ALTERNATIVES TO DETENTION FOR CHILDREN IN AFGHANISTAN

MARIANNE MOORE
Marianne is a consultant adept at strategy, business planning, project management and design. She has worked extensively in the UK, wider Europe, Asia, and Africa. Marianne has vast experience working for unions of nations such as UNICEF and the Council of Europe, undertaking evaluations, developing policy and legislation and speaking on issues of child justice. Currently she is leading a number of projects in the UK and overseas. She has an MSc from Cass Business School, an MA from the University of Middlesex and her first degree was from Oxford University.

marianne@justicestudio.org
Tel: +44755498702

THE TEAM

Ministry of Interior (MoI)
The Attorney General’s Office (AGO)
Ministry of Labour, Social Affairs, Disabled, and Martyrs (MoLSADM)
Minister of Justice (MoJ)
Ministry of Education (MoE)
The Supreme Court (SC)
The Ministry of Public Health (MoPH),
The Ministry of Women’s Affairs (MoWA)
The National Directorate of Security (NDS)

Signed
2010

Signed
2013

Signed
2013

Signed
2010

Original signatories
2008
JUVENILE STATISTICS ACCORDING TO CRIME AND GENDER (2007-2012)

SITUATION OF JUVENILE JUSTICE

- 55% of children in detention ‘poor’ or ‘very poor’ Adult situations - 76% boys working prior
- 92% of girls and 72% of boys not completed primary education
- 62% of girls and 36% of boys illiterate
- March 2015 1133 child detainees in JRCs out of which only 245 were found guilty of criminal conduct; the remainder were merely under suspicion (70) or officially accused (818)
Carried out in Kabul, Dandkón, Jawalábud, Herat, Mazár-i-Sharif, and Panjshir.

Mapped of 65 available organisations that could contribute to alternatives to detention.

34 focus groups were held with 740 community members and 1649 juvenile justice professionals.

56 children interviewed in Kabul, Herat, Jalalabad, Kandahar, and Mazar-i-Sharif.

High level juvenile justice stakeholders and key government stakeholders were interviewed.

**The Child Rights Consortium III – Alternatives to detention program**

**2012-2013**

**Sentences other than detention:**

- Performing social services
- Sending the child to special social services institutions
- Issuance of warning
- Postponement of trial
- Conditional suspension of punishment
- Home confinement
- Surrender of child to his/her parents or those who have the guardianship rights
- Sending the child to the juvenile rehabilitation centres for confinement.

In a 2008 71% sentenced to more than one year of detention.

**JUVENILE CODE 2005 ARTICLE 35.**

Alternatives to detention are used more in Herat where certain factors were present:

- Juvenile justice stakeholders had been trained
- Tribal and religious groups were united by common ethnic or moral values
- Where there was limited corruption
- Where social workers provided background information on the juveniles;
- Respondents (“Social Inquiry Reports”); and
- Where there were good economic conditions.

**FINDINGS OF THE STUDY …**
EFFECTIVENESS

Justice Studio is determined to produce outputs that are relevant and useful. We will build on best practice but ensure that all solutions are relevant and workable in the specific context of each locality. The work we undertake is useful and practical.

EFFICIENCY

Justice Studio works with clients to identify creative approaches to your specific needs. We get to the heart of your problem quickly, use our time productively and produce high quality outputs. Our people are experts in their field and love what they do. As such they are committed, enthusiastic and dedicated to the project in hand. We charge competitive rates for their expertise.

EMPATHY

Justice Studio is driven by aiding those who have a lack of voice in society, are discriminated against or are subject to injustice. Our solutions never lose sight of this. Our people have been selected because they have empathy and a deep held respect for the end beneficiaries of our clients. They are brilliant and they care. We strive to ensure that the rights and voices of your beneficiaries come first.

OUR VALUES

Alternatives to detention not used on a sliding scale of factors:
• Lack of knowledge of the Juvenile Code 2005 and article 35
• When the Juvenile Code is understood, a lack of confidence to implement article 35 without sanction from superiors or training
• When there is confidence to implement article 35, lack of guidance on how exactly to implement the alternatives
• When there is a willingness to implement, lack of understanding of the resources available. For example, the need for social workers and also for ‘special social services institutions’
• When the alternatives are implemented, a lack of monitoring and reporting mechanisms to ensure that the children are supervised effectively on the alternatives.

FINDINGS OF THE STUDY ...

RECOMMENDATIONS

• 37 of 55 organisations willing to work with children on alternatives to detention = increase their capacity rather than building any new facilities.
• MoLSAMD Social workers should monitor children on alternatives to detention. = their capacity needs to increase in terms of numbers, education and training. an assessment and planning system needs to be linked to the SIF. With an effective planning and monitoring process the social workers can also help inform the judge of progress.

RECOMMENDATIONS

• Ministry of Finance create a budget line for Atd.
• Members of the Letter of Agreement (LoA) build the capacity of existing social services institutions and awareness of Atd.
• MoLSAMD) establish a referral mechanism for alternatives to detention linked with (CPAN) and increase the number, capacity and quality of training to social workers.
• AGO increase the level of qualifications, training and salaries of prosecutors
• Courts ensure all judges are aware of Juvenile Code, and article 35
**BARRIERS**

- The age of criminal responsibility in Afghanistan is 13 but only 10% of children are registered at birth and many do not have identity cards.
- Still lack of observable differentiation in juvenile system.
- No presumption of innocence.
- Prosecutors resort to detention – releasing 2-4 out of 10.
- Lack of confidence in lawyers to ask for release.
- Detention used by default by courts and rising.
- Number of children in JRCs doubled between 2008 (n=455) and 2013 (n=1118) at 1133 in March 2015.

**OPPORTUNITIES**

- In 2013 90% of community members supportive of atd - children should be rehabilitated in their community with support of institutions such as mosques, schools, shelters, and orphanages.
- Police practice diversion through reconciliation in 4-8 out of 10 cases (2015).
- Atd can be issued by all three courts and was used in Herat, Jalalabad and Kabul in 2013.
- Use of atd in Kabul increasing atd used in 4 - 6 out of 10 cases in 2015.

"Crime is something that is taught. Children do not have a natural propensity towards crime."

Head of Kabul Special Juvenile Court, 2013

"I'm in full support of children getting alternatives to detention. When the children go to the JRCs they are not properly looked after there and there they are introduced to criminal children and are more likely to commit crime again. I am really in support of this idea I would like to work together and pave the way for alternatives to detention.

Deputy Mayor of the Municipality, Kabul, 2013"