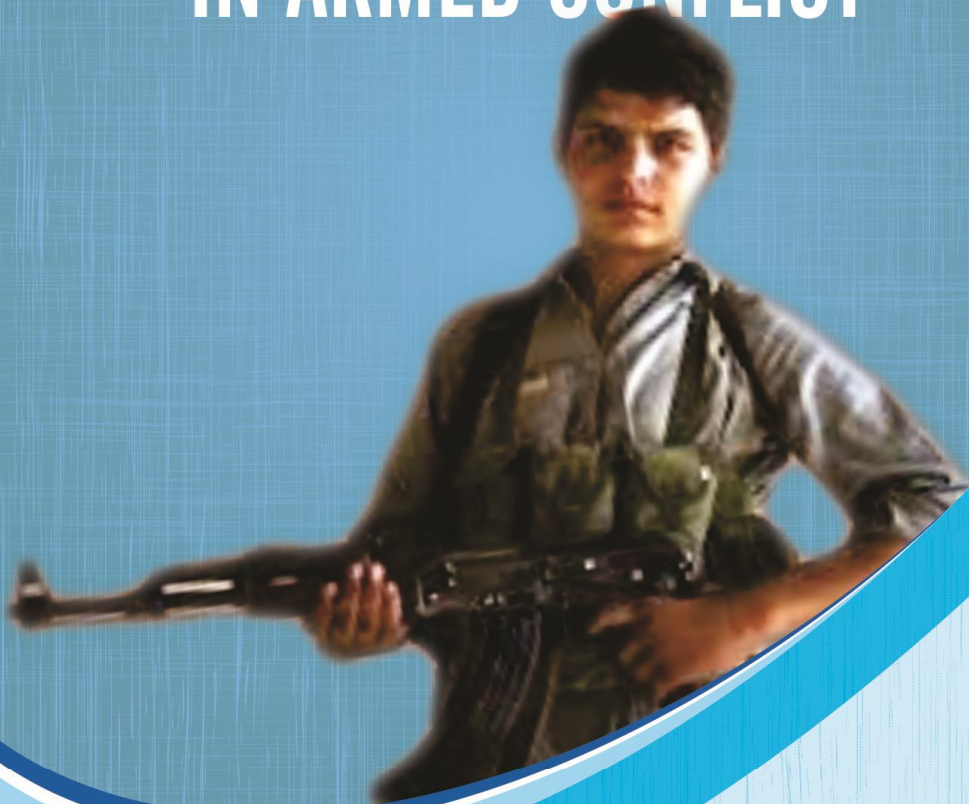


PROTECTING AFGHANISTAN'S **CHILDREN** IN ARMED CONFLICT



United Nations Assistance
Mission in Afghanistan

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Protecting Afghanistan's Children in Armed Conflict

*Principles of Sharia Law, National
Legislation, International Human Rights
and International Humanitarian Law on
Children and Armed Conflict*



United Nations Assistance Mission in Afghanistan

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Protecting Afghanistan's Children in Armed Conflict

Principles of Sharia Law, National Legislation, International Human Rights and International Humanitarian Law on Children and Armed Conflict

Introduction

Children, the most vulnerable group in society, particularly in situations of armed conflict, need to be protected by all parties to the conflict from harm and abuse. The need for such protection is clearly articulated in Islamic Sharia, international human rights, and international humanitarian law. United Nations Security Council Resolution 1612 [2005] specifically calls upon all parties to a conflict to take action to stop and prevent six grave violations against children in armed conflict, namely: killing and maiming of children; recruitment or use of child soldiers by parties to the conflict; abduction of children; attacks against schools or hospitals; rape and other forms of sexual violence against children; and denial of humanitarian access to children.

Due to the situation of on-going armed conflict in Afghanistan, the United Nations Assistance Mission in Afghanistan (UNAMA) has developed this booklet to strengthen efforts by parties to the

conflict including Afghan forces and armed opposition groups to protect and promote the rights of all Afghan children. The booklet, which highlights the complementarity of international human rights and Islamic law, is to be used as a resource to raise awareness on the rights of children in armed conflict, foster accountability and compliance of all parties to the conflict with international child protection standards and principles of Sharia law, and ultimately, to assist in preventing grave violations against children.

The booklet is the outcome of an extensive consultation process, first initiated at a conference in May 2013 and followed by a series of discussions, and has been unanimously endorsed by the Islamic scholars, religious leaders and experts in international law involved in the consultation process. Scholars and experts noted that although certain interpretations of religious precepts are often used to justify some harm to children, such as recruitment or association of children with armed forces, the six grave violations of child rights referred to in Security Council Resolution 1612 clearly violate the rights of Afghan children and are inconsistent with the basic tenets of Islam.

Religious scholars and experts agree that child rights are referred to in the texts of the holy Quran and numerous Hadith that stress the rights of a child within Islam. A well-known Hadith, for example, states:

Ismail bin Jafar al-Madini related to us (from Abdullah ibn Dinar from ibn Umar) that “the messenger of God (PBUH), said: Each of you is a responsible and each is responsible for his flock. Each man is a responsible for the members of his family, and is responsible to the community (*ummah*). A man’s wife is responsible for her husband’s house and her children. A man’s servant is responsible for his master’s

property. Beware, each one of you then, is a responsible and each one of you will be questioned about his flock.”
(Sahih-al-Bukhari Tradition, 2558)

This tradition speaks of duties not rights. As per Islamic jurisprudence, however, one cannot draw conclusions from a single text; there is a need to analyse all available texts on the issue and try to induce and formulate general principles applicable to the issue of child rights.

Prior to discussing child rights and Islam, it must be asserted that Islamic law always takes the best interest of the child into consideration. The two institutions of *wilayah* (authority, of father or in the case of his absence or death another close male relative) and *wisayah* (guardianship) are based on the principle of best interest of the child.

Each of the following six grave violations against children in the context of armed conflict are analysed from the perspective of Sharia law, international humanitarian law, international human rights law as well as applicable national legislation. All six grave violations of child rights are clearly recognised as crimes in all three spheres of law (Islamic, international human rights law, and international humanitarian law). The laws and principles referred to in this booklet highlight the consistency of these three sources of law as providing a comprehensive framework for protection of child rights; all parties to the conflict, including all armed opposition groups, and all Afghan National Security Forces are accountable under this legal framework – they are obligated to take positive steps to protect and promote the rights of Afghan children or face punishment for violations of any of the six grave violations detailed in this booklet.

1. Killing and Maiming of Children



According to Islamic law, killing a human being is a major sin, punishable with the most serious punishment in the hereafter. The holy Quran has equated killing a single person with the killing of entire humanity to highlight the gravity of this crime. In Islamic law a child is considered *masoom* (innocent) and hence is not subjected to any obligations. The intentional killing of a child is therefore the worst form of killing and thus demands the worst form of punishment in this world and the hereafter.

The Holy Quran:

وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا (سورة النساء 93)

Translation: But whoever kills a believer intentionally – his recompense is Hell, wherein he will abide eternally, and Allah has become angry with him and has cursed him and has prepared for him a great punishment.

Short description: Whenever any Muslim kills another Muslim intentionally, while there are different opinions about the punishment, one of the opinions says that the punishment is eternal damnation; there is no scope for pardon or atonement.

Moreover, in verse 32 of Sura Al-Maidah, Allah Almighty states that:

"مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا" (سورة المائدة 32)

Translation: Whosoever killed a person [...] it shall be as if he had killed all mankind, and who so gave life to one, it shall be as if he had given life to all mankind).

Short description: Killing innocent people is thus condemned as contrary to the principles of Islam. A person can only be subjected to death in extreme cases, if he has killed other human beings, has caused mischief on earth by committing crimes against peace, crimes against humanity and genocide.

Hadith of the Prophet (PBUH):

لَا تَغْلُوا وَلَا تَغْدِرُوا وَلَا تَمْتَلُوا وَلَا تَقْتُلُوا وَلِيدًا (رواه موطأ مالك)

Translation: Do not transgress, do not cheat, do not cut organs (nose and ears) and do not kill children.

In all his battles, the Prophet (PBUH) advised army leaders and said:

أن رسول الله صلى الله عليه وسلم قال : انطلقوا باسم الله وبالله ، وعلى ملة رسول الله صلى الله عليه وسلم لا تقتلوا شيخا فانيا، ولا طفلا صغيرا ، ولا امرأة ، ولا تغلوا ، وضموا غنائمكم وأصلحوا وأحسنوا إن الله يحب المحسنين (رواه أبو داود)

Translation: "Advance in the name of Allah, on the pattern of the Messenger of God. That means do not kill the elderly, infants or children and women. Do not exceed the proper bounds. Gather your spoils and make peace and do good. God loves those who do good." (Narrated by Abu Daoud)

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَالَّذِي نَفْسِي بِيَدِهِ لَقَتْلُ مُؤْمِنٍ أَعْظَمُ عِنْدَ اللَّهِ مِنْ زَوَالِ الدُّنْيَا (رواه النسائي)

Translation: according to Allah the killing of one Muslim is greater than vanishing of the world.

عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو رَضِيَ اللَّهُ عَنْهُمَا
عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ الْمُسْلِمُ مَنْ سَلِمَ الْمُسْلِمُونَ مِنْ لِسَانِهِ وَيَدِهِ وَالْمُهَاجِرُ مَنْ هَجَرَ مَا نَهَى اللَّهُ عَنْهُ (صحيح بخارى جزء اول صفحه 15)

Narrated by 'Abdullah bin 'Amr: The Prophet said, "A Muslim is the one who avoids harming Muslims with his tongue and hands. And a

Muhajir (emigrant) is the one who gives up (abandons) all what Allah has forbidden." (Sahih Bukhari, part 1, page 15)

Short description: Islam recognises the value of human life and thus considers protection and preservation of life as one of the five *Maqasid al-Sharia* (purposes of Sharia). Ultimately, the killing of innocent people, especially children, is forbidden in Islam.

National Legislation

Constitution of Afghanistan

Article 23

Life is a gift of God and a natural right of human beings. No one shall be deprived of this right except by the provision of law.

Penal Code of Afghanistan

Article 358

(1) A person who himself or through someone else endangers the life of a person who has not completed the age of fifteen or due to health, mental or psychological state is incapable of protecting himself, shall be sentenced to medium imprisonment of not more than three years or cash fine of not more than thirty six thousand Afghanis.

(2) A person who leaves (releases) a child or feeble in an abandoned place shall be sentenced to medium imprisonment, even if the said crime is committed by one of the parents or someone charged with the protection of the child.

(3) If as a result of the crime mentioned in paragraph 2 of this article the child or feeble becomes handicapped or dies, and the person committing it does not intend it, he shall be sentenced in the light of circumstances to the anticipated punishment of

beating resulting in disability or death.

(4) If the child or feeble is deliberately deprived of feeding or nursing required by his state and as a result of it his life is put in danger, the person committing it shall be sentenced to the punishment mentioned in paragraph 3 of this article.

Article 395

A murderer shall be sentenced to death in one of the following cases:

1. In case where the act is accomplished with malice, premeditation and perusal.
2. If murder is accomplished by using poisonous, anesthetic, or explosive materials.
3. If murder is accomplished brutally, with low motivation or for pay.
4. If the murdered is one of the roots of the murderer.
5. If the murdered is an official of public serves, murdered while performing duty or murdered as a results of his duty.
6. If the murderer had the intention of killing more than one person and as a result of his single act all of them have been murdered.
7. If murder is accompanied by a felony or misdemeanor.
8. If murder has been committed for the propose of making preparation for , facilitation of or execution of committing felony or a misdemeanor whose anticipated punishment is not less than one year, or for the purpose of escape or evasion of punishment.
9. A person who is due to serve a sentence of long imprisonment and prior to the enforcement of the verdict initiate or accomplishes a murder.

The Afghan Constitution, as the main source for all national legislation, is very clear on the right to life as God's endowment and the natural right of all humans including men, women and children.

In addition, the Afghan Penal Code has clearly prescribed the punishments for those who take the life of another.

International Law

Universal Declaration of Human Rights (1948)

Article 3

Everyone has the right to life, liberty and security of person.

Convention on the Rights of the Child (CRC) [ratified by Afghanistan on 28 March 1994]

Article 6

1. State parties recognize that every child has the inherent right to life.
2. State parties shall ensure to the maximum extent possible the survival and development of the child.

Common Article 3, Geneva Conventions (1949)

Persons taking no active part in the hostilities... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949

Article 147

Grave breaches [...] shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful

deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Rome Statute of the International Criminal Court [acceded to by Afghanistan in February 2003]

Article 8, War Crimes

8.2 For the purpose of this Statute, "war crimes" means:

8.2(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment.

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

8.2(e)(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities.

8.2 (e)(iv) Intentionally directing attacks against buildings dedicated

to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.

The prohibition of 'violence to life and person [of non-combatants, including children], in particular murder of all kinds, mutilation, cruel treatment and torture' is a principle of customary international law – with universal applicability in all conflict situations and by all parties. The Geneva Conventions' common Article 3 is the most recognised source of these primary protections. Common Article 3 is universally applicable and allows no derogation. It is binding on both States and non-State armed forces in all conflicts. The 4th Geneva Convention moreover, clearly states that willful killing, torture or inhumane treatment constitutes a grave breach of the convention.

Two bedrock standards of the laws of armed conflict are the principles of "**distinction**" and "**proportionality**".

- The principle of proportionality prohibits military attacks if they cause civilian death or injury, or damage to civilian objects, that is **excessive relative to the concrete and direct military advantage anticipated from the attack**.
- The principle of distinction demands that parties to a conflict **distinguish between civilians and combatants at all times, and attacks must not be directed against civilians**. The use of indiscriminate weapons, for example, pressure plate improvised explosive devices that do not distinguish between military and civilian targets, are thus contrary to the laws of armed conflict and contravene a host of international treaties.

2. Recruitment, Use and Association of Children by Parties to the Conflict



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Islamic law lays down the principle of distinction in the law of war; it thus recognises the difference between legal and prohibited targets. Civilians and civilian objects are prohibited targets at all times during armed conflict. It is for this purpose that Islamic law prohibits the targeting of women, children and the elderly in war as they constitute vulnerable groups and are unable to defend themselves. Moreover, they are also groups that usually do not take an active part in hostilities. The participation of children in armed hostilities therefore undermines the fundamental principle of distinction.

Direct participation in armed conflict also carries certain duties and obligations; children are deemed to be at an age where they cannot accept and abide by these responsibilities. Further, in Islam children are not obliged to offer prayers or be subjected to criminal

punishments in case they commit a crime. Islamic scholars have thus often asked the question, how children could justifiably be allowed to participate in war, which will ultimately harm their physical, mental, and psychological upbringing and development.

The Holy Quran:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ (سورة البقرة 286)

Translation: Allah does not charge a soul except [with that within] its capacity. It will have [the consequence of] what [good] it has gained, and it will bear [the consequence of] what [evil] it has earned.

Short description: It is necessary for every Muslim to care for his family and others, and try to play a vital role in guiding them to the right path with love and mutual understanding.

Hadith of the Prophet (PBUH):

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ رَفَعَ الْقَلَمَ عَنْ ثَلَاثَةٍ ، عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ ، وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ ، وَعَنِ الْمَجْنُونِ حَتَّى يَعْقِلَ (سنن أبي داود)

Translation: The Messenger of Allah (PBUH) said: left the pen of three: the sleeper until he awakes, the boy, until he attains puberty (adolescence), and the insane person, until he achieves sanity.

(Narrator: Ali bin Abi Talib: Sunan Abi Dawood)

Short description: According to this hadith three groups of individuals are not accountable for their acts (children, the insane and those who are not conscious, *i.e.*, sleeping). Based on this

interpretation, a child, who cannot be held accountable for his or her acts, should not be recruited as a fighter by any armed group.

Prophet Mohammad (PBUH) did not allow children to participate in the battle of Badr (Ghazwa-e- Badr), and in another *hadith*, the Prophet (PBUH) said:

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَيْسَ مِنَّا مَنْ لَمْ يَرْحَمْ صَغِيرَنَا وَلَمْ يَوْقِرْ حَقَّ كَبِيرِنَا (مسند أحمد)

Translation: Prophet Mohammad (PBUH) said: Those are not from our group who are not compassionate with our children and do not respect our elders.

It is furthermore mentioned in Siratun Nabawia Fi Zaw-eel Quran (Book 2, page 190) that Prophet (PBUH) did not allow five youths to participate in Ghazwa Uhud (Uhud's war).

Short description: Parents are obliged to provide facilities and an adequate environment for their children's growth, their education and health, and protect their welfare – not to push them to live in an environment which will undermine their healthy upbringing. Children's participation in an armed conflict and the failure to protect children from the effects of warfare is against the injunction of the Quran and the Sunnah of the holy Prophet (PBUH).

National Legislation

Constitution of Afghanistan

Article 24

Liberty is the natural right of human beings. This right has no limits unless affecting the rights of others or public interests, which are regulated by law. Liberty and dignity of human beings are inviolable. The state has the duty to respect and protect the liberty and dignity of human beings.

Article 49

Forced labour is forbidden.

Children shall not be subjected to forced labour.

Article 55

[...]The conditions for military services are regulated by law.

Penal Code of Afghanistan

Article 414

A person who, illegally and without the instruction of concerned authorities, arrests, detains, or prevents someone else from work, shall be sentenced in view of the circumstances to medium imprisonment.

Article 415

If arrest, detention and prevention from work is accomplished by a person wearing, without a right, official uniform or by a person who assumes a false attribute, or by a person presenting to other persons feigned orders of concerned authorities, the offender shall be sentenced in view of the circumstances to long imprisonment, not exceeding ten years.

Article 416

If arrest, detention and prevention from work is accompanied by coercion, threat or torture, or if the person committing the crime is an

official of the government, the offender shall receive the maximum anticipated punishment specified under Article 415 of this Law.

Juvenile Code

Article 8

Confinement of a child is considered to be the last resort for rehabilitation and re-education of the child. The court shall consider minimum possible duration for confinement based on the provisions of this code.

Article 10

3. The juvenile court has the authority, at the time of issuing pre-trial detention order, to consider other appropriate alternatives instead of detention.

Article 20

1. If a child with wisdom and intelligence, who has not completed 12 years of age, commits misdemeanor or felony, s/he shall not be detained for completion of investigations. The prosecutor can hand over the child for supervision to his/her legal representatives respecting degree of their relationship, by obtaining a guarantee from them.

Article 39

1c. Children cannot be convicted to continued imprisonment (life imprisonment) or death penalty.

The decree of the President of the Transitional Islamic State of Afghanistan on Intensifying the Fight Against the Kidnapping and Trafficking of Children (1381/2002)

Article 2

The cases of kidnapping and trafficking of children perpetrated by the organised and international criminal groups, will be considered as crimes against the internal and external security of the country,

and therefore, fall under the jurisdiction of the court on crimes against internal and external security.

Decree no. 162 President of the Transitional Islamic Administration of Afghanistan on Managing Military Services (1381/2002)

1. All Afghan male nationals aged twenty two up to age thirty are allowed to join and enter the military service on a voluntarily and contract basis for a period of four years.

The Afghan Constitution highly respects human freedom. For pursuance of the Constitution, all other national legislation relevant to child rights is focused on measures that protect the freedom for children. The lower age limit of 22 years of age for admission into the army in the Presidential Decree goes beyond internationally accepted standards, which considers 18 years of age as the minimum acceptable age for recruitment into national security forces.

International Law

Convention on the Rights of the Child's Optional Protocol on the Involvement of Children in Armed Conflict (2000)

Article 3

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognising that under the Convention persons under 18 are entitled to special protection.

Article 4

1. Armed groups [...] should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalise such practices.

Paris Principles on Children Associated with Armed Forces and Groups, 2007

Article 2.1

A child associated with an armed force or armed group “refers to any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.”

Rome Statute of the International Criminal Court [accessed to by Afghanistan in February 2003]

Article 8, War Crimes

8.2. For the purpose of this Statute, “war crimes” means: [for violations of the laws and customs applicable in armed conflicts not of an international character]

8.2.(e)(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.

The rules that children must not be recruited into armed forces or armed groups and that children must not be allowed to take part in hostilities are considered customary international law, applying equally to international and non-international conflicts, and to State and non-

State armed groups. In recent years, human rights treaty law has strengthened the acceptable minimum age for direct participation in hostilities and raised it to 18 years of age. The Convention on the Rights of the Child's Optional Protocol on the Involvement of Children in Armed Conflict (2000) requires State parties to increase to 18 years the minimum age for compulsory recruitment and for direct participation in hostilities (Afghanistan became State party to the Optional Protocol in September 2003). In addition, the Optional Protocol prohibits rebel or other non-State armed groups 'under any circumstances' from recruiting or using children under 18 years in hostilities.

3. Rape and other Forms of Sexual Violence against Children



When formulating Islamic principles that relate to children, it is evident that the holy Quran and Sunnah assert that any act or omission in the upbringing and development of children, or in establishing a healthy environment for a child, which causes harm – physical, mental or psychological – is prohibited and will incur damnation. Rape and sexual violence against children is considered to be one the gravest violations of child rights. Islamic law stresses the need to comply with the principle of ‘best interests of the child’; children therefore, as a vulnerable group, need to be protected against any forms of sexual violence.



The Holy Quran:

The Almighty Allah says:

وَلَا تَقْرَبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ
تَعْقِلُونَ (سورة الأنعام آية 151)

Translation: ...come not near to al-fawahish [shameful sins, illegal sexual intercourse] whether committed openly or secretly... (Al-An'am, or the cattle, Verse 151)

He also says:

وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا (سورة الإسراء 34)

Translation: and fulfill [every] covenant. Verily, the covenant will be questioned. (Al-Isra', or night journey, Verse 324)

And:

وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ (سورة البقرة 190)

Translation: ...but transgress not the limits. Truly, Allah likes not the transgressors. (Al-Baqarah, or the cow, Verse 19)

The sexual assault of children by those entrusted to care for them is a betrayal of trust and a breach of covenant; it is a sin against Allah Himself. The Islamic religion abhors the betrayal of trust and the breach of covenant. The Almighty Allah says:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ تَعْلَمُونَ (سورة الأنفال 27)

Translation: o you who believe! Betray not Allah and his messenger, nor betray knowingly your *amanat* [things entrusted to you and all the duties that Allah has ordained for you]. (Al-Anfal, or the spoils of war, Verse 27).

The sexual assault, especially of a child, who does not discern the good from the bad, or realise what he or she is being forced to do, is the greatest kind of physical and psychological assault on a human being. Islam considers it a major sinful act and one of the greatest crimes under Islamic criminal law.

Short description: A child may lose his or her life during a sexual assault, or be killed later on by family members, especially in the case of female children; in accordance with a skewed and unjust logic that blames the victim instead of rendering assistance and support as needed in these circumstances. The sexual abuse of a

child not only causes stress, trauma and harm, but impacts a child's future mental and physical development.

وَلُوطًا إِذْ قَالَ لِقَوْمِهِ أَتَأْتُونَ الْفَاحِشَةَ مَا سَبَقَكُمْ بِهَا مِنْ أَحَدٍ مِّنَ الْعَالَمِينَ (الاعراف آيه 80)

Translation: And Lout (Lot) [I sent], when he said to his people: "Do you commit the worst sin such as none preceding you has committed in the '*Alamin* (mankind and jinns)?" (Al-a'raf, verse 80)

وَالَّذَانِ يَأْتِيَانِيَا مِنْكُمْ فَأُذَوْهُمَا فَإِنْ تَابَا وَأَصْلَحَا فَأَعْرِضُوا عَنْهُمَا إِنَّ اللَّهَ كَانَ تَوَّابًا رَّحِيمًا (النساء آيه 16)

Translation: and the two persons (man and woman) among you who commit illegal sexual intercourse, punish them both. And if they repent (promise Allah that they will never repeat, *i.e.*, commit illegal sexual intercourse and other similar sins) and do righteous good deeds, leave them alone. Surely, Allah is Ever the One Who accepts repentance, (and He is) Most Merciful. (an-nisa, verse 16)

Hadith of the Prophet (PBUH):

Islam forbids any attack on the human body.

كل المسلم على المسلم حرام دمه وماله وعرضه (رواه مسلم)

The Prophet (PBUH) said: "The whole of the Muslim is forbidden to another Muslim; his blood, his property and his honour." (Narrated by Al-Imam Muslim in his Sahih, Kitab Al-Birr (The Book of Righteousness), chapter 4/1986, Hadith, 2564).

Short description: Sexual violence against children is often a result of harmful traditional practices that condone violence and mistreatment and are grounded in discriminatory views and beliefs

that are inconsistent with Sharia law and violate the rights of children. Muslim scholars and religious leaders have a major role to play in explaining the position of Islamic law, which enjoins equality and mercy; prohibits aggression, especially against the young and vulnerable; and affirms the right to bring perpetrators to justice.

Although females are often more vulnerable to sexual exploitation, male children may also be subjected to this kind of exploitation, for example the harmful practice of *bacha bazi*. The sexual exploitation of children may be the result of encouraging or enticing children, or it may be the result of coercion exercised by adults who are entrusted to care for children and betray this trust.

National Legislation

Penal Code of Afghanistan

Article 427

- (1) A person who commits adultery or pederasty shall be sentenced to long-term imprisonment.
- (2) In one of the following cases commitment of the acts, specified above, is considered to be aggravating conditions:
 - a) In the case where the person against whom the crime has been committed is not yet eighteen years old.
 - b) In the case where the person against whom the crime has been committed is a third degree relative of the offender.
 - c) In the case where the offender is a tutor, teacher, or servant of the person against whom the crime has been committed or the latter has, one way or another, authority or influence over the former.
 - d) In the case where the person against whom the crime has been committed is a married woman.

- e) In the case where the offender deflowers a maiden.
- f) In the case where two or more persons have assisted each other in committing the crime or that the offenders have committed the act one after another.
- g) In the case where the person against whom the crime has been committed is affected by genital disease.
- h) In the case where the person against whom the crime has been committed becomes pregnant.

Article 429

(1) A person who, through violence, threat, or deceit, violates the chastity of another (whether male or female), or initiates the act, shall be sentenced to long imprisonment, not exceeding seven years.

(2) In the case where the person against whom the crime is committed is not eighteen years old, or the person who commits the crime is one of the persons specified under paragraph 2 of Article 427 of this Law, the offender shall be sentenced to long imprisonment, not exceeding ten years.

Juvenile Code**Article 7**

Humiliating and harsh punishment of a minor, even if for correction and re-education purposes, is not allowed.

Rape and other forms of sexual violence are clearly forbidden under the Afghan Penal Code. Article 427 of the Penal Code which (which criminalizes pederasty and adultery) is applicable at all times, including in situations of armed conflict. The act of sexual violence is aggravated when perpetrated against a person under the age of 18 and when the offender has 'authority or influence' over the victim. Article 429 also further aggravates the crime of sexual violence

when perpetrated against a child (under 18) whether male or female.

International Law

Convention on the Rights of the Child (CRC) [ratified by Afghanistan in March 1994]

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Common Article 3, Geneva Conventions (1949)

Persons taking no active part in the hostilities[...] shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War

Article 34

The taking of hostages is prohibited.

Article 27

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They

shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are[...].

Optional Protocol of the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography

Article 3

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

- a. Sexual exploitation of the child
- c. Engagement of the child in forced labour

Rome Statute of the International Criminal Court [acceded to by Afghanistan in February 2003]

Article 8, War Crimes

8.2. For the purpose of this Statute, “war crimes” means: [for violations of the laws and customs applicable in armed conflicts not of an international character]

8.2(e)(vii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions.

Rape and other forms of sexual violence against children – boys and girls – are clearly serious human rights violations and may amount to grave breaches of international humanitarian law. Significant acts of sexual violence may constitute a war crime and/or a crime against humanity. In situations of armed conflict, rape and other forms of sexual violence are prohibited under the Geneva Conventions and their Additional Protocols. Child-specific provisions of these treaties specifically forbid sexual violence against children.

The obligation of humane treatment under common Article 3 of the Geneva Conventions implicitly prohibits rape or any other sexual violence – be it against women or children. Article 27 of the 4th Geneva Convention explicitly prohibits such actions stating: *'Women [including girls] shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.'*

4. Abduction



Given Islamic law's emphasis on protecting children and family, the abduction, or seizing of children against their will and/or the will of their adult guardians either temporarily or permanently without due cause, is illegal and against the dignity of the family and mankind. It also may constitute a grave breach of international human rights law and the Geneva Conventions and amount to a crime against humanity and a war crime.

The Holy Quran:

وَاذْكُرُوا إِذْ أَنْتُمْ قَلِيلٌ مُسْتَضْعَفُونَ فِي الْأَرْضِ تَخَافُونَ أَنْ يَتَخَطَّفَكُمُ النَّاسُ (سورة الانفال 26)

Translation: And remember when you were few and oppressed in the land, fearing that people might abduct you.

Hadith of the Prophet (PBUH):

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ
عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ قَالَ اللَّهُ ثَلَاثَةٌ أَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ رَجُلٌ أَعْطَى بِي ثُمَّ غَدَرَ وَرَجُلٌ بَاعَ
حُرًّا فَأَكَلَ ثَمَنَهُ وَرَجُلٌ اسْتَأْجَرَ أَجِيرًا فَاسْتَوْفَى مِنْهُ وَلَمْ يُعْطِ أَجْرَهُ (صحيح بخارى جزء 7 صفحہ 471)

Translation: Narrated Abi Huraira the Prophet said, "Allah says, 'I will be against three persons on the Day of Resurrection: -1. One who makes a covenant in my name, but he proves treacherous. -2. One who sells a free person (as a slave) and eats the price. -3. And one who employs a laborer and gets the full work done by him but does not pay him his wages.'" (Sahih Bukhari, Part 7, Page 471)

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَيْسَ مِنَّا مَنْ لَمْ يَرْحَمْ صَغِيرَنَا وَيَعْرِفْ حَقَّ كَبِيرِنَا (مسند أحمد)

Translation: Prophet Mohammad (PBUH) said: Those are not from our group who are not compassionate with our children and do not respect our elders.

Short description: Parents, grandparents or official guardians legitimately take care of a child's needs and concerns. Anyone who takes/abducts a child, whether by force or otherwise, is in reality causing harm to the best interest of the child, and this act is accordingly prohibited.

Often abduction occurs for proposes such as sexual abuse, child trafficking, sale of body parts, as means to extort money from a child's family, as well as for the recruitment/use and association of children with armed groups – in all circumstances Sharia prohibits any form of abduction and associated abuse, through the established principle of 'do no harm'. Abduction is therefore viewed

as a very serious offence under Islamic law, which requires all perpetrators to be duly brought to justice.

National Legislation

Constitution of Afghanistan

Article 24

Liberty is the natural right of human beings. This right has no limits unless affecting the rights of others or public interests, which are regulated by law. Liberty and dignity of human beings are inviolable. The state has the duty to respect and protect the liberty and dignity of human beings.

Penal Code of Afghanistan

Article 414

A person who, illegally and without the instruction of concerned authorities, arrests, detains, or prevents someone else from work, shall be sentenced in view of the circumstances to medium imprisonment.

Article 415

If arrest, detention and prevention from work is accomplished by a person wearing, without a right, official uniform or by a person who assumes a false attribute, or by a person presenting to other persons feigned orders of concerned authorities, the offender shall be sentenced in view of the circumstances to long imprisonment, not exceeding ten years.

Article 416

If arrest, detention and prevention from work is accompanied by coercion, threat or torture, or if the person committing the crime is an official of the government, the offender shall receive the maximum anticipated punishment specified under Article 415 of this Law.

Article 418

A person who, himself or through another, kidnaps a child, not yet seven years old, or someone who cannot look after himself, or leaves at large one of the persons mentioned in an uninhabited area, shall be sentenced to medium imprisonment, not exceeding three years.

Article 419

If as a result of commitment of the crimes specified under Article 418 of this Law, some bodily member of the child or the person (kidnapped) is defected or lost the offender shall be punished in accordance with the provisions of "Deliberate Laceration", or if the child or the person (kidnapped) dies, the offender shall be punished in accordance with the provisions of "Deliberate Murder."

The Afghan Constitution strongly emphasizes the right to liberty stating that liberty and dignity of human beings are inviolable. The right is viewed as God-given and can only be limited in unique and special circumstances. The Penal Code of Afghanistan places great emphasis on liberty, and affirms that only legally authorised staff, under certain circumstances clearly defined by the law, have the right to limit the liberty of a person. Under the Afghan Constitution and Penal Code the abduction of children is a breach of the law and constitutes a criminal act.

International Law

Universal Declaration of Human Rights (1948)

Article 3

Everyone has the right to life, liberty and security of person.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Additional Protocol to the Geneva Conventions (1949), relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977

Article 4

Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever:

- (a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) collective punishments;
- (c) taking of hostages;
- (d) acts of terrorism;
- (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form or indecent assault;
- (f) slavery and the slave trade in all their forms;
- (g) pillage;
- (h) threats to commit any or the foregoing acts.

Convention of the Rights of the Child [ratified by Afghanistan on 28 March 1994]

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Rome Statute of the International Criminal Court [acceded to by Afghanistan in February 2003]

Article 8, War Crimes

8.2 For the purpose of this Statute, “war crimes” means: [for violations of the laws and customs applicable in armed conflicts not of an international character]

8.2(c)(iii) Taking of hostages.

The Geneva Conventions’ common Article 3 requirement of humane treatment for civilians implicitly but undeniably prohibits the abduction of children. Forced displacement, or deportation of a civilian population, both of which are express prohibitions in the Geneva Conventions may also include instances of child-abduction. Abduction may also amount to ‘enforced disappearance’ and is thereby proscribed by several international legal instruments. Further, the arbitrary deprivation of liberty is prohibited under customary international law – with universal application to all parties to conflict, States or non-State armed groups alike.

5. Attacks on Schools and Hospitals



It is obvious that education is the foundation for a society's bright future. Education is an inalienable right of human beings, especially children. Every child, girl and boy, has the right to education, according to Islam, national legislation, and international instruments. The right to health means that all individuals, including children, should have an ever-increasing access to health services and facilities without distinction of any kind. This involves four dimensions, namely, physical accessibility, economic accessibility, informational accessibility, and non-discrimination. Health services, materials, and facilities should be physically and safely available for all, especially vulnerable categories of people and all persons should be able to afford such services, materials, and facilities. On the one hand, people have the right to search for information on health-related issues and on the other, health services and facilities should

be provided for all people without discrimination of any form. Another significant issue is the acceptability of health services and facilities, meaning that these should be compatible with people's mentality and culture and planned so that they will be accepted by the general public.

قُلْ هَلْ يَسْتَوِي الَّذِينَ يَعْلَمُونَ وَالَّذِينَ لَا يَعْلَمُونَ إِنَّمَا يَتَذَكَّرُ أُولُوا الْأَلْبَابِ (الزمر آية 9)

Translation: Say: "Are those who know equal to those who know not?" It is only men of understanding who will remember (i.e. get a lesson from Allah's Signs and Verses) (Az-Zumar, Verse 9).

The importance of education cannot be ignored in Islamic law. The Prophet (PBUH) set free prisoners of war in return for educating Muslim members of society. Moreover, he asserted that:

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ طَلَبُ الْعِلْمِ فَرِيضَةٌ عَلَى كُلِّ مُسْلِمٍ (سنن ابن ماجه)

Translation: "Seeking knowledge is obligatory upon every Muslim male and Muslim female". *Faridha* or obligation in Islamic law is an act, which if not committed, invokes punishment.

As far as attacks on schools and hospitals are concerned, the principle of distinction, discussed above, is applicable to this situation. Schools and hospitals are civilian objects and hence are protected from attacks – destroying them is termed *fasad fi al-ardh* (mischief and corruption on the earth) which carries serious punishment.

The Holy Quran:

وَلَوْلَا دَفْعُ اللَّهِ النَّاسَ بَعْضَهُمْ بِبَعْضٍ لَهَدَمْتُ صَوَامِعُ وَيَبْعُ وَصَلَوَاتُ وَمَسَاجِدُ يُذَكَّرُ فِيهَا اسْمُ اللَّهِ كَثِيرًا
وَلَيَنْصُرَنَّ اللَّهُ مَن يَنْصُرُهُ إِنَّ اللَّهَ لَقَوِيٌّ عَزِيزٌ (الحج آيه 40)

Translation: Those who have been expelled from their homes unjustly only because they said: "Our Lord is Allah." - For had it not been that Allah checks one set of people by means of another, monasteries, churches, synagogues, and mosques, wherein the Name of Allah is mentioned much would surely have been pulled down. Verily, Allah will help those who help His (Cause). Truly, Allah is All-Strong, All-Mighty. (Al-Haj, Verse 40)

وَإِلَى ثَمُودَ أَخَاهُمْ صَالِحًا قَالَ يَا قَوْمِ اعْبُدُوا اللَّهَ مَا لَكُم مِّنْ إِلَهٍ غَيْرُهُ هُوَ أَنشَأَكُم مِّنَ الْأَرْضِ
وَاسْتَغْرَمَكُمْ فِيهَا فَاسْتَغْفِرُوهُ ثُمَّ تَوْبُوا إِلَيْهِ إِنَّ رَبِّي قَرِيبٌ مُّجِيبٌ (سوره هود، آيه 61)

Translation: And to Thamud (people), we sent their brother Salih (Saleh). He said: "O my people! Worship Allah, you have no other *Ilah* (God) but Him. He brought you forth from the earth and settled you therein, then ask forgiveness of Him and turn to Him in repentance. Certainly, my Lord is near (to all by His Knowledge), Responsive." (Hud, Verse 61)

The value and position of schools is similar to that of mosques, because for centuries and even currently mosques are used as educational centres for children (male and female). God says:

وَمَنْ أَظْلَمُ مِمَّنْ مَنَعَ مَسَاجِدَ اللَّهِ أَنْ يُذَكَّرَ فِيهَا اسْمُهُ وَسَعَىٰ فِي خَرَابِهَا (سورة البقرة 114)

Translation: And who is more unjust than he who prohibits the name of Allah being glorified in Allah's temples and seeks to ruin them?

Therefore, an attack on any educational centre is clearly prohibited under Sharia law.

Hadith of the Prophet (PBUH):

Yazeed was guided by the first Caliph Abu Bakr on the following:

وَأَنِّي مُوصِيكَ بِعَشْرِ لَّا تَقْتُلَنَّ امْرَأَةً وَلَا صَبِيًّا وَلَا كَبِيرًا هَرِمًا وَلَا تَقْطَعَنَّ شَجَرًا مُثْمِرًا وَلَا تُخَرِّبَنَّ عَامِرًا
(موطأ مالک)

Translation: I give you ten instructions, do not kill women and children, do not kill elders, do not cut fruit-trees, do not destroy buildings.

Short description: Since schools are the houses of knowledge and science, under Islam it is forbidden to destroy them.

The Prophet (PBUH) said: "On the other hand, God has appointed human beings as his caliph on the earth to build and not destroy. Also the Angels told Allah:

قَالُوا أَتَجْعَلُ فِيهَا مَنْ يُفْسِدُ فِيهَا (سورة البقرة 30)

Translation: Do you create anyone on earth to be corrupt and vitiate?

It is thus a legal obligation of all Muslims to prevent others from undertaking destructive and prohibited acts let alone committing such acts.

روى مسلم أن رسول الله صلى الله عليه وسلم قال: " إِنَّ الْمَلَائِكَةَ لَتَضَعُ أجنِحَتَهَا لَطَالِبِ الْعِلْمِ رَضًى بِمَا يَصْنَعُ (صحيح مسلم)

Translation: "The angels spread their wings for the seeker of knowledge as an expression of content for what he does."

دَتْنَا أَبُو النُّعْمَانِ، قَالَ: حَدَّثَنَا أَبُو عَوَانَةَ، عَنْ زِيَادِ بْنِ عِلَاقَةَ، عَنْ أُسَامَةَ بْنِ شَرِيكِ قَالَ: كُنْتُ عِنْدَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَجَاءَتِ الْأَعْرَابُ، نَاسٌ كَثِيرٌ مِنْ هَاهُنَا وَهَاهُنَا، فَسَكَتَ النَّاسُ لَا يَتَكَلَّمُونَ غَيْرَهُمْ، فَقَالُوا: يَا رَسُولَ اللَّهِ، أَعْلَيْنَا حَرَجٌ فِي كَذَا وَكَذَا؟ فِي أَشْيَاءٍ مِنْ أُمُورِ النَّاسِ، لَا بَأْسَ بِهَا، فَقَالَ: يَا عِبَادَ اللَّهِ، وَضَعَ اللَّهُ الْحَرَجَ، إِلَّا أَمْرًا اقْتَرَضَ امْرَأًا ظُلْمًا فَذَاكَ الَّذِي حَرَجٌ وَهَلَكَ، قَالُوا: يَا رَسُولَ اللَّهِ، أَتَدَاوَى؟ قَالَ: نَعَمْ يَا عِبَادَ اللَّهِ تَدَاوَوْا، فَإِنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يَضَعْ دَاءً إِلَّا وَضَعَ لَهُ شِفَاءً، غَيْرَ دَاءٍ وَاحِدٍ، قَالُوا: وَمَا هِيَ يَا رَسُولَ اللَّهِ؟ قَالَ: الْهَرَمُ، قَالُوا: يَا رَسُولَ اللَّهِ، مَا خَيْرٌ مَا أُعْطِيَ الْإِنْسَانُ؟ قَالَ: خُلُقٌ حَسَنٌ.

Translation: Usama ibn Sharik said, "I was with the Prophet, may Allah bless him and grant him peace, when some Bedouins came. There were many people on all sides. The people were silent and no one spoke except them. They said, 'Messenger of Allah! We experience difficulty in such-and-such and such-and-such' and it was in things which are not harmful to people. He said, 'Servants of Allah! Allah has removed difficulty except in a case where a man slanders someone unjustly - that is the one who is in difficulty and destroyed.' They said, 'Messenger of Allah, can we make use of medical treatment?' 'Yes, servants of Allah,' he replied, 'you can

make use of medical treatment. Allah Almighty did not create an illness but that He made a cure for it - except for one disease.' They asked, 'And what is that, Messenger of Allah?' 'Old age,' he replied. They said, 'Messenger of Allah, what is the best thing that a man can be given?' 'Good character,' he replied."

National Legislation

Constitution of Afghanistan

Article 43

Education is the right of all citizens of Afghanistan, which shall be provided up to the level of BA (license), free of charge by the State. The State is obliged to devise and implement effective programmes for a balanced expansion of education all over Afghanistan, and to provide compulsory intermediate level education. The State is also required to provide the opportunity to teach native languages in the areas where they are spoken.

Article 44

The State shall devise and implement effective programmes for balancing and promoting education for women, improving education of nomads and eliminating illiteracy in the country.

Article 52

The State is obliged to provide free means of preventative health care and medical treatment, and proper health facilities to all citizens of Afghanistan in accordance with the law.

Article 53

The State shall take necessary measures for regulating medical services and financial support to descendants of martyred, lost or disabled and handicapped individuals in accordance with provisions of law.

The State guarantees the rights of pensioners and renders necessary

assistance to needy elders, women without caretakers, and needy orphans in accordance with the provision of law.

Afghan Penal Code

Article 369

(1) A person who deliberately endangers the goods or life of people by putting poisonous, microbial or other harmful substances in the well, water reservoir or general storage place, shall be sentenced to continued imprisonment.

(2) If commitment of the crimes mentioned in the above paragraph results in the loss of human life, the person committing it shall be sentenced to death.

Article 370

A person who pollutes well or public storage or such other things, such as to diminish its utility, shall be sentenced to short imprisonment or cash fine of not more than twelve thousand Afghanis.

Article 371

(1) A person who deliberately breaks or destroys equipment, pipes or special facilities of water, electricity, gas and other public "marafeq", resulting in the stoppage of public (utilities) "marafeq", shall be sentenced to medium imprisonment and cash fine of not more than twenty five thousand Afghanis or to one of these two punishments.

(2) A person who deliberately harms, destroys or puts out of work the fixed or transferable health establishments, or makes a part of it unusable, shall be sentenced to medium imprisonment of not less than two years.

(3) A person who commits any of the crimes mentioned in paragraph 1 of this article by mistake shall be sentenced to short imprisonment and cash fine of not more than five thousand Afghanis.

The right to basic education is guaranteed by the Afghanistan Constitution as well as the International Covenant on Civil and Political Rights. Article 13 of the Covenant stipulates that the Government has a responsibility to provide free, universal and compulsory primary education. Similarly, Article 43 of the Afghanistan Constitution guarantees the right to free education up to the bachelor's degree level as well as demanding that the Government implements universal programmes to achieve these goals. The Constitution further stipulates the necessity of positive discrimination to facilitate equal access to education for women and *Kuchis* [nomads].

The Government of Afghanistan has also committed to provide free health care services to all citizens under Article 52 of the Constitution. This is reinforced by the Government's ratification of the Convention on the Rights of the Child under which the Government has committed itself to take appropriate measures to diminish infant and child mortality and to ensure appropriate pre-natal and post-natal healthcare for mothers (Article 24 (2)). These human rights obligations apply during all situations – including armed conflict.

International Law

Universal Declaration on Human Rights (1948)

Article 26

(1) Everyone has the right to education.

Convention on the Rights of the Child (CRC) [ratified by Afghanistan in March 1994]

Article 24

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Article 28

States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity.

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War

Article 18

Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict.

Article 19

The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only

after due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded.

The fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants and not yet handed to the proper service, shall not be considered to be acts harmful to the enemy.

Article 20

Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall be respected and protected.

Additional Protocol to the Geneva Conventions (1949), relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977

Article 4

3. Children shall be provided with the care and aid they require, and in particular:

(a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care.

Article 9

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.

2. In the performance of their duties medical personnel may not be required to give priority to any person except on medical grounds.

Article 11

1. Medical units and transports shall be respected and protected at all times and shall not be the object of attack.
2. The protection to which medical units and transports are entitled shall not cease unless they are used to commit hostile acts, outside their humanitarian function. Protection may, however, cease only after a warning has been given, setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

Rome Statute of the International Criminal Court [accessed to by Afghanistan in February 2003]

Article 8, War Crimes [for violations of the laws and customs applicable in armed conflicts not of an international character]

8.2 (e)(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law.

8.2 (e)(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.

The equal rights to adequate healthcare and access to education, in both times of peace and conflict, are enshrined in international human rights law and constitute established principles of international law.

Attacks against schools or hospitals contravene well established principles of international humanitarian law and may constitute

crimes against humanity and war crimes. Under international humanitarian law, both schools and hospitals are protected civilian objects, and therefore benefit from the humanitarian principles of distinction and proportionality. The 4th Geneva Convention prohibits the targeting of civilian objects, emphasizing the importance of schools and hospitals to the civilian population, especially children.

Deliberate targeting of schools or hospitals, in the absence of military necessity, is prohibited under the general legal principle that civilian objects must be distinguished from legitimate military objectives and protected against the consequences of military operations – this is a customary norm of international law applicable in all situations of armed conflict.

Protection afforded to schools and hospitals is comprehensive: according to international customary and treaty law, a party to a conflict must guard against targeting or attacking schools and hospitals as well as safeguard from attack schools and hospitals that are within their respective civilian areas. The deliberate targeting or destruction of a school or hospital (or other civilian objects) may amount to a grave breach of the laws of armed conflict; the sole exception to the blanket protection afforded to schools and hospitals is ‘unless and for such time as they are military targets’ – *i.e.*, being used for military purposes.

6. Denial of Access to Humanitarian Assistance



The Holy Quran:

وَيُطْعَمُونَ الطَّعَامَ عَلَى حُبِّهِ مِسْكِينًا وَيَتِيمًا وَأَسِيرًا (سورة الإنسان 8)

Translation: And they give food in spite of love for it to the needy, the orphan, and the captive,

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ (المائدة، آية 2)

Translation: Help you one another in *Al-Birr* and *At-Taqwa* (virtue, righteousness and piety); but do not help one another in sin and transgression. And fear Allah. Verily, Allah is Severe in punishment. (Al-Maidah, Verse 2)

وَيَمْنَعُونَ الْمَاعُونَ (الماعون، آية 7)

Translation: And refuse *Al-Ma'un* (small kindnesses e.g., salt, sugar, water, etc.). (*Al-Maaoon*, Verse 7)

وَلَا تَحَاضُّونَ عَلَى طَعَامِ الْمِسْكِينَ (الفجر، آیه 18)

Translation: And urge not on the feeding of *AlMiskin* (the poor)! (*Al-Fajr*, Verse 18)

Short description: The act of giving food with honesty and love to the poor, needy, orphans and captives, especially when a person is in great need themselves, is deemed to be a great act of personal sacrifice under Islam. Moreover, as stated above, failure to protect children from the effects of warfare – including intentional denial of essential services such as food and healthcare – is against the injunction of the Quran and the Sunnah of the holy Prophet (PBUH).



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Hadith of the Prophet (PBUH):

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَنْ نَفَسَ عَنْ مُؤْمِنٍ كُرْبَةً مِنْ كُرْبِ الدُّنْيَا نَفَسَ اللَّهُ عَنْهُ كُرْبَةً مِنْ كُرْبِ يَوْمِ الْقِيَامَةِ وَمَنْ يَسِّرْ عَلَى مُعْسِرٍ يَسِّرَ اللَّهُ عَلَيْهِ فِي الدُّنْيَا وَالْآخِرَةِ وَمَنْ سَتَرَ مُسْلِمًا سَتَرَهُ اللَّهُ فِي الدُّنْيَا وَالْآخِرَةِ وَاللَّهُ فِي عَوْنِ الْعَبْدِ مَا كَانَ الْعَبْدُ فِي عَوْنِ أَخِيهِ (صحيح مسلم، جزء 13 ص 212)

Translation: Abu Huraira (radiallahu anhu) narrated that the Prophet Muhammad (sallallaahu alayhi wa sallaam) said: Whoever removes from a Believer a hardship from the hardships of this life (the dunya), Allah (God) will remove from him a hardship from the hardships of the Day of Judgment. And whoever makes a difficult affair easy, Allah will make things easy for him in this life and the Hereafter. And whoever covers a Muslim, Allah will cover him in this life and the Hereafter. And Allah comes to the help of His servant as long as (or as much as) the servant comes to the help of his brother.

حَدَّثَنَا إِسْمَاعِيلُ قَالَ حَدَّثَنِي مَالِكٌ عَنْ نَافِعٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ عَذَّبْتُ امْرَأَةً فِي هِرَّةٍ حَبَسْتُهَا حَتَّى مَاتَتْ جَوْعًا فَدَخَلْتُ فِيهَا النَّارَ قَالَ فَقَالَ وَاللَّهِ أَغْلَمُ لَا أَنْتِ أَطْعَمْتِهَا وَلَا سَقَيْتِهَا حِينَ حَبَسْتِهَا وَلَا أَنْتِ أَرْسَلْتِهَا فَأَكَلَتْ مِنْ خَشَاشِ الْأَرْضِ (صحيح بخاری، جزء 8 ص 184)

Translation: Narrated `Abdullah bin `Umar: Allah's Messenger (ﷺ) said, "A woman was tortured and was put in Hell because of a cat which she had kept locked till it died of hunger." Allah's Messenger (ﷺ) further said, (Allah knows better) Allah said (to the woman), 'You neither fed it nor watered when you locked it up, nor did you set it free to eat the insects of the earth.'

Islamic law recognises the principal of distinction between civilians and military personnel/objects and Islam also emphasizes the best interests of the child. It is clearly understood that children are not a party to any conflict and do not take direct part in hostilities. Therefore children should be protected by all means; the denial of access to humanitarian assistance violates the principal of distinction and the best interests of the child as well as the need to protect children from the effects of warfare.

Theft or the appropriation of any humanitarian assistance which is aimed at alleviating the suffering of the poor and vulnerable, would, under Islamic law, be viewed in the same way as the crime of highway robbery – which carries severe punishment. The right to life is very important in Islam, therefore humanitarian assistance, including emergency and life-saving healthcare, food, water/sanitation, is integral to the right to life. The denial of humanitarian assistance can thus be viewed as a serious violation of Sharia law due to the impact it can have on the lives of vulnerable people caught in the middle of conflict, particularly children.

National Legislation

Afghan Penal Code

Article 447

(1) Any person who takes position on a public route or such other places for the purpose of gaining possession of goods by means of overpowering with a weapon or an object similar to a weapon and commits one of the following acts shall be considered a robber:

- a) Extortion of wayfarer.
- b) Acquiring other person's goods by threat or coercion.
- c) Murder.
- d) Murder and acquisition of other person's goods.

(2) If conditions of "Had" are not fulfilled or, one way or another, the due punishment for "Had" is dropped, the offender shall be served with a "Tazeeri" punishment in accordance with the provisions of this Chapter.

International Law

Convention on the Rights of the Child [ratified by Afghanistan on 28 March 1994]

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 24

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the

treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Article 27

States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Additional Protocol to the Geneva Conventions (1949), relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977

Article 14

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.

Article 18

2. If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as food-stuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.

Rome Statute of the International Criminal Court [acceded to by Afghanistan in February 2003]

Article 8, War Crimes

8.2 For the purpose of this Statute, "war crimes" means: [for violations of the laws and customs applicable in armed conflicts not

of an international character]

8.2(e)(iii) Intentionally directing attacks against buildings, material, medical

units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law.

8.2(e)(iv) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.

Denial of humanitarian access to children and attacks against humanitarian workers assisting children are prohibited under the 4th Geneva Convention and its Additional Protocols. It is a principle of customary international law that parties to a conflict must *allow* and *facilitate* aid to any civilian population in need, subject to their right of control. Provision of such relief must be impartial in character and conducted without any adverse distinction, for example based on race, age or ethnicity.

Denying humanitarian access to children may violate several basic human rights. The freedom of movement of all persons, including aid-workers, is enshrined in several international and regional human rights instruments. Moreover, the denial of humanitarian access to children in need may violate the right to survival, including the right to be free from hunger – a fundamental right. In relief operations, children are entitled to special attention and must be provided the care and aid they require.

Protection of humanitarian relief personnel, including persons engaged in operations such as de-mining, and their equipment is one of the oldest maxims of the laws of armed conflict. Humanitarian relief personnel, their equipment and the buildings or other objects they utilize are afforded specific protection under the Geneva Conventions and their Additional Protocols. Parties to a conflict must ensure freedom of movement for authorized humanitarian relief personnel, subject only to imperative military necessity. Medical transports and facilities are specifically provided further protections. These protections are recognized as customary international law.



Paris Principles on Children Associated with Armed Forces and Groups, 2007

Article 2.1

A child associated with an armed force or armed group "refers to any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities."