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“Forgotten Children”

Children detained in Afghanistan for alleged association with armed groups

Summary

Over the past five years, armed forces and groups in Afghanistan have reportedly recruited thousands of children for both combat and support roles, including for sexual purposes.¹ The United Nations has verified hundreds of these cases. The Taliban, the Islamic State of Iraq and the Levant – Khorasan Province (ISIL-KP) and other armed groups have used children to carry out suicide attacks, plant improvised explosive devices, transport explosives, and participate in hostilities. Afghan security forces, including the Afghan National Police (ANP), Afghan Local Police (ALP), and Afghan National Army (ANA), have also recruited and used children.²

Although international standards recognize children recruited by armed forces and armed groups primarily as victims, not perpetrators, Afghan authorities have detained hundreds of children for alleged security crimes, including for links to Taliban or Islamic State insurgents. According to the UN Secretary General’s 2020 report on children in armed conflict, the government reported that 146 boys were detained in juvenile rehabilitation centers in 2019 on national security-related charges, while an additional 506 children, reportedly including foreigners, allegedly associated with Islamic State of Khorasan Province were transferred to the Kabul juvenile rehabilitation center. Since 2015, an average of 180 children per year have been detained in juvenile rehabilitation centers on national security charges, including for association with non-state armed groups, while hundreds more have been detained in

¹ United Nations, Secretary-General’s Report on Children and Armed Conflict in Afghanistan, S/2019/727, September 10, 2019, para 22-25.

² Ibid.

facilities run by different government security forces.³ Children are charged under vaguely-worded “terrorism offenses,” and may be sentenced to up to 15 years in prison for the most serious offenses.⁴

Under Afghan law, children under age 18 are meant to be detained only in juvenile rehabilitation facilities and their cases investigated by the Special Juvenile Prosecution Office, which is required by law to deal with all cases involving children.⁵ In practice many are detained by the police or intelligence service either before finally being transferred to a juvenile center or for the duration of their sentence. Some who look older than their actual age may be detained in adult prisons, although many Afghan children do not have documentation of age.

In 2019-2020, UNAMA documented the detention of 85 children (82 boys and 3 girls) by the ANA, ANP, and National Directorate of Security (NDS) based only on a sample of interviews, meaning the actual number is larger. The youngest said they were 10 years old.⁶ Many were detained in multiple facilities.⁷

Children in detention in Afghanistan endure mistreatment and torture at higher rates than adults, according to the UN. Although Afghanistan’s revised penal code and juvenile code provide for alternatives to detention and incarceration, these are made available to a limited number of children accused of ordinary crimes, and rarely if at all for those accused of security crimes. There is little advocacy for children in detention or monitoring of conditions in detention.

Why are children detained?

Hundreds of children in detention are accused of association with armed insurgent groups, including the Taliban and the Islamic State. In some cases, children were taken into custody along with their parents when government security forces raided their village or neighborhood and were detained separately. An official of Afghanistan’s National Security Council (NSC) told Human Rights Watch that many of the children in custody have been detained solely because of their parents’ alleged involvement with

³ Secretary-General’s annual reports to the UN Security Council on children and armed conflict. See also, UNAMA, Preventing Torture and Upholding the Rights of Detainees in Afghanistan: A Factor for Peace, February 2021, p 20.

https://unama.unmissions.org/sites/default/files/treatment_of_conflict_related_detainees_report_feb21.pdf.

⁴ Government of Afghanistan, Juvenile Law (Juvenile Code) - Official Gazette No. 846, published 2005/03/23 (1384/01/03 A.P.),

<https://www.refworld.org/docid/5bofffbe4.html>.

⁵ UNAMA, Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law, October 2019,

https://unama.unmissions.org/sites/default/files/afghanistan_-_report_on_the_treatment_of_conflict-related_detainees_-_17_april_2019.pdf.

⁶ UNAMA, Preventing Torture and Upholding the Rights of Detainees in Afghanistan: A Factor for Peace, February 2021, p 20.

https://unama.unmissions.org/sites/default/files/treatment_of_conflict_related_detainees_report_feb21.pdf.

⁷ Ibid.

insurgent groups.⁸ Because of weaknesses in investigations, children may be accused of links with insurgents purely because they live in a certain area or are accused by others.

In addition to children actually charged with a crime, younger children may be detained with their mothers. As of May 2021, at least 189 children were living in NDS detention centers with mothers accused of links to the Islamic State.⁹ Some of the women were pregnant when they were detained, and their children have been born in prison.¹⁰ Under Afghan law, the child of a detained mother should stay with her until age 7, but in practice, many stay in women's prisons longer. Some of the detained women, including non-Afghans who are unable to return to their home countries, have given birth to their children in prison.

What happens to children in detention?

There is limited independent monitoring of children in detention. UNAMA conducts a sample of interviews in connection with its monitoring of conflict-related detention but has been unable to do so from March 2020 because of the Covid-19 pandemic. As of April 2021, in-person visits had not resumed. Plans for reducing staff at the juvenile rehabilitation centers will likely reduce existing services and oversight, especially as the number of female staff is low relative to girls in custody.

The Gender, Children's Rights and Human Rights Directorate of the Ministry of Interior (MOI) is authorized to conduct monitoring in places of detention, to investigate allegations of human rights violations (including, but not limited to, allegations of torture and ill-treatment of persons deprived of liberty), and to refer appropriate cases to the relevant authorities for prosecution.¹¹ MOI human rights officers are recruited by MOI headquarters and report to the Gender, Children's Rights and Human Rights Directorate of the MOI in Kabul, rather than the provincial Chief of Police.

Many children involuntarily sign documents, including confessions, that they do not understand and without the advice of a lawyer.¹² Only about half of juveniles have access to legal counsel. Children are

⁸ Human Rights Watch interview with National Security Council official, Kabul, October 14, 2020.

⁹ Information provided to Human Rights Watch by the Afghanistan Independent Human Rights Commission, May 19, 2021.

¹⁰ Human Rights Watch interview with National Security Council official, Kabul, October 14, 2020.

¹¹ UNAMA, Preventing Torture and Upholding the Rights of Detainees in Afghanistan: A Factor for Peace, February 2021, p 34, https://unama.unmissions.org/sites/default/files/treatment_of_conflict_related_detainees_report_feb21.pdf.

¹² UNICEF, "Justice for Children: The situation for children in conflict with the law in Afghanistan," June 2008, https://www.unicef.org/media/files/Juvenile_Detention_Study_engl.pdf.

charged under vaguely-worded “terrorism offenses” that carry prison sentences of up to 10 years for children between ages 12 and 16; and 15 years for children between 16 and 18.¹³

Roughly half of children UNAMA interviewed said they were able to contact their families at some point in their detention.¹⁴ One impediment is the limited availability of phones. The use of mobile phones in places of detention is generally prohibited, and most NDS and ANP lockups and juvenile rehabilitation centers lack phones that could be used by children to contact their families. Many are from districts outside of major cities and their families may lack phones entirely and be unable to visit.

Mistreatment is common. UNAMA found that children in detention for conflict-related charges were more likely than adults to report torture, with nearly 44 percent of children interviewed providing credible accounts of torture or ill-treatment, including severe beatings and threats (compared with roughly 32 percent for all detainees).¹⁵ In 2021, the Afghanistan Independent Human Rights Commission documented frequent ill-treatment of children in detention.¹⁶

Torture may take place in interrogation when detainees are pressured to confess, but beatings and other abuse also take place as a form of punishment. Beating by guards is common, especially for those children accused of being affiliated with the Taliban, and even more so for those accused of links to the Islamic State.

The NDS has long been accused of torture of conflict-related detainees. As noted above, under Afghan law, no NDS unit is allowed to keep persons under the age of 18 in their custody.¹⁷ However, suspects and accused persons under the age of 18 claimed in interviews with UNAMA that they were held in NDS detention and tortured there.

Where are children detained in Afghanistan?

Children have been detained in a variety of facilities across Afghanistan. All 34 provinces in Afghanistan are required to have a juvenile rehabilitation center; however, all national security cases are brought to

¹³ Government of Afghanistan, Penal Code, gazette November 2017 (came into force February 2018), http://www.ilo.int/dyn/natlex/natlex4.detail?p_lang=en&p_isn=105003&p_count=106912&p_classification=01&p_classcount=15124.

¹⁴ Ibid, p. 29.

¹⁵ UNAMA, Preventing Torture and Upholding the Rights of Detainees in Afghanistan: A Factor for Peace, February 2021, p 20. https://unama.unmissions.org/sites/default/files/treatment_of_conflict_related_detainees_report_feb21.pdf
In 2017 and 2018, UNAMA randomly interviewed 618 detainees in 77 facilities; 82 (13 percent) were children.

¹⁶ Human Rights Watch interview via email with human rights official, Kabul, May 19, 2021.

¹⁷ Order No. 555 dated 30/09/2013 and Order No. 432 dated 02/07/2016 of the Director General of National Security.

Kabul. The Law on Management of Deprivation of Liberty Centres (2020) provides that juvenile rehabilitation centers should be the only facilities where children suspected, accused or sentenced should be detained. All juvenile rehabilitation centers are under the management of the Office of Prison Administration. However, because children often go through multiple places of detention before they reach a juvenile rehabilitation center, they are often held in other facilities controlled by the ANP, ANA, and NDS before being transferred to a juvenile rehabilitation center. In some cases, children may remain in these other facilities without being transferred, in violation of the law.

Out of 33 juvenile rehabilitation centers throughout Afghanistan, only 13 are located in standard government buildings. The rest have been set up in rented houses that lack space for sports, vocational training, and even access to the outdoors and sunlight.¹⁸ Children in the juvenile rehabilitation centers are permitted visits with their families once a week and have limited access to speak with them via phone.

Older children or children accused of links to insurgents or other national security crimes may not go to juvenile rehabilitation centers at all. Because many children lack proof of age, older children may be sent to adult prisons after being sentenced, such as Pul-e Charkhi, a large prison complex on the eastern outskirts of Kabul where many conflict-related prisoners and detainees awaiting trial are held. If children turn 18 before their sentence is up, they are sent to adult prisons to serve out the rest of their sentences. Some children detained at the same time as their parents may be transferred to the custody of the Ministry of Labor and Social Affairs after their sentences have ended, waiting until their mothers or fathers are released.

Children may also remain in the juvenile rehabilitation center after their sentences are completed because of obstacles to reintegration into their communities, poor monitoring, and lack of a dedicated case data system.

What services are provided?

A number of donors provide some support for legal, educational and health services in juvenile detention centers.¹⁹

Access to Legal Aid

According to UNAMA reports, only about 7 percent of children in juvenile rehabilitation centers had seen a lawyer before being questioned, but nearly half had access to a lawyer at some point during their

¹⁸ Human Rights Watch interview via email with human rights official, Kabul, May 19, 2021.

¹⁹ Funding from EU, INL. INL will not give any support to conflict-related kids [change from notes to text]

detention.²⁰ Most children come from very poor families and have no means to pay legal fees. Afghan legal aid organizations have told Human Rights Watch that while they are aware of the need, they do not have the resources to help the majority of children in detention. Even those who have representation have lawyers who may lack adequate training or knowledge of the case to represent them well. As a result, the children's case files are not always accurate, meaning longer time in detention, no access to alternatives to detention, or even being tried for the wrong crimes. Human rights observers collected some 200 allegations of children detained several months longer than their sentences.²¹

Health Services

Children in juvenile rehabilitation centers have access to basic health care. However, mental health counseling is inadequate. Some children engage in self-harm, and there have been some attempted suicides among children in detention.²² Children with substance abuse issues do not get any dedicated treatment. Children with infectious illnesses are not segregated from the rest.²³

Education

The juvenile rehabilitation centers have vocational training, religious instruction, and literacy classes for all children. However, aside from lessons in the morning, and a short period in the courtyard, the children spend most of their time in their rooms.²⁴ Children detained in rented houses or NDS generally do not have access to these services.²⁵

Has the Covid-19 pandemic affected children in detention?

After the outbreak of the Covid-19 pandemic, the Afghan government announced that it would release up to 10,000 prisoners, but since then has not confirmed precise numbers, which may be far fewer. Women and children who were in jail on non-conflict related charges were freed during the pandemic and sent back to their villages. According to official figures, 284 children detained on criminal charges, but no children detained for conflict-related reasons were released.²⁶

²⁰ https://unama.unmissions.org/sites/default/files/treatment_of_conflict_related_detainees_report_feb21.pdf p 28

²¹ Human Rights Watch interview via email with human rights official, Kabul, May 19, 2021.

²² Secunder Kermani, "Afghanistan: The detention centre for teenage Taliban members," BBC News, April 21, 2020, <https://www.bbc.com/news/world-asia-52186388>.

²³ Information provided to Human Rights Watch by the Afghanistan Independent Human Rights Commission, May 19, 2021.

²⁴ Secunder Kermani, "Afghanistan: The detention centre for teenage Taliban members," BBC News, April 21, 2020, <https://www.bbc.com/news/world-asia-52186388>.

²⁵ Information provided to Human Rights Watch by the Afghanistan Independent Human Rights Commission, May 19, 2021.

²⁶ Ibid.

Have any children been released as part of the Afghanistan Peace Talks?

On February 29, 2020, the United States and the Taliban signed an agreement outlining a phased withdrawal of US forces from Afghanistan in exchange for Taliban commitments not to allow attacks on the US or its allies from Afghan territory.²⁷ The agreement included a provision that the Afghan government would release “up to” 5,000 Taliban prisoners in exchange for up to 1,000 detainees held by the insurgents. Under pressure from the US, the prisoner releases eventually took place over several months between June and September 2020. Those released did not include any children.

The US-Taliban agreement also stated that the Afghan government and the Taliban would release “all the remaining prisoners” over the course of the subsequent three months following the start of intra-Afghan talks.²⁸ After these talks began on September 12, 2020, the Taliban demanded that the government release an additional 7,000 prisoners. However, the talks have made little progress and largely stalled in early 2021. No further prisoner releases—whether of children or adults—have taken place.

What standards apply to children and reintegration assistance?

International standards recognize that children who have been involved in armed conflicts are entitled to special treatment, placing a priority on their rehabilitation and reintegration into their communities. These standards—including both hard and soft law—recognize these children are primarily victims of violations of international law, not perpetrators, and reject the use of detention except in exceptional cases where children have committed grave offenses or pose a serious threat to a state’s security. Even in such exceptional cases, international law still requires the application of due process and international juvenile justice standards and does not allow exceptions based on national emergency or the seriousness of the offense.

In 2003, Afghanistan acceded to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (the “Optional Protocol”), which states that “armed groups that are distinct from the armed forces of a state should not, under any circumstances, recruit or use in

²⁷ US Department of State, “The Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban and the United States of America, February 29, 2020,” <https://www.state.gov/wp-content/uploads/2020/02/Agreement-For-Bringing-Peace-to-Afghanistan-02.29.20.pdf>.

²⁸ Ibid.

hostilities persons under the age of eighteen.”²⁹ The Optional Protocol calls on states to provide appropriate assistance for the physical and psychological recovery and social reintegration for children who have been recruited or used in armed conflict contrary to the protocol.³⁰

The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, non-binding guidelines endorsed by over 100 states including Afghanistan, state that “Children who have been associated with armed forces or armed groups should not be prosecuted or punished or threatened with prosecution or punishment solely for their membership of those forces or groups.”³¹

Despite these obligations, there are currently no reintegration programs in Afghanistan for children suspected of association with armed groups.

Putting Children on the Peace Agenda

Peace processes and agreements do more than end war. They establish a framework for transition, and the political, social, and economic agenda for peace. They establish priorities for post-conflict investment and resource allocation. When children are excluded from peace agreements, their needs and rights become invisible. The result is under-investment and lack of critical programming that perpetuates harm to children and could lead to the emergence of new grievances.

The UN Security Council has highlighted the importance of integrating child protection issues in peace processes in 10 resolutions on children and armed conflict.³² In 2018, for example, the Security Council emphasized “the importance of giving due consideration to child protection issues from the early stages of all peace processes, in particular the integration of child protection provisions, as well as of peace agreements that put strong emphasis on the best interest of the child, the treatment of children separated from armed groups as victims and focus on family and community based reintegration.”³³

In June of 2020, the Security Council’s working group on children and armed conflict specifically called on parties involved in the peace talks in Afghanistan to address child protection:

²⁹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted May 25, 2000, G.A. Resolution 54/263, Annex I, 54 U.N. GAOR Supp. (no.49) at 7, U.N. Doc. A/54/49, vol. III (2000), entered into force February 12, 2002.

³⁰ Optional Protocol, art. 6(3).

³¹ Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (“The Paris Principles”), January 30, 2007, para 8.7. <http://www.unicef.org/protection/files/ParisPrinciples310107English.pdf>.

³² Security Council resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1612 (2005), 1882 (2009), 1998 (2011), 2143 (2014) 2225 (2015), and 2427 (2018).

³³ Security Council resolution 2427 (S/RES/2427), July 9, 2018, para 22.

Calling upon those who are or will be engaged in peace talks and agreements to ensure that child protection provisions, including the release and reintegration of children, as well as provisions on the rights and well-being of children, are integrated into all peace negotiations, ceasefire and peace agreements and in provisions for ceasefire monitoring, taking into account children's views, where possible, in these processes;

Calling upon the Government of Afghanistan, Member States, United Nations entities, including the Peacebuilding Commission, and other concerned parties to ensure that the protection, rights, well-being and empowerment of children affected by armed conflict are fully incorporated into and prioritized in all post-conflict recovery and reconstruction planning, programmes and strategies, as well as in efforts on peacebuilding and sustaining peace, and encourage and facilitate consideration of the views of children in these processes.³⁴

In a 2017 presidential statement, the Security Council encouraged the Special Representative of the Secretary-General for Children and Armed Conflict, together with relevant child protection actors, to compile practical guidance for mediators on the integration of child protection issues in peace processes.³⁵ The resulting document, Practical Guidance for Mediators to Protect Children in Armed Conflict, was issued in February 2020 and represents an important guide for actors involved in peace processes.³⁶

Recommendations

Children have been profoundly impacted by Afghanistan's armed conflict. Given the scale and effect of violations against children, child protection should be a priority in Afghanistan's peace talks. The peace talks and any resulting peace agreement should include the following:

- Explicit agreement by all parties to end the six grave violations against children (killing and maiming, recruitment and use, sexual violence, abduction, attacks on schools and hospitals, and denial of humanitarian access), including by naming them as specific violations of ceasefire agreements;

³⁴ Conclusions of the Security Council Working Group on Children and Armed Conflict in Afghanistan, June 12, 2020, S/AC.51/2020/2, para 7 aa and bb.

³⁵ S/ PRST/2017/21, October 31, 2017

³⁶ Office of the Special Representative of the Secretary-General on children and armed conflict, Practical Guidance for Mediators to Protect Children in Armed Conflict, February 2020, <https://childrenandarmedconflict.un.org/wp-content/uploads/2020/07/Practical-guidance-for-mediators-to-protect-children-in-situations-of-armed-conflict.pdf>.

- Immediate and unconditional release of all children under the age of 18 from the ranks of all parties to the conflict, and their transfer to child protection authorities for rehabilitation and reintegration;
- The establishment of programs and allocation of adequate resources for the demobilization, rehabilitation, and reintegration (DDR) of children, recognizing that the DDR of children is not contingent on a final peace agreement, security sector reform, or demobilization and reintegration of adult forces, but should be a priority at all times;
- Release of all children from detention for alleged association with armed groups or forces, and transfer to civilian child protection authorities for rehabilitation and reintegration;
- Adoption of formal handover protocols to ensure the swift and direct transfer of children apprehended by or in the custody of armed forces or armed groups to civilian child protection authorities for rehabilitation and reintegration;
- Agreement that children should not be detained, prosecuted, or punished solely for membership in armed forces or armed groups and that children who committed crimes during their association with parties to conflict should be treated in accordance with international standards for child justice;
- Ensure that detention conditions meet international standards, and are only used as a last resort and for the shortest appropriate period of time;
- Amendments to the Criminal Procedure Code to require any child detained to be brought in front of a judge within 24 hours to examine the legality of detention, the need for further detention, and any ill-treatment during arrest or subsequent detention.
- Protections for education, including agreements by parties to vacate and rehabilitate schools that have been used for military purposes and to rebuild and repair schools that have been damaged or destroyed;
- Inclusion of children's needs and rights in post-conflict programming, including their physical and mental health needs, education, and vocational and economic opportunities, and allocation of adequate resources;
- Transitional justice, accountability, and reparations mechanisms that specifically address violations against children and solicit children's views;
- Monitoring and implementation mechanisms for any peace agreement to address all child protection provisions, including the six grave violations, and provide for civil society participation to promote transparency and accountability.