation of the rights enshrined in the Convention, and which delayed the submission of the State party's report.

### **IV. Main areas of concern and recommendations**

#### **A. General measures of implementation (arts. 4, 42 and 44, paragraph 6 of the Convention)**

##### **Legislation**

7. The Committee notes with concern that in spite of recent legislative developments in the field of child rights, the State party does not consider the Convention as a legally binding instrument in the internal order, and has therefore not incorporated it systematically into the domestic legal system in order to make it applicable. The Committee is also concerned that child rights continue to be negatively affected by the application of different sources of law, namely codified, customary and sharia laws, and that legislation

contradictory to the Convention remains in force. The Committee is further concerned about the low implementation of legislation enacted in the field of child rights due mainly to weak enforcement, limited level of awareness of the legal norms promulgated, widespread corruption, and the application by courts of provisions of customary or sharia law which infringe the principles and rights contained in the Convention.

**8. The Committee urges the State party to ensure applicability of the Convention in the domestic legal order, and further ensure that all its principles and provisions can be applied in the courts and in administrative proceedings and that they apply to all children living on the territory of the State party. The Committee also urges the State party to ensure that the existing domestic framework, including customary or sharia laws is brought into compliance with the Convention. To this aim, the Committee recommends that the State Party consider enacting a comprehensive Child Act which would supersede all legislation that is not in conformity with the Convention, and provide children with appropriate means of redress.**

#### **Coordination**

9. While welcoming the recent establishment of a Children's Secretariat to coordinate the implementation of the Convention, the Committee is concerned that the Secretariat has been placed within the Ministry of Labour and Social Affairs, Martyrs and the Disabled (MoLSAMD) which may limit its cross-sectoral impact. The Committee is also concerned about the proliferation of ad hoc commissions, and the overlapping of such commissions and Government departments on issues affecting children.

**10. The Committee urges the State party to allocate principal responsibility for the coordination and evaluation of the implementation of the Convention to a single mechanism with full authority and capacity to coordinate the implementation of children's rights across all ministries and other agencies which are responsible for the State Party's obligations under the Convention and to provide this mechanism with adequate financial and human resources to fulfill its mandate throughout the national territory.**

#### **National plan of action**

11. The Committee commends the formulation of several specific plans of action for children and of an overall Afghan National Development Strategy (2008-2013). However, the Committee is concerned that there is no comprehensive policy and strategy for the attainments of child rights which could be linked to the Afghan National Development Strategy and to the national budget.

**12. The Committee recommends that the State party develop a comprehensive policy and strategy on children that is closely linked to the Afghan National Development Strategy with appropriate resources, and covering all specific plans of action relating to different aspects of child rights, either in the form of a National Plan of Action for children or other such framework. The Committee recommends that in formulating such policy and plans, appropriate attention be paid to the outcome document of the 2002 Special Session of the General Assembly of the United Nations "A world fit for children" and its mid-term review in 2007, and to its General comment No. 5 of 2003 on the general measures of implementation of the Convention on the Rights of the Child.**

#### **Independent monitoring**

13. The Committee welcomes the creation of the Afghanistan Independent Human Rights Commission (AIHRC), and the establishment by the Commission of a specific Child

Rights Desk. However, the Committee is concerned about the procedure for nominating the Commission's members, which may not fully guarantee their independence from political influence, as well as about the insufficient financial support provided by the State party to the Commission, and the limited expertise of its child rights field monitors.

14. The Committee calls upon the State party to ensure that the nomination procedure for Commissioners fully guarantee their independence in accordance with the Paris Principles. The Committee also urges the State party to ensure that the AIHRC, especially its Child Rights Desk, receive adequate public funds and training to perform all the functions set out in their mandates. The Committee further urges the State party to ensure that children are aware of the Child Rights Unit of the AIHRC and can access it. The Committee draws the attention of the State party's to its General comment No. 2 (2002) on the role of independent human rights institutions (CRC/GC/2002/2).

#### **Allocation of resources**

15. The Committee expresses concern that information about budget allocation for implementing the rights of children is extremely limited, and that there is no effective mechanism for tracking and monitoring the allocation and impact of resources from national and international sources, from a child's rights perspective.

16. **The Committee urges the State party to:**

**(a) Allocate adequate budgetary resources in accordance with article 4 of the Convention for the implementation of the rights of children, with regard to their survival, development, protection and participation;**

**(b) Utilize a child rights approach in preparing the State budget by implementing a tracking system for the allocation and use of resources for children throughout the budget, thus providing clarity in relation to the investment on children. The Committee also urges that this tracking system be used for impact assessments on how investments in any sector serves "the best interest of the child", ensuring that the differential impact of such investment on girls and boys is adequately reflected;**

**(c) When appropriate, follow United Nations recommendations to start budgeting-by-results to monitor and assess the effectiveness of resource allocation and, if necessary, seek international cooperation to this effect;**

**(d) Conduct a comprehensive assessment of budget needs in relation to establishment of social services in districts affected by armed conflict, and establish clear allocations for these areas that address and progressively eliminate the disparities in living conditions of children;**

**(e) Ensure transparent and participatory budgeting through public dialogue and participation, in particular that of children, and ensure proper accountability by local authorities;**

**(f) Define strategic budgetary lines for disadvantaged or particularly vulnerable children and for those situations that may require affirmative social measures (such as birth registration, situation of the girl child) ensuring that those budgetary lines are protected even in situations of crisis; and**

**(g) Take into account the Committee's recommendations during its General Discussion day in 2007 on "Resources for the Rights of the Child - Responsibility of States".**

### **Corruption**

17. The Committee expresses deep concern that in spite of the establishment of mechanisms to combat it, corruption has attained alarming levels in the State party, directly impacting children's enjoyment of their rights and greatly reducing the funds available notably for education, health care, including access to safe drinking water and child protection.

**18. The Committee urges the State party to take immediate measures to efficiently prevent and combat corruption and prosecute acts of corruption.**

### **Data collection**

19. The Committee expresses concern about the absence of a comprehensive data collection system, which allows disaggregation and further analysis of data on the living conditions of children, particularly girls, children in poverty, or children with disabilities.

**20. The Committee urges the State party to establish a comprehensive data collection and analysis system, with disaggregation by, inter alia, age, sex, minority group, and family structure, and covering all rights under the Convention. The Committee recommends that the State Party take guidance from its General comment No. 5 (2003) on the general measures of implementation of the Convention on the Rights of the Child (CRC/GC/2003/5).**

### **Dissemination, awareness raising and training**

21. The Committee is concerned that the general level of awareness about the Convention remains extremely limited, and that training on child rights reach only a limited number of professionals working with or for children.

**22. The Committee recommends that the State party strengthen its efforts to systematically disseminate and promote the Convention, raising awareness among the public at large and children in particular. It further recommends that adequate training be systematically provided to all professional groups working for and with children.**

## **B. Definition of the child (art. 1 of the Convention)**

23. The Committee expresses concern that there are inconsistencies between civil law, sharia and customary laws as to the legal minimum age for marriage.

**24. The Committee urges the State party to rectify the disparity in the minimum age of marriage for boys and girls by raising the minimum age for marriage to 18 years for girls, as it is for boys.**

## **C. General principles (arts. 2, 3, 6 and 12 of the Convention)**

### **Non-discrimination**

25. The Committee expresses grave concern that girls continue to be subject to multiple gender-based discrimination from the earliest stages of their life, and through their childhood. It notes with concern that discrimination against girls is due to the persistence of adverse and traditional attitudes and norms. The Committee recognizes that the State party has initiated steps to expand girls education, improve their safety, and protect them against violence, but remains deeply concerned that no systematic efforts have been undertaken, including with religious leaders, opinion makers, and the mass media, to combat and

change the discriminatory attitudes and practices. It is particularly concerned that discrimination against girls and women has been legitimized by the Shia Personal Status Law adopted in 2009.

26. **The Committee calls upon the State party to:**

(a) **Formulate a comprehensive strategy, including a clear definition of targets, and the establishment of a monitoring mechanism, to modify and eliminate negative attitudes and practices, and deep-rooted stereotypes that discriminate against girls;**

(b) **Undertake such efforts in coordination with a wide range of stakeholders, including girls, and involve all sectors of society, so as to facilitate social and cultural change and the creation of an enabling environment that promotes equality;**

(c) **Monitor such efforts and regularly assess progress made towards the achievement of established goals, and include an assessment of the results achieved in its next report; and**

(d) **Repeal the Shia Personal Status Law as recommended by the United Nations High Commissioner for Human Rights (A/HRC/13/62 para. 69 c).**

#### **Best interests of the child**

27. The Committee is concerned that the principle of the best interests of the child is not adequately applied by legislative bodies and is therefore absent from most of the legislation concerning children, as well as from the judicial and administrative decisions and policies, and programmes relevant to children.

28. **The Committee urges the State party to ensure that the general principle of the best interests of the child is fully integrated into all legislation relevant to children, and applied in all political, judicial and administrative procedures and decisions, as well as in programmes, services and reconstruction activities which have an impact on children.**

#### **Right to life, survival and development**

29. While welcoming the establishment in July 2008 of a Country Task Force on Monitoring, Reporting and Response (CTFMRM) in compliance with Security Council resolution 1612, the Committee expresses deep concern over the death of hundreds of children as a result of attacks and air strikes by insurgent groups, international military forces and the Afghan National Army (ANA). The Committee expresses serious concern that armed forces responsible for the killing of children have not been held accountable and that the grievances of families have not been redressed. The Committee expresses further concern that the 2007 Law on Public Amnesty and National Stability may be used to grant amnesty to perpetrators of the most serious crimes against children.

30. **The Committee urges the State party to ensure that allegations of violations against children perpetrated by any party to the conflict are investigated in a transparent, timely and independent manner, and ensure that perpetrators of those violations are brought to justice.**

#### **Respect for the views of the child**

31. The Committee is concerned that traditional societal attitudes towards children limit, and often totally prevent, children from expressing their views on issues that affect them and from having their views duly taken into account within the family, schools, other

children's institutions, the judicial and administrative system, and society at large. The Committee also notes with concern that although the 2005 Juvenile Code provides therefor, the right of children to be heard in any judicial or administrative proceedings affecting them is rarely respected, especially when girls are concerned, and children are not present or often requested not to speak during proceedings that concern them.

32. **Recalling States parties' obligation to undertake appropriate measures to fully implement the right of the child to be heard, the Committee urges the State party to actively combat negative attitudes which impede the full realization of the child's right to be heard through public education programmes and campaigns, including opinion leaders and the media, and to pay special attention to the particularly disadvantaged situation of girls in this regard. The Committee also urges the State party to amend its civil and criminal code to ensure that children are heard in judicial and administrative proceedings affecting them. The Committee draws the attention of the State party to its General comment No. 12 (2009) on the right of the child to be heard (CRC/C/GC/12).**

#### **D. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37(a) of the Convention)**

##### **Birth registration**

33. While noting some progress made in 2009 to increase birth registration, the Committee is however concerned that the majority of children remain unregistered. The Committee also expresses concern about the situation of children born out of wedlock, who may be deprived of their right to birth registration.

34. The Committee draws the attention of the State party to the fact that birth registration is an essential means of protecting children's rights, in particular protecting children against early marriage, child labour, premature enlistment in the armed forces or, if accused of a crime, prosecution as an adult, and that the lack of a birth certificate may prevent a child from receiving health care, social assistance, and enrolment in school. **It urges the State party to take all necessary measures to ensure that all children, including children born out of wedlock, are properly registered at birth.**

##### **Torture or other cruel, inhuman or degrading treatment and punishment**

35. The Committee is deeply concerned that almost half of the children arrested are reportedly subjected to different forms of verbal and physical abuse by the police during arrest in order to extract a confession, and that virginity testing is imposed on girls in judicial proceedings. The Committee also expresses grave concern that children are being handcuffed and shackled in juvenile rehabilitation centres, during transportation to court or hospital, and at night, allegedly for security reasons or as a form of punishment.

36. **The Committee calls upon the State party to urgently set up an independent child-sensitive mechanism to receive complaints against law enforcement officers regarding ill-treatment during arrest, questioning and police custody, and ensure that perpetrators are brought to justice. The Committee also urges the State party to systematically train police, prison staff and other authorities on human rights of children, and ensure physical and psychological recovery and social reintegration of child victims of ill-treatment. The Committee further calls upon the State party to immediately cease imposing virginity testing on girls.**

**Corporal punishment**

37. The Committee notes with concern that in spite of the prohibition contained in the Education Law against all kinds of physical and psychological punishment of students, such practices continue to be common in the State party's schools. The Committee is particularly concerned that all schools continue to have a discipline/guards committee, comprised of teachers and students, with full permission to use physical punishment on school children.

38. **The Committee urges the State party to unequivocally prohibit by law corporal punishment in the family, schools and institutions for children, and ensure that those laws are effectively implemented, and that legal proceedings are systematically initiated against those responsible for mistreating children. The Committee also calls on the State party to introduce public education, awareness-raising and social mobilization campaigns on the harmful effects of corporal punishment, with a view to changing the general attitude towards this practice, and to promote positive, non-violent, participatory forms of child-rearing and education as an alternative to corporal punishment. In this regard, the Committee draws the attention of the State party to its General comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8).**

**Follow-up to the United Nations study on violence against children**

39. The Committee is extremely concerned by the high level of violence against children in the State party and abhors that child victims of abuse and violence, especially girls, are often treated as perpetrators and sent to juvenile rehabilitation centres, while most of the perpetrators of violence against children enjoy impunity. While noting as positive the recent establishment of the Child Protection Action Networks (CPAN) in several provinces and districts, the Committee expresses concern about the absence of comprehensive public and private systems of protection for child victims of violence as reflected by the lack of a mechanism through which child victims of violence can lodge complaints and obtain protection and rehabilitation services.

40. **The Committee encourages the State party to:**

(a) **Prioritize elimination of all forms of violence against children, including by ensuring implementation of the recommendations of the United Nations study on violence against children (A/61/299), paying particular attention to gender;**

(b) **Provide information concerning the implementation by the State party of the recommendations of the above-mentioned study in its next periodic report, particularly those highlighted by the Special Representative of the Secretary-General on violence against children, namely:**

(c) **The development in each State of a national comprehensive strategy to prevent and address all forms of violence against children;**

(d) **The introduction of an explicit national legal ban on all forms of violence against children in all settings; and**

(e) **The consolidation of a national system of data collection, analysis and dissemination, and a research agenda on violence against children.**

(f) **Cooperate with the Special Representative of the Secretary-General on violence against children, and seek technical assistance, inter alia, from UNICEF, the Office of the High Commissioner for Human Rights (OHCHR), World Health Organization (WHO), International Labour Office (ILO), UNESCO, UNHCR, United Nations Office on Drugs and Crime (UNODC), as well as NGO partners.**



**E. Family environment and alternative care (arts. 5, 18 (paras.1-2), 9-11, 19-21, 25, 27 (para.4) and 39 of the Convention)**

**Family environment**

41. The Committee takes note of the State party's report that a Family Code is being adopted which will emphasize shared family responsibilities between women and men. It is however concerned that, in accordance with article 256 of the Civil Code, maintenance of children falls under the exclusive responsibility of the father who has the obligation to maintain a son until he is capable of making his own livelihood, and a daughter until she is married, which greatly contributes to early marriage for girls. The Committee is also concerned that in case of divorce, guardianship of girls over 9 years, and of boys over 7 years will be given to the father. The Committee is further concerned that children who have lost their father are often considered as orphans and may be separated from their mother, especially if she does not accept to marry a male member of her deceased husband's family.

**42. The Committee urges the State party to take all necessary measures to ensure that mothers and fathers share responsibility for their children on an equal basis, and that no difference is made between responsibilities towards girls and boys. The Committee also urges the State party to ensure that children are not separated from their mothers in the case of the father's death, even when she refuses to marry a male relative of her deceased husband.**

**Children deprived of a family environment**

43. The Committee expresses serious concern about the continuous increase in the institutionalization of children in the State party, especially children from poor families. The Committee notes with concern that other alternative care options, such as foster care, remain underdeveloped which leads to excessive institutionalization of children. The Committee is also concerned that most alternative care facilities are unregistered and are not adequately regulated and monitored.

**44. The Committee urges the State party to:**

**(a) Revise admission criteria and strategies to reduce the number of children living in care facilities, including through policies to strengthen and support families and ensure that placement of children in institutions is only used in the best interests of the child;**

**(b) Develop community-based alternative care especially in rural areas.**

**(c) Ensure that all alternative care facilities are registered and monitored by an independent body;**

**(d) Periodically review the placement of children in alternative care facilities and fully include children in the review of their placement;**

**(e) Implement mechanisms to expand and stimulate the reintegration of children into their families, and to this aim, recruit and train social workers and other professionals; and**

**(f) Take into account the Guidelines for the Alternative Care of Children annexed to the United Nations General Assembly resolution 64/142 of December 2009.**

45. While noting the information provided in the State party's report that the State party does not practice adoption or *kafalah*, the Committee expresses concern that the State party does not have a system that provides special protection and assistance to children deprived

of a family environment. The Committee also takes note of the information provided during the interactive dialogue that a system of guardianship exists in the State party to take care of orphaned children, and that legislation to protect those children is being considered. Nevertheless, the Committee is concerned about the absence of a legal framework regulating such guardianship and protecting children deprived of a family environment on a long-term basis.

**46. The Committee urges the State party to adopt through legislation a system that fully protects the rights of all children deprived of a family environment who may require permanent placement, in conformity with of article 20 of the Convention. The Committee encourages the State party to seek technical assistance, inter alia, from UNICEF, in matters regarding placement of children deprived of a family environment.**

#### **Abuse and neglect**

47. The Committee notes with deep concern that in spite of widespread abuse and neglect of children and women in the home, domestic violence has not been criminalized in the State party, and that the Penal Code even allows the father to discipline family members, including children, without incurring penalties. The Committee also expresses serious concern about Edict No. 1497/1054 of 26 October 2010 by which the Supreme Court ruled that women and girls who run away from their residence to a stranger's residence, instead of to a relative's house, or a security or justice department, regardless of whether they had experienced violence caused by a family member, will be condemned as having committed the crime of adultery or prostitution.

**48. The Committee urges the State party to criminalize domestic violence and to adopt a comprehensive national strategy to prevent, combat and punish domestic violence and other forms of child abuse and neglect, and in particular:**

**(a) Conduct broad awareness-raising campaigns and training on domestic violence and the provisions of the new law for officials (law enforcement agencies, judges, lawyers and social workers) who are in direct contact with the victims, as well as for the public at large;**

**(b) Recruit and train female police officers, and provide adequate facilities in order to increase the number of Family Response Units (FRUs) within police stations to register cases of domestic violence.**

**(c) Open, as a matter of urgency, State-sponsored temporary shelters exclusively for victims of domestic violence throughout the country;**

**(d) Provide adequate protection to child victims of abuse in their homes when possible, through restraining and removal orders against the alleged perpetrator;**

**(e) When the removal of the child from his/her family is necessary, give preference to foster care or similar family-type settings, and only resort to institutionalization when in the best interests of the child; and**

**(f) Ensure the inclusion and participation of the whole society, including children, in the definition and the implementation of preventive strategies against domestic violence and other forms of abuse and neglect.**

**F. Basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)**

**Children with disabilities**

49. The Committee welcomes the National Strategy for Children with Disabilities (2008) and the Law on the Rights and Privileges of People with Disabilities and Martyrs' Families (2010), which should ensure access to education and health services, and promote the participation of children with disabilities. The Committee is however concerned about the limited measures taken so far to implement the law and the strategy, and in particular to collect reliable data on children and their disabilities and support families raising children with disabilities. The Committee also expresses serious concern at the extent of maltreatment of children with disabilities in families and institutions, including psychiatric medication and deprivation of education for the majority of children with disabilities, in spite of the goals set in the above-mentioned National Strategy for Children with Disabilities.

50. **The Committee recommends that the State Party strengthen its efforts to implement the National Strategy for Children with Disabilities (2008) and the Law on the Rights and Privileges of People with Disabilities and Martyrs' Families (2010), and in particular:**

- (a) **Collect data enabling analysis of the extent and nature of disabilities, and the conditions under which the children live;**
- (b) **Provide adequate financial, technical and educational support to families caring for children with disabilities in order to prevent their institutionalization;**
- (c) **Make sure that children with disabilities are not exposed to violence or neglect, and carefully monitor all facilities which work with children with disabilities;**
- (d) **Ensure access to education for all children with disabilities, and implement inclusive education by a realistic time-bound strategy which is effectively monitored;**
- (e) **Ensure that the right of children with disabilities to participate in all measures of concern to them is respected;**
- (f) **Take guidance from the Committee's General comment No. 9 (2006) on the rights of children with disabilities (CRC/C/GC/9); and**
- (g) **Consider ratifying the Convention on the Rights of Persons with Disabilities.**

**Health and health services**

51. The Committee notes with concern that in spite of efforts made by the State party, maternal and infant mortality remains among the highest in the world, and the death of most of the children who die in their early years is due to preventable diseases. The Committee is also concerned that:

- (a) Health facilities are inadequate, significantly underfunded as well as subject to attacks by insurgent groups, and occupation by the State party's armed forces, as a result of which, one third of children living in rural areas do not have access to any public or private health facilities;
- (b) Two thirds of children are chronically malnourished, and among them, thousands suffer from acute malnutrition;

(c) Limitations on the movements of women and girls, imposed by traditional norms, and the lack of female medical staff poses a serious obstacle to providing essential health-care services to women and girls;

(d) A significant number of children use drugs or are given drugs by addicted parents who want them to keep quiet, and one third of women who do not have access to health services use narcotic drugs to treat themselves and their children, resulting in addiction;

(e) Mental health services remain insufficient to cope with widespread war-related psychosocial disorders suffered by children; and

(f) The rate of exclusive breastfeeding for at least six months is very low.

**52. The Committee recommends that the State party give priority attention to identifying and addressing the causes of children's poor health situation, and:**

**(a) Take effective measures to improve access to and the quality of health-care and nutrition services throughout the State party, by allocating sufficient financial resources to the health sector and ensuring the availability of qualified medical staff, including in remote and rural areas;**

**(b) Ensure that girls and children from the most marginalized groups are fully included in all health strategies and programmes;**

**(c) Strengthen efforts to develop outreach services, including a network of mobile health-care facilities in conflict-affected areas, as an interim measure, and ensure that health-care facilities are restored and no longer used by armed forces;**

**(d) Develop a comprehensive policy to prevent and end drug use among children and their parents, as well as make sure that children are not criminalized, and that any measures taken, including rehabilitation, duly takes into account the best interests of the child;**

**(e) Formulate strategies to strengthen available psychosocial assistance, especially for children, and recruit more mental health workers and other specialized professionals to address war-related disorders;**

**(f) Enhance efforts to promote exclusive breastfeeding practices, and comply with the International Code of Marketing of Breast-milk Substitutes; and**

**(g) Continue to seek technical cooperation from UNICEF, WHO and UNODC.**

#### **Adolescent health**

53. The Committee is concerned that specific health assistance for adolescents as well as reproductive health education are not adequately provided in the State party. The Committee is also concerned that adolescent pregnancy is a consequence of the widespread practice of early marriage, and one of the leading causes of maternal mortality.

**54. The Committee urges the state party to undertake a comprehensive study of the shortcomings of adolescent health services, with the full participation of adolescents, and use the outcome of this study to formulate adolescent health policies and programmes, with particular focus on prevention of early pregnancy and sexually transmitted infections (STIs). The Committee also urges the State party to incorporate adolescent reproductive health information and knowledge in school curricula. The Committee draws the attention of the State party to its General comment No. 4 (2003) on adolescent health and development (CRC/GC/2003/4).**

### Harmful practices

55. The Committee commends the State party for the adoption of the Law on Elimination of Violence against Women (EVAW Law) in 2009 as a major step forward in the elimination of harmful practices. The Committee is however seriously concerned that harmful practices such as child marriage, giving away girls as dispute resolution, forced isolation in the home, exchange marriage and “honour” killings are pervasive and cause suffering, humiliation and marginalization for millions of Afghan women and girls. In this context, the Committee notes with particular concern:

(a) The absence of effective measures to prevent and eliminate early and forced marriages;

(b) That the EVAW Law does not criminalize honour killings, and that the Penal Code (art. 398) exempts perpetrators of honour killings from punishment for murder, and sanctions them with a prison sentence of less than two years;

(c) The implication of traditional dispute mechanisms in the perpetuation of harmful practices, and the impunity that perpetrators of those practices often enjoy as a result of inaction and complicity of local and State authorities, religious leaders and elders.

56. **The Committee urges the State party to put in place a national strategy for the implementation of the Law on Elimination of Violence against Women, and in particular to:**

(a) **Ensure prosecution of harmful practices criminalized under said law;**

(b) **Repeal article 398 of the Penal Code, and adopt legislation providing for sanctions commensurate with the gravity of honour crimes;**

(c) **Set up awareness-raising and educational programmes and develop gender-sensitive teaching materials and textbooks that will sensitize and inform all stakeholders, including community and religious elders, about the harmful effects of certain traditional or customary practices, as well as about the provisions of the EVAW Law, and ensure that the principle of the best interests of the child is fully integrated into the new law on traditional dispute resolution, so as to ensure that harmful practices towards children are not legitimized and institutionalized; and**

d) **Provide comprehensive information in its next periodic report on the concrete measures taken to eliminate harmful practices, and their outcome.**

### Standard of living

57. While taking note of the National Strategy for Children at Risk which aims to build a comprehensive child protection and family support system, the Committee is, nonetheless, concerned that one third of the State party’s families and children live in absolute poverty, and a further 37 per cent live just above the poverty line, also less than one quarter of Afghan families have access to safe drinking water, and less than one-third can access sanitation facilities. In this context, the Committee expresses concern about the lack of services in the State party to support families in raising their children, and ensure their rights to holistic development.

58. **The Committee calls on the State party to take all necessary measures to provide support and material assistance to economically disadvantaged families, including targeted programmes for the most needy groups of families, implemented at community level.**

**G. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)****Education, including vocational training and guidance**

59. The Committee takes note of the adoption of the Education Law in 2008 and of the Education Strategy for 2006-2010 and 2010-2014 and commends the State party for the remarkable expansion of the educational system over the last decade, in terms of the number of schools, trained teachers and enrolled children, including the notable increase in the enrolment of girls. The Committee is however concerned that almost half of the State party's children are not enrolled in school, and that extreme gender disparity with regard to school enrolment and high-school dropouts persist at all levels. The Committee is further concerned that budgetary allocations to the education sector remain insufficient to build and restore school infrastructure and to enforce the provision of free and compulsory education, which may result in schools asking parents for so-called "voluntary" donations. The Committee is concerned that children from minorities, notably Hindu and Kuchi children, have limited access to education.

60. The Committee expresses its extreme concern over attacks by insurgent groups on school facilities, which have killed dozens of school children and their teachers, and led to the closure of hundreds of schools throughout the country since 2007, especially in the South of the country. The Committee is particularly concerned that, in the prevailing conditions of conflict, schools have been used as polling stations during elections and occupied by international and national military forces.

61. **The Committee recommends that the State party:**

(a) **Allocate increased resources to the education sector in order to expand, build and reconstruct adequate school facilities throughout the State party, and create a truly inclusive educational system welcoming children with disabilities as well as children from all minorities;**

(b) **Strengthen efforts to stop all forms of corruption in the educational system;**

(c) **Increase education funding allocations to the poorest, most conflict-affected and remote districts so as to ensure equitable access to education for all children, including the most vulnerable and disadvantaged children;**

(d) **Take active measures to promote the right of girls to education through social mobilization campaigns, and increase the number of adequately trained female teachers, and ensure their security;**

(e) **Promote the quality of education by revising the curricula, using interactive learning methods, and employing trained teachers;**

(f) **Eradicate sexual harassment and abuse of children inside and outside schools through information campaigns, enforcement of the law, and the provision of help lines and shelters;**

(g) **End corporal punishment and other forms of violence in school, including bullying, through teacher training, school-specific action plans, and closer inspection of schools;**

(h) **Promote students' participation in all matters of concern to them in school and education;**

(i) Use all means to protect schools, teachers and children from attacks, and include communities, in particular parents and children, in the development of measures to better protect schools against attacks and violence;

(j) Take into account General comment No. 1 on the aims of education (CRC/GC/2001/1).

## H. Special protection measures (arts. 22, 38, 39, 40, 37(b) and (d), 30, 32-36 of the Convention)

### Internally displaced/refugee children

62. The Committee commends the State party for its efforts to provide assistance to returnee and internally displaced children, especially those who were internally displaced between June 2009 and July 2010 in the Helmand and Badghis provinces. However, the Committee expresses concern that there is currently no clear policy to monitor the situation of internally displaced children and their families and respond to their needs, and that refugee, returnee and internally displaced children, especially Pashtun and Jogi children continue to face harsh living conditions and problems accessing birth registration, identity documents and education.

63. **The Committee urges the State party to develop a clear policy to monitor the situation of internally displaced children, prioritizing timely protection support to internally displaced, and paying due attention to their needs in terms of health and education. The Committee also calls upon the State party to take the necessary measures to ensure that returnee, refugee and internally displaced children are not denied access to education and identity documents, and are not discriminated in any other way on the basis of their ethnicity. The Committee encourages the State party to accede to the 1954 Convention relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness.**

### Children affected by armed conflict

64. While welcoming the establishment in 2010 of the Inter-Ministerial Steering Committee on Children and Armed Conflict and the adoption of an Action Plan to respond to grave violations committed against Afghan children during conflict, the Committee is concerned that there is no specific reference in the 2010 Afghanistan Peace and Reintegration Programme to, nor resources or responsibilities allocated for, the particular needs of all children affected by armed conflict. The Committee further notes with concern that although the minimum age for recruitment in the police and the army has been set at 18 years by presidential decree, under-18 recruitment persists in the State party, including in the ranks of the Afghan police. The Committee is also concerned that, when arrested, children used by insurgent groups are held with adults under national security charges for extended periods of time in facilities of the international armed forces or of the National Directorate of Security, with limited access by national and international child protection bodies.

65. **The Committee urges the State party to:**

(a) **Ensure that appropriate child-specific provisions and resources are included in all peace and reconciliation negotiations and treaties;**

(b) **Implement the above-mentioned Action Plan to respond to the six grave violations of child rights committed against Afghan children during conflict;**

(c) **Allow national and international child protection bodies regular access to all detention facilities at all levels, including those of the National Directorate of Security, and ensure due process for all juveniles detained for alleged association with armed groups; and**

(d) **Fully implement the recommendations contained in the latest mission report of the Special Representative of the Secretary-General on Children and Armed Conflict on her visit to Afghanistan from 20 to 26 February 2010.**

#### **Economic exploitation, including child labour**

66. While welcoming the ratification of ILO Conventions No. 138 (Minimum age) and No. 182 (Worst forms of child labour), and the provision in the Labour Law setting the minimum age for employment at 18 years, the Committee expresses concerns that half of the children in the State party are economically active, most of them subject to the worst forms of child labour. The Committee also notes that not enough efforts have been made to prevent forced labour in the informal and private sectors, where most of the children are engaged. The Committee notes with particular concern that a large proportion of child workers start working between the ages of 5 and 11 years, and work all day; also, more than one third of child workers do not attend school and are illiterate due to the need to work, the high cost of school-related expenses, and their parents' decision not to enrol them in school.

67. **The Committee urges the State party to:**

(a) **Conduct a national child labour survey to collect reliable and valid data in order to understand the dynamics of child labour and to support recommendations that will address the root causes and the dangers of child labour throughout the country;**

(b) **Develop a stronger legal framework and enforcement mechanism to eradicate child labour, including in the informal and private sectors;**

(c) **Include children and representatives of children's organizations in all efforts to eliminate child labour;**

(d) **Provide educational opportunities for children who must work for their family's survival; and**

(e) **Raise awareness on the negative consequences of child labour through a wide public information campaign.**

#### **Children in street situations**

68. The Committee is concerned that there are significant numbers of children working in the streets in the State party, and that these children are at great risk of physical, emotional and sexual exploitation and abuse. The Committee expresses particular concern that children in street situations are often used as sex workers and introduced to intravenous drug use by criminal groups. The Committee is also concerned that children in street situations under the age of criminal responsibility have been arrested and detained by the Afghan National Police.

69. **The Committee urges the State party to collaborate closely with civil society to support local authorities in designing and implementing social inclusion strategies for children in street situations and their families.**

#### **Sexual exploitation and abuse**

70. The Committee expresses grave concern that limited action has been taken by the State party to combat widespread sexual abuse and exploitation of children, and that



perpetrators of such abuse enjoy impunity. The Committee also expresses deep concern that while there is a systematic failure on the part of the authorities to prosecute perpetrators of sexual abuse, child victims are very often considered and treated as offenders, and charged with offences such as debauchery, homosexuality, running away from home or *zina*. The Committee is also particularly concerned that:

- (a) Shame and stigma are attached to the child victim rather than the perpetrator;
- (b) The crime of rape has not been clearly defined and separated from the offence of *zina* in domestic legislation, and that other types of sexual abuse, including abuse in homosexual relations as well as sexual exploitation, have not been included in the Penal Code;
- (c) There is no mechanism in place through which child victims of sexual abuse can lodge complaints and obtain protection and recovery services, with their privacy protected; and
- (d) Girl victims of sexual abuse and exploitation are at risk of honour killing, the practice of *baad* or forced marriage with their rapist, and rejected by their families.

71. **The Committee calls on the State party to:**

- (a) Urgently develop awareness-raising programmes and campaigns, with the involvement of children, to curb sociocultural norms that lead to sexual abuse of children, condone abusers and stigmatize child victims;**
- (b) Revise legislation in order to adequately protect all girls and boys from all forms of sexual abuse and violence, and ensure that the crime of rape is clearly defined;**
- (c) Ensure that child victims of any form of sexual abuse or exploitation are considered and treated as victims and no longer charged and detained as offenders;**
- (d) Strengthen Family Response Units and establish, as a matter of urgency, effective and child-friendly procedures and mechanisms to receive, monitor and investigate complaints;**
- (e) Ensure that perpetrators of sexual abuse and exploitation of children are brought to justice and punished with sanctions proportionate to their crimes; and**
- (f) Develop a national strategy to respond to the housing, health, legal and psychosocial needs of child victims of sexual exploitation and violence.**

#### **Sale, trafficking and abduction**

72. The Committee expresses concern that children are trafficked by criminal groups mainly within the country and into neighbouring countries for forced prostitution, begging and labour in brick kilns, carpet-making factories, the drug smuggling industry and domestic service. The Committee is also deeply concerned that some families knowingly sell their children into forced prostitution, including for *bacha baazi*. The Committee notes with concern that little has been done to implement the provisions of the 2008 Law on Counter Abduction and Human Trafficking and the 2004 National Plan of Action on Combating Child Trafficking, and that human trafficking convictions remain rare while victims of trafficking are punished for acts they may have committed as a direct result of being trafficked, and jailed pending resolution of their legal cases, despite their recognized victim status.

73. **The Committee urges the State party to adopt concrete measures for the full implementation of the anti-trafficking law and plan of action, and in particular ensure that perpetrators are effectively prosecuted and punished if found guilty. The**

Committee also calls on the State party to ensure that child victims of trafficking are no longer punished and jailed for unlawful acts committed as a direct result of being trafficked, but receive protection and rehabilitation services, and that public awareness campaigns to warn at-risk populations of the dangers of trafficking are conducted. The Committee further encourages the State party to consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (known as the Trafficking Protocol).

#### **Administration of juvenile justice**

74. The Committee welcomes the adoption of the Juvenile Code in 2005 and the establishment of the specialized juvenile justice system based on said Juvenile Code. The Committee is however deeply concerned at the situation of juvenile justice in the State Party, in particular that:

(a) To date juvenile courts have only been established in six districts and children in conflict with the law are tried by family judges, many of whom are not specifically trained for juvenile justice;

(b) Status offences regarded as "abnormal behaviours" can lead children to be sentenced as criminals, in particular girls who are victims of violence and abuse and who are made responsible for the criminal acts committed against them;

(c) Detention is not the last resort and a large number of children are in detention, almost half of them in pre-trial detention, while about half of the girls in Juvenile Rehabilitation Centres have been charged with so-called moral offences, such as running away from home, some of them even during pregnancy and the birth of their child;

(d) A number of children under the age of criminal responsibility, which is 12 years, are in Juvenile Rehabilitation Centres;

(e) Alternatives to detention are rarely used despite options provided by the Juvenile Code of 2005;

(f) A number of children in detention are not separated from adults, nor are they provided with adequate food, care, protection, education and vocational training, and they are often subjected to abuse and torture;

(g) Children are not provided with legal aid, including while in court, and often statements are forcibly extracted from them; and

(h) Many parents are not informed of the detention of their children, and children not allowed to meet with their parents.

**75. The Committee recommends that the State party bring the juvenile justice system fully in line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System; and the Committee's General comment No. 10 (2007) on the rights of the child in juvenile justice (CRC/C/GC/10). In particular, the Committee urges the State party to:**

**(a) Strictly respect the minimum age of criminal responsibility;**

**(b) Strengthen efforts to establish specialized courts throughout the country;**

**(c) Revise legislation to decriminalize so-called moral offences, and release children detained on this basis;**

- (d) Ensure that no child is subjected to abuse and torture when in contact or in conflict with the law, especially during arrest and investigation;
- (e) Respect the right of the child to be informed of the charges and to have access to his/her family, as well the right of the parents to have information;
- (f) Limit by law the use and length of pre-trial detention of children;
- (g) Provide children, both victims and accused, with adequate legal and other assistance at an early stage of the procedure and throughout the legal proceedings;
- (h) Ensure that detention is a measure of last resort and for the shortest possible period of time, and that it is reviewed on a regular basis with a view to withdrawing it;
- (i) Continue efforts to ensure that children deprived of liberty or in rehabilitation centres or detention facilities are never kept with adults, but have a safe, child-sensitive environment and can maintain regular contact with their families, and are provided with food, education and vocational training;
- (j) Promote alternative measures to detention, such as diversion, probation, counselling, community service or suspended sentences, wherever possible;
- (k) Request further technical assistance in the area of juvenile justice and police training from the Interagency Panel on Juvenile Justice, whose members include UNODC, UNICEF, OHCHR, and NGOs; and
- (l) Take account of the Committee's General comment no. 10 (2007) on the rights of the child in juvenile justice (CRC/C/GC/10).

#### Protection of witnesses and victims of crimes

76. The Committee also recommends that the State party adopt adequate legal provisions and regulations to ensure that all child victims, such as child victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking, and child witnesses of such crimes are provided with the protection required under the Convention, and fully take into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20).

### I. Ratification of international and regional human rights instruments

77. The Committee recommends that the State party promptly submit its initial reports under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography. It also encourages the State party to accede to all core human rights instruments, including the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families, the International Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the International Convention for the Protection of All Persons from Enforced Disappearance, and to consider acceding to the 1996 Hague Convention No. 34 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

## **J. Follow-up and dissemination**

### **Follow-up**

78. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, *inter alia*, transmitting them to the members of the Government, Parliament, provincial councils and other local governments, when applicable, for appropriate consideration and further action.

### **Dissemination**

79. The Committee further recommends that the initial report and written replies submitted by the State party and the related recommendations contained in the concluding observations be made widely available in the languages of the country, including (but not exclusively) through the Internet to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Convention, its implementation and monitoring.

## **K. Next report**

80. The Committee invites the State party to submit its combined second to fifth periodic reports by 26 April 2016 and to include therein information on the implementation of the present concluding observations. The Committee draws attention to its harmonized treaty-specific reporting guidelines adopted on 1 October 2010 (CRC/C/58/Rev.2) and reminds the State party that future reports should be in compliance with the guidelines and not exceed 60 pages. The Committee urges the State party to submit its report in accordance with the reporting guidelines. Should a report exceeding the page limitations be submitted, the State party will be asked to review and resubmit the report in accordance with the above mentioned guidelines. The Committee reminds the State party that if it is not in a position to review and resubmit the report, then translation of the report for purposes of examination by the treaty body cannot be guaranteed.

81. The Committee also invites the State party to submit an updated core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, approved by the fifth inter-committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3). The treaty-specific report and the common core document together constitute the harmonized reporting obligation under the Convention.

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