

# Building Alternatives:

SUPPORTING AFGHAN  
WOMEN & CHILDREN IN  
CONFLICT WITH THE LAW

The logo for STREET CHILD, featuring the words "STREET" and "CHILD" stacked vertically in a bold, sans-serif font. "STREET" is in orange and "CHILD" is in black, both within a white rectangular border.The logo for SAMUEL HALL., featuring a network diagram of black dots connected by thin lines, with the text "SAMUEL HALL." positioned below it.

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# ACKNOWLEDGEMENTS



Street Child is a UK charity, established in 2008, that aims to create educational opportunity for some of the world's most vulnerable children. Street Child started in Sierra Leone in 2008 working with a small number of street children. Since then they have helped over 50,000 children to go to school and enabled thousands of families to generate sustainable incomes so that their children can stay in education.

This report was commissioned by **StreetChild**, whose team in Afghanistan undertook longitudinal data collection for the project.



Samuel Hall is a social enterprise specialising in research, policy design, monitoring, and evaluation with a focus on contexts affected by migration.

Our research connects the voices of communities for more inclusive societies.

Research for this report was also conducted by **Samuel Hall** in Afghanistan during 2019 and 2020. This report was produced by Samuel Hall's Children & Youth research team.



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## List of Acronyms

AGE	Anti-government Elements	GoIRA	Government of the Islamic Republic of Afghanistan
AtD	Alternative to Detention	JRC	Juvenile Rehabilitation Centre
AtI	Alternative to Incarceration	KII	Key Informant Interview
CIC	Children in Crisis	MoLSA	Ministry of Labour and Social Affairs
CS	Case Study	MoWA	Ministry of Women's Affairs
CRC	Convention on the Rights of the Child	SIR	Social Inquiry Report
CICWTL	Child(ren) in conflict with the law	NGO	Non-government Organization
FGD	Focus Group Discussion	UN	United Nations
FI	Family Interview	WICWTL	Woman (or women) in conflict with the law

# EXECUTIVE SUMMARY

The Afghan justice system has since 2018 provided for both Alternatives to Detention (AtDs) and Alternatives to Incarceration (AtIs). However, to date there is very limited data on the impacts of the use of AtIs and AtDs, the challenges to their implementation, and how these may be impacting the rehabilitation and reintegration of women and children in conflict with the law (WICWTL and CICWTL). Past **research has made clear that detention or incarceration remains the first and most common option for sentencing in the Afghan justice system, and has also shown the range of negative physical, mental and social impacts which this detention or incarceration has on the children and women concerned.** This highlights a critical need for increased use of alternatives to detention and incarceration to help to avoid such negative impacts.

In response to these challenges, Children in Crisis (CiC) implemented the "Support to Afghan Women and Children in Conflict with the Law: Diversion, Rehabilitation and Reintegration" project, which sought to address the major structural barriers to the implementation of the Alternatives to Detention (AtD) and Alternatives to Incarceration (AtI) measures added to the Afghan Penal Code, and to contribute to the growing evidence base for positive outcomes in reintegration, rehabilitation and recidivism.

Specifically, this research aimed to collect, assess, and consolidate data regarding Afghan justice system services, identify research gaps to be filled in addressing the needs of women and children in conflict with the law in the Afghan context, and provide strategic recommendations.

**This research report highlights the depth and breadth of the challenges facing the Afghan justice system both in terms of utilising alternatives to detention and incarceration, and in the system more broadly. It also demonstrates the value of these approaches despite these challenges** – in line with research worldwide on how alternatives to detention can facilitate positive impacts for persons in conflict with the law in terms of rehabilitation and reintegration.

Alternatives to detention and incarceration are a critical step to protect child rights and create better outcomes for women and children in conflict with the law. In the Afghan context as in others, they can have great positive impacts at individual, community and societal levels. Research was conducted over nearly a year with a range of participants including justice sector actors and experts as well as CICWTL and WICWTL and their families and communities:

- Participants repeatedly emphasised how positive AtDs and AtIs had been for them, allowing them to stay at home, work or continue school, avoid community stigma, and rely on the support of family in close proximity.
- They further underlined that AtDs and AtIs reduce or avoid exposure to detention or incarceration which can be distressing and harmful in many ways for children in particular, and poses a variety of risks including (child) protection concerns.
- Overall, while it was clear that rehabilitation and reintegration programming does offer important support to CICWTL and WICWTL, **alternatives to detention and incarceration provide a greater benefit** that was highlighted not only by the participants who had experienced them and their families, but also by the contrast between their experiences and those of respondents who had experienced detention or incarceration.
- Rehabilitation and reintegration programmes may mitigate some of the negative impacts of detention and incarceration – but alternatives to detention and incarceration provide a means to avoid them altogether.

Based on these findings, **this report strongly recommends continued commitment to implementing alternatives to detention for women and children in conflict with the law.**

Specific recommendations include improving resourcing and funding; raising awareness and educating children, families and communities; improving legal frameworks and justice sector capacity; and continuing to grow the evidence base on the needs and experiences of WICWTL and CICWTL in Afghanistan and the impacts on outcomes for these groups that AtDs and AtIs may facilitate. This requires concerted efforts from Afghan government, including financial and other resources, as well as ongoing support from non-governmental organisations, civil society and the international community to advocate, advise and support through programming.

# 1. INTRODUCTION

*"Diversion from judicial proceedings and alternatives to detention are essential focus areas for those working on reforming justice systems to ensure the protection of the rights of children in conflict with the law in conformity with the Convention on the Rights of the Child".<sup>1</sup>*

Since 2018, the Afghan justice system has provided for both Alternatives to Detention (AtDs) and Alternatives to Incarceration (AtIs). Justice sector programming actors are generally positive about these new provisions, and a number of organisations have moved to provide support for AtDs and AtIs through a range of programming initiatives strengthening the Afghan justice system. However, understandably given how recently these options have been made available, there is very limited data on the impacts of the use of AtIs and AtDs, challenges to their implementation, and how these may be impacting the rehabilitation and reintegration of women and children in conflict with the law (WICWTL and CICWTL).

Women and children in conflict with the law face a range of hurdles in a challenging system, where detention or incarceration often remains the first and most common option for sentencing. Past research has underlined the negative physical, mental and social impacts which this has on the children and women concerned, and the difficulties it leads to for reintegration<sup>2</sup>. There is thus a critical need for alternatives to detention and incarceration, which help to avoid many of the negative impacts of detention or incarceration, at individual, community and societal levels

In response to these challenges, Children in Crisis (CiC) implemented the "Support to Afghan Women and Children in Conflict with the Law: Diversion, Rehabilitation and Reintegration" project, composed of a series of programmatic interventions running from 2017 to 2020. These sought to address the major structural barriers to the implementation of the Alternatives to Detention and Alternatives to Incarceration measures added to the Afghan Penal Code, and to contribute to the growing evidence base for positive outcomes in reintegration, rehabilitation and recidivism that are connected to successful implementation of such alternatives in other contexts. This research contributes to the latter goal, seeking to generate an evidence base to guide future justice sector reforms for women and juveniles.

Specifically, this research aimed to:

- Collect, assess, and consolidate data regarding Afghan justice system services, focusing on the existence and impact (both positive and negative) of alternatives to detention, rehabilitation, and reintegration measures in the Afghan context;
- Identify best practices as well as research gaps to be filled in addressing the needs of women and children in conflict with the law in the Afghan context; and,
- Provide strategic recommendations that incorporate analysis of collected data to bolster CiC's action plan, creating a report that will influence Afghan justice system reforms, and contribute to global knowledge.

To do so, this research engaged with a variety of justice system actors and programming actors, as well as children in conflict with the law and women in conflict with the law and their families and communities, from 2019 to 2020. It provides actionable recommendations, a foundation for future programming and research, and an overall greater understanding of the strengths, opportunities, barriers, and challenges that should be considered in improving outcomes for CICWTLs and WICWTLs. The report considers key conceptual elements related to AtDs and AtIs, outlines the theory and practices of AtDs and AtIs in Afghanistan, and, drawing on the primary research conducted, highlights critical gaps, barriers and challenges that the Government of Afghanistan, the Afghan justice sector, and programming actors both international and national must seek to address.

<sup>1</sup> UNICEF, "Toolkit on Diversion and Alternatives to Detention," 2010.

<sup>2</sup> Samuel Hall, "Hope Behind Bars: The Boys of the Kabul JRC," 2017.

"Life in detention is really hard"  
-WICWTL Case Study, Balkh

"Some nights when we were missing our family, we would sit in a corner and think until going to sleep."  
-CICWTL Case Study, Balkh

"There were [many] restrictions at the JRC."  
-CICWTL Case Study, Kabul

## 2. METHODOLOGY

The methodology was developed in response to the objectives outlined earlier in this report, with a focus on the following research questions:

**Figure 1: Research Questions**

<p>“How are Alternatives to Detention (AtDs) and Alternatives to Incarceration (AtIs), rehabilitation, and reintegration measures currently used in the Afghan context to improve outcomes for women and children in conflict with the law, and what lessons can be identified and shared around their current and potential usage?”</p>
1. What is currently known about AtDs / AtIs and rehabilitation and reintegration measures in Afghanistan, including their implementation, impact and perceptions of them?
2. What is the existing approach to, use of, and known outcomes of AtDs / AtIs (in Kabul and Mazar-e Sharif specifically)?
3. What are best practices in AtDs / AtIs and in rehabilitation and reintegration, for boy and girl children and for women, and based on these, what can be recommended for the Afghan context?

The research took a **mixed-methods approach**, with data collection efforts undertaken by both Samuel Hall and CIC. Under Samuel Hall's guidance, CIC's team undertook **longitudinal data collection** with CICWTLs and WICWTLs who had experienced detention, incarceration, and AtDs or AtIs, as well as family and community members. Research with children was guided by Samuel Hall's approach to ethical research with children, centred around a principle of 'do no harm' and supported by an updated and high-quality child safeguarding approach, which includes the formalised Child Safeguarding Codes of Conduct and training for all staff.

This approach was designed to develop a better understanding of the perceived impacts among AtDs and AtIs for those who had experienced them, and to highlight key challenges and barriers to implementation of alternatives by engaging with CICWTL and WICWTL and their families, as well as community, and justice sector actors and experts. Importantly, this approach leveraged CIC / Streetchild's teams of social workers to engage with CICWTL and WICWTL, to ensure sensitive and appropriate engagement with this potentially vulnerable group.

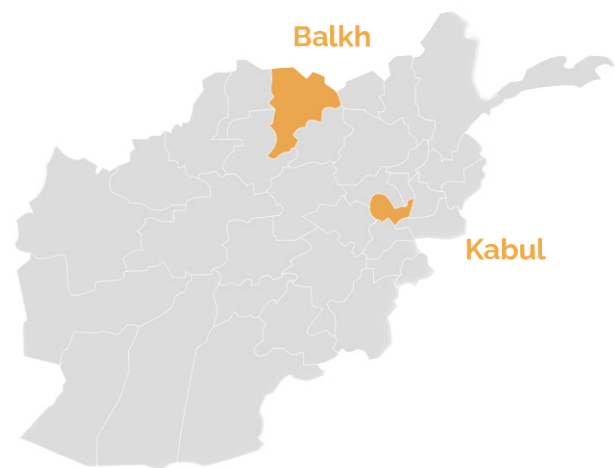
The research involved the use of the following qualitative and quantitative tools across the year-long research period:

**Figure 2: Research Tools & Sampling<sup>3</sup>**

Tool	Phase	Description	Sample Group	Final Sample
Desk Review	Inception	Exploring best practices & key concepts	N/A	N/A
Police & Court Observations		Ethnographic-style observations of courts and police stations.	Police stations, courts	2
KIIs	Inception & Reporting	Semi-structured interviews on use of and challenges to AtDs/AtIs.	Justice sector programming actors and experts	11
Past AtD / AtI Participant Survey	Longitudinal Data Collection	Survey exploring experiences with AtDs and AtIs.	CICWTL & WICWTL previously sentenced to AtD/AtIs.	197
Entry / Exit Survey		Focused on experiences and attitudes, providing comparison with detention / incarceration.	CICWTL & WICWTL beginning or completing sentences.	200
Family Interviews		Focused on understandings of AtDs/AtIs, support received, views of rehabilitation and reintegration.	Family members of CICWTL and WICWTL.	38
Case Studies		Focused on understandings of AtDs/AtIs, support received, views of rehabilitation and reintegration.	CICWTL and WICWTL	38
Community FGDs		Exploring community attitudes to AtDs/AtIs and W/CICWTL.	Community members in Balkh & Kabul.	16

<sup>3</sup> Note that the intended research sample was impacted by COVID-19, which resulted in some restrictions on access to CICWTL and WICWTL during the planned research period.

Figure 3: Research Locations



The sample was designed to be statistically representative of the time period when research was conducted by interviewing the vast majority of children going through the system in Balkh and Kabul. It was intended to provide views and understandings from a range of relevant stakeholders and from those in conflict with the law themselves.

The research was undertaken in Mazar-e Sharif and Kabul, based on CIC / Streetchild's programming and access considerations, and as such, does have a bias towards the experiences of CICWTL, particularly those who have benefited from AtDs.

## 3. UNDERSTANDING THE AFGHAN JUSTICE SYSTEM

Alternatives to Detention and Alternatives to Incarceration (also known as Alternatives to Imprisonment) have grown in use worldwide as part of rule of law and criminal justice sector reforms, implemented in varying ways across contexts. Understanding these approaches more broadly – and how they have been successfully implemented – is key to addressing possible challenges faced in Afghanistan.

### 3.1. Defining Alternatives to Detention and Incarceration, rehabilitation and reintegration

**Alternatives to detention** refer to measures that may be imposed on children who are being formally processed through the criminal justice system, at both pre-trial and sentencing stages, that do not involve deprivation of liberty. Alternatives to detention are also referred to as 'alternatives to deprivation of liberty' and 'non-custodial measures'. Alternatives can be applied from the time of apprehension until final disposition for children who have not been diverted away from judicial proceedings.<sup>4</sup> In the Afghan justice system specifically, Alternatives to Detention refer to measures taken by the authorized court over the children in conflict with the law instead of detention conditionally or unconditionally.<sup>5</sup>

Similarly, **Alternatives to Incarceration or Imprisonment** are used to refer to a wide range of options, involving sentencing that is not imprisonment or incarceration.<sup>6</sup> Typically, this is used with regards to adults in conflict with the law, rather than children. In Afghanistan, alternatives to imprisonment are specifically defined as a punishment applied on the perpetrator instead of / in place of imprisonment, in the form of conditional release, issued by the court.<sup>7</sup>

The positive relationship of AtDs and AtIs with rehabilitation and reintegration outcomes for WICWTL and CICWTL is a key reason for their use. Indeed, Article 39 of the UN Convention on the Rights of the Child (UNCRC) calls for such measures for children:

*"measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and re-integration shall take place in an environment which fosters the health, self-respect and dignity of the child."<sup>8</sup>*

Definitions of **rehabilitation** vary, but it is considered to be a central goal of the corrective system. It can include a wide array of programmes, including mental health and education services, which ultimately intend to actively engage with persons in conflict with the law during their sentences to prevent them from re-offending.<sup>9</sup>

**Reintegration** is often discussed in combination with rehabilitation. While these terms are related, reintegration is also

4 UNICEF

5 Supplementary Interview, Children in Crisis

6 United Nations and Office on Drugs and Crime, Alternatives to Imprisonment (New York: United Nations, 2007).

7 Supplementary Interview, Children in Crisis.

8 \*OHCHR | Convention on the Rights of the Child," accessed October 8, 2020.

9 Beth M. Huebner and Victoria Inzana, "Rehabilitation," in Criminology, by Beth M. Huebner and Victoria Inzana (Oxford University Press, 2009).



a potential effect of rehabilitation, namely “various forms of intervention and programme targeting individuals to prevent them from becoming involved in criminal behaviour or, for those who are already in conflict with the law, to reduce the likelihood that they will reoffend”.<sup>10</sup>

### 3.2. Why do we need ‘alternatives’?

Alternatives to detention or incarceration are founded in a **restorative** concept of justice – moving away from punishing offenders in a retributive approach to justice. Retributive approaches are “often not in the best interests of the victim, the offender, or society in general [and] those parties involved may emerge from the process further alienated, more damaged, disrespected, disempowered, feeling less safe and less cooperative with society.”<sup>11</sup> By contrast, restorative approaches seek to rebuild damaged relationship and focus on solutions, reconciliation, harmony and healing.

As noted in the previous section of this report, AtDs in particular have a foundation in the United Nations Convention on the Rights of the Child and are a critical child protection measure for CICWTL. Providing alternatives to detention for CICWTL is therefore not only in line with international standards for treatment of persons in conflict with law but leverages the known benefits of restorative justice approaches and contributes to the protection of children who may be in contact or conflict with justice systems.

“Justice systems designed for adults often lack the capacity to adequately address these issues and are more likely to harm than improve a child’s chances for reintegration into society. For all these reasons, UNICEF strongly advocates diversion (directing children away from judicial proceedings and towards community solutions), **restorative justice** (promoting reconciliation, restitution and responsibility through the involvement of the child, family members, victims and communities), and **alternatives to custodial sentencing** (counselling, probation and community service).”<sup>12</sup>

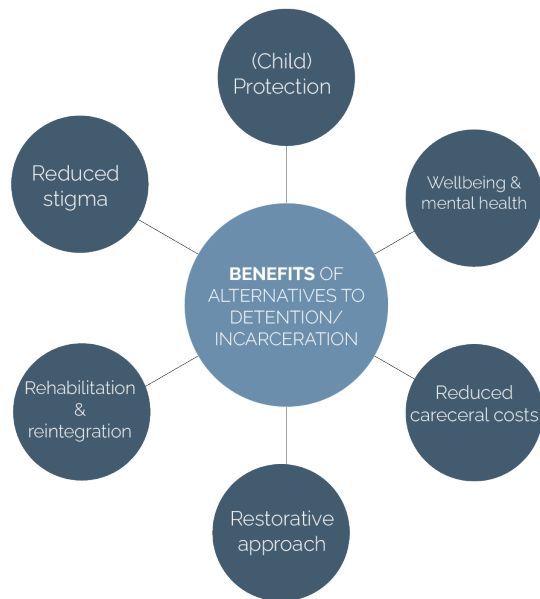
Furthermore, rehabilitation and reintegration efforts are in line with international best practices. In particular, the 2015 Doha Declaration highlights the importance of measures to support rehabilitation and social reintegration. This is based on the understanding that rehabilitation programmes are one of the best and most cost-effective ways of preventing re-offending, and which provide significant individual and societal benefits.<sup>13</sup>

These alternatives contrast starkly with the known conditions for many experiencing detention or incarceration in Afghanistan. A 2016 report by UNAMA noted progress in terms of the conditions in Juvenile Rehabilitation Centres (JRCs) but noted that “gaps in compliance with minimum detention standards, however, remain.”<sup>14</sup>

Samuel Hall’s 2017 report for CiC on the Kabul JRC, *Hope Behind Bars*, further showed insufficient support provided to incarcerated children – noting that “while strides have been made [...], the Kabul JRC is still short on consistent and quality rehabilitation programmes and reintegration support in line with national and international standards [and] existing initiatives generally lack specifically trained staff, resources, management, and facilities”. It also identified ongoing challenges in terms of reintegration for CICWTL.<sup>15</sup>

**There is thus a clear need for both a continued focus on these populations and for growth and support of alternatives to detention or incarceration in order to mitigate impacts of detention and incarceration and improve rehabilitation and reintegration outcomes.**

**Figure 4: Potential Benefits of Alternatives to Detention/ Incarceration**



<sup>10</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders*, CRIMINAL JUSTICE HANDBOOK SERIES, 2012.

<sup>11</sup> UNICEF, *UNICEF Toolkit on Diversion and Alternatives to Detention: “Learn more about restorative justice.”*

<sup>12</sup> UNICEF, “Child Protection Information Sheet: Children in Conflict with the Law,” accessed October 11, 2020.

<sup>13</sup> United Nations Office on Drugs and Crime, “Rehabilitation and Social Reintegration of Prisoners,” *The Doha Declaration*, n.d.

<sup>14</sup> UNAMA Rule of Law Unit, “Assessment of Afghanistan’s Juvenile Rehabilitation Centers,” 2016.

<sup>15</sup> Samuel Hall, *Hope Behind Bars: The Boys of the Kabul JRC.*

### 3.3. The Afghan justice system and incorporating 'alternatives'

Despite improvements, **the current Afghan juvenile and women's justice system faces numerous structural problems.** Often service provision does not fulfil the provisions of the law, and most Afghans lack access to justice institutions.<sup>16</sup> The justice system is further complicated by tribal and informal justice systems often used at the community level,<sup>17</sup> and additionally, by divergent forms of justice utilised by anti-government elements (AGEs) in areas no longer controlled by the government.<sup>18</sup> Corruption and maltreatment of detainees have been reported; women and children in contact or conflict with the law in Afghanistan, specifically, have been found to be disproportionately marginalised.<sup>19</sup> Women and girl children also face an additional set of challenges, including limited access to or representation within formal justice systems<sup>20</sup> as well as the possibility of sentencing for 'moral crimes'<sup>21</sup> and high rates of gender-based violence that increase vulnerability.

#### The development of 'alternatives' in Afghanistan

The 2018 inclusion in the Penal Code of alternatives to detention followed from advocacy from non-government organisations for such options in previous years. Past research had flagged the limited options for, and use of, alternatives for detention in juvenile justice, noting also that the limitations of the prior legal frameworks led to informal alternatives being used in some cases, with limited uptake of those formal alternatives that did exist.<sup>22</sup>

A 2013 report from CIC and WarChild UK highlighted the growing number of children being placed in JRCs. It noted at the time that a key factor in the limited use of alternatives to detention was the lack of knowledge or awareness around their existence and use from the justice sector.<sup>23</sup> Further research examined this trend, noting that:

*"[a]lthough the United Nation Convention on the Rights of the Child (UNCRC) and the Juvenile Code of Afghanistan specify that detention and incarceration of children should be used as means of "last resort," official data indicates that in many instances, they are the first recourse of justice professionals."*<sup>24</sup>

This was further highlighted in a CIAI report, which identified many cases of children in detention who could have reasonably been referred to alternatives: over a quarter of boys in their research sample who were in detention were eligible for alternatives.<sup>25</sup> This underuse of alternatives for CICWTL, combined with the known negative impacts of detention in JRCs, highlights how positive a move the update to the Penal Code in 2018 and ongoing efforts to support the uptake of alternatives are for both CICWTL and WICWTL.

#### Current Alternatives to Detention and Incarceration

The Afghan Penal Code now outlines a number of Alternatives to Detention,<sup>26</sup> detailed primarily in Articles 109 and 112. The most commonly used among these appear to be submission to parents, home confinement, or suspension of punishment. These apply to children – defined as a person who has not reached the age of 18 – who are criminally responsible from the ages of 13 and above.<sup>27</sup>

The Afghan Penal Code also lays out a number of Alternatives to Incarceration or Imprisonment (AtIs) that apply to adults – and therefore, women in conflict with the law – in the justice system, including probation, home confinement, deprivation from social rights, and performing community services.

Both AtDs and AtIs are further detailed in Annex 2 of the criminal procedure codes.<sup>28</sup> However, research for this report

16 UNDP Afghanistan, "UNDP Project Summary, Afghanistan," 2014.

17 The Asia Foundation, "Afghanistan's Justice System," 2009.

18 Ashley Jackson and Florian Weigand, "Taliban Courts in the West and North-West of Afghanistan," Briefing Note, 2020.

19 Children in Crisis, AWEC, and Tabish, "Interim Report: To Support Women and Children in Conflict with the Law: Diversion, Rehabilitation and Reintegration," December 2017 – November 2018," 2018.

20 Samuel Hall and World Bank, "Gender and Justice Study: Obstacles to Justice," 2013.

21 Heather Barr, "I Had to Run Away": Women and Girls Imprisoned for "Moral Crimes" in Afghanistan (New York, NY: Human Rights Watch, 2012).

22 Kimberley Motley, "An Assessment of Juvenile Justice in Afghanistan" (Terre des Hommes, n.d.).

23 Children in Crisis and WarChild, "Implementing Alternatives to Detention, 'Community Sanctions', for Children in Afghanistan," 2013.

24 Mohammad Amin Mahmood and Valerie Wattenberg, "Non-Custodial Measures for Children in Conflict with the Law in the Afghanistan Justice System" (Terre des Hommes, 2015).

25 CIAI and Aschiana, "Juvenile Justice - The Rights of Boys and Girls in Conflict with the Law in Afghanistan," 2016.

26 Islamic Republic of Afghanistan Ministry of Justice, "Official Gazette # 1260 Special Issue MAY 15, 2017 Penal Code" (n.d.).

27 Supplementary Interview, Children in Crisis.

28 Key Informant Interview #2

suggests that some of these alternatives are being used very rarely, if at all, due to factors ranging from major resource challenges and related structural limitations to lack of clarity on key factors that could facilitate implementation. Further, they appear to be used even less for WICWTL than for CICWTL.<sup>29</sup> Understanding the challenges and barriers is further complicated by limited evidence after the new 2018 Penal Code.

The sentencing process begins in the Primary Court but may go on to the Appeal Court or finally, the Supreme Court.<sup>30</sup> Importantly, alternatives can be applied at any stage of sentencing – and as this report will go on to note, are notably being applied after an initial sentence of detention or after initial sentencing to the Open JRC, highlighting how detention in fact remains the 'first recourse' for the Afghan justice system.

### **Commission of Misdemeanor by a Child - Article 109:**

If the child commits a misdemeanor, the court may order one of the following measures:

1. Submission to parents;
2. Home Confinement;
3. Delay of the trial;
4. Suspension of punishment;
5. Sending to special social services organizations;
6. Performance of community services;
7. Confinement in open center of JRC;
8. Confinement in closed center of JRC.

## **4. ATDS & ATIS IN AFGHANISTAN**

This section presents Samuel Hall's findings from primary research, drawing on qualitative and quantitative findings to highlight how alternatives are currently being used and understood. Broadly, the research found that alternatives were largely positively experienced or perceived, despite limited awareness of their existence, but they remain underutilised for CICWTL and WICWTL.

### **4.1. Sentencing WICWTL & CICWTL**

The foundation of sentencing for women and children in conflict with the law is the legal frameworks that apply during these processes – primarily the Afghan Penal Code. Exploring what happens in practice, however, showcases gaps between the 'theory' of law and policy and the 'practice' of the legal system. Broadly, Alternatives to Detention or Incarceration can be applied to those who commit 'minor' crimes such as misdemeanours (though the applicable categories vary slightly for CICWTL).

There are however a range of crimes to which alternative sentences cannot be applied (laid out in Article 10 in Annex 2 of the Criminal Procedural Code) which includes crimes of security, terrorism, molestation, corruption, war crimes, crimes against humanity, violence against women, smuggling, murder and kidnapping.<sup>31</sup>

### **Sentencing children**

In practice, children's sentencing is governed not only by the Penal Code, but by other codes – namely Annex 2 of the Penal Code, the Juvenile Code,<sup>32</sup> and the current legislation on prison affairs.<sup>33</sup>

Beyond these, a number of additional steps can apply to a child's sentencing, and alternatives to detention can come into play at various stages of this process for a child:

*"We have two [ways to apply] AtD – [in] court, and after court which are sentence amendments. Based on the penal code, all children who have committed a crime and whose imprisonment is less than 5 years should be considered for an AtD. The social workers fill out an SIR (Social Inquiry Report) and request that they be considered, and then attend the hearings where they would try to lobby for AtD. After court, when children are*

<sup>29</sup>Note that as a result of the research locations and sample, less information was collected regarding Alternatives to Imprisonment / Incarceration and the particular challenges faced by WICWTL.

<sup>30</sup>CIAI and Aschiana, "Juvenile Justice - The Rights of Boys and Girls in Conflict with the Law in Afghanistan."

<sup>31</sup> See Article 95-114 and 148-202 of the Penal Code for further detail on the applicability of AtD and AtI sentences

<sup>32</sup> Key Informant Interview #2

<sup>33</sup> Supplementary Interview, Children in Crisis.

*convicted to Closed JRC, if the sentence is less than 1 year, if the JRC (Juvenile Rehabilitation Centre) officials think the children are promising they identify children who could be considered for AtDs after sentencing, cases are referred to a relevant court where they can revise their verdict and possibly be diverted to AtDs. From a one-year sentence, if they are in JRC for 3 months, they are eligible to be considered for AtDs.”<sup>34</sup>*

The process of completing an SIR is a vital one, as it provides a great deal of information to support another key element of this process, namely the decision making of prosecutors and judges. The advocacy of social workers and defence lawyers, and the work of social workers in completing these SIR forms, was highlighted as a vital element supporting AtDs. Police were rarely noted as playing a positive role in this process, though this may depend on the Police Department where a child is arrested. Family also plays a critical role in the application of alternatives to detention:

*“It is a prerequisite of AtD that parents and children consent – the court cannot convert the sentence without this. If families do not accept, the AtD can be rejected and the court must revise the verdict. We see this happen a lot.”<sup>35</sup>*

**Figure 5: Potential Pathways to AtDs<sup>36,37,38</sup>**

The support of families can be a make-or-break factor in whether children are able to be diverted or sentenced to an alternative to detention, as they must provide guarantee letters in some cases, and further may have to provide financial support for transportation to facilitate presence at an Open JRC, community service, or in relevant rehabilitation and reintegration programming. Finally, the JRC itself plays a role in the process, engaging in particular during appeals processes and when children may be assessed for good behaviour and subsequent eligibility for alternatives to detention.



34 Key Informant Interview #3  
 35 Key Informant Interview #3  
 36 Key Informant Interview #4  
 37 Key Informant Interview #3  
 38 CICW/TL Case Study (Balkh) #13

The sentencing process itself reportedly has improved in speed but can take a number of months, depending on the case and location.

*"The speed of this process has become better than the past, especially for children."<sup>39</sup>*

*"When a child is arrested through police stations the police have the authority to remand them for 72 hours, after this if they have evidence of guilt the case should be referred to prosecution, and the prosecution should go to Juvenile Court within about 3 weeks, from where it should be fulfilled in 10 days. But in practice, it can take around 2 months."<sup>40</sup>*

Reports from key informants varied on what the most common option actually was. However, the research overall suggested that either simply going straight to a 'lighter' AtD sentence or being first sentenced to the Closed JRC then transferred out for a lower grade of sentence, were the two most common scenarios.

In terms of treatment during arrest and sentencing, few respondents reported poor treatment during their arrest and



A child in conflict with the law poses for a photograph at the Kabul JRC.

sentencing if they had been engaged in an AtD or AtI (only 35 out of 197 respondents said they had been treated 'not very well', and 3, 'very badly'). However, many more reported it in the Exit / Entry Survey<sup>41</sup> which also engaged with CICWTL and WICWTL who did not receive an AtD or AtI (where 75% answered 'not very well' when asked how they were treated during their arrest and sentencing).

Some respondents, including family of CICWTL and CICWTL themselves, also reported requested bribes or beatings during this time when interviewed for qualitative research. This suggests how critical it is to have support during this arrest and sentencing period – and how much of a difference the support of social workers can make for protection outcomes, as well as ultimately rehabilitation and reintegration outcomes.

## Sentencing women

Alternatives to Imprisonment which apply to adult women – WICWTL - include forms of community service, home confinement, mandatory participation in rehabilitation programming, and deprivation of social rights.<sup>42</sup> Women are sentenced as adults, with no specific legal provisions, although crimes linked to violence against women are treated differently:

*"If he or she is above 18, they come under the adult category and will be dealt with based on the criminal procedure code and the new penal code. However, there is an exceptional case that women shall not be put in detention centers if women commit a crime as a result of experiencing violence against women – then they go to the Elimination of Violence Against Women (EVAW) Unit which works in the structure of MoWA and Attorney General."<sup>43</sup>*

The 2018 Harassment legislation led to the establishment of a commission led by MoWA which has provincial offices in all the provinces where women can refer to and complain of harassment cases in both public and private sector. It further can put them in contact with NGOs, which can mediate in collaboration with local organisations, or refer the

<sup>39</sup>Key Informant Interview #4

<sup>40</sup>Key Informant Interview #3

<sup>41</sup>The Entry / Exit Survey was conducted with WICWTL and CICWTL in both Mazar-e Sharif and Kabul when they were either 'entering' or 'exiting' their sentence, in this case meaning at the beginning or ending of their sentence. Attitudes that are discussed in this report as being 'at entry' indicates respondents who had just been sentenced, but not yet experienced either detention / imprisonment or an AtD / AtI, while 'at exit' refers to those who had completed their sentence.

<sup>42</sup>Key Informant Interview #1

<sup>43</sup>Key Informant Interview #1

case to the Attorney General's Office. In some cases, women may also be sentenced through a specific court, under the Personal Affairs Division, where sessions are confidential.<sup>44</sup>

## 4.2. Use of AtDs and AtIs

Figure 6: Different forms of AtD

	Submission to parents	Home Confinement	Delay of trial	Suspension of punishment	Special social services organizations	Performance of community services	Confinement in Open JRC
Form of AtD	Both commonly reported but overlapped in how they were understood by CICWTL and families		Not reported as used during research	Reported by some CICWTL and families.	Never reported as used – and some reported confusion about what this meant	KIs suggested that there have been extremely limited cases of this due to lack of required support mechanism & funding.	Most CICWTL and their families were aware of this, but important barriers to its use were noted.
	These 'lighter' options appeared to be common either as a first sentence for some CICWTL or received on appeal or good behaviour.						

### Use of Alternatives to Detention

*"I don't know about the past, but recently the terms of AtDs have gotten better for the children in conflict with the law [...] the courts try to help the children and their families - but it's not enough."<sup>45</sup>*

The ratios of AtD participants to those in detention found in the quantitative Exit / Entry Survey conducted suggest that uptake of AtDs is still limited, with only around 40% reporting having been sentenced to an AtD – despite the fact that many of those who were not sentenced to an AtD had committed misdemeanours, which would likely leave them eligible for alternatives. For those in that group who reported having been sentenced to an AtD, the most common forms were home confinement or surrender to parents or guardians, although several instances of community service were noted.

The qualitative research included participants from most forms of AtD – in particular home confinement, suspension of punishment, the Open JRC, as well as issuance of warnings. It was in some cases not fully clear what form of AtD a child had been sentenced to based on their own reporting, suggesting that there is some lack of clarity on the options for CICWTL, at least in the eyes of those benefiting from them. For instance, there was a great deal of overlap in how suspension of punishment and home confinement were described, with most children simply saying that they had gone home to stay with their parents. While the Open JRC was noted as being used, it was not the mostly commonly discussed or used option – though for the Open JRC, however, capacity limitations may also come into play.

Key informants also had conflicting ideas about what forms of AtD were being used the most, though most agreed that lack of awareness, coordination and resources were the major factors limiting their use. This landscape demonstrates the widely recognised challenges that the government and the justice sector are facing in implementing AtDs, captured in a number of previous reports and evaluations. With multiple actors playing a role, and in particular, multiple ministries engaged including MoLSA, MoJ, and MoI among others, coordination has been a noted challenge, as has funding and resourcing, the lack of which continues to undercut the potential positive impacts of alternatives to detention and incarceration.

CIC has been engaged in advocacy for putting community services as form of AtD into practice as to date, their use remains limited. CIC has liaised with Kabul Municipality and MoLSA on this issue, and Kabul Municipality has pledged to bring a list of community services which they can support to the MoLSA, who will share this with the Supreme Court. These ongoing efforts represent positive steps towards further uptake, and a shared recognition that some forms of AtDs and AtIs are practical and positive but require further support or structural changes for implementation. The existing draft guidelines for community services would allow for this alternative to be applied to services in education, health,

<sup>44</sup> Key Informant Interview #3

<sup>45</sup> Community Focus Group Discussion #13 (Kabul)

agriculture, production and services industries, and to be hosted by a range of organisations. These could include ministries and government bodies, directorates, commissions, municipalities, charities, orphanages, workshops and factories, the Afghan Red Crescent Society, and traffic administration, or other institutions at the court's decision (with the exception of legal, judiciary, security and intelligence institutions). It will require that institutions report regularly on their capacity to host and what activities those sentenced could perform, and courts will be able to consider both this capacity and the skills of the person being sentenced when considering their placement.

Overall, as this report will explore in more detail later, family and participant attitudes reported were broadly positive as AtDs were seen as allowing:

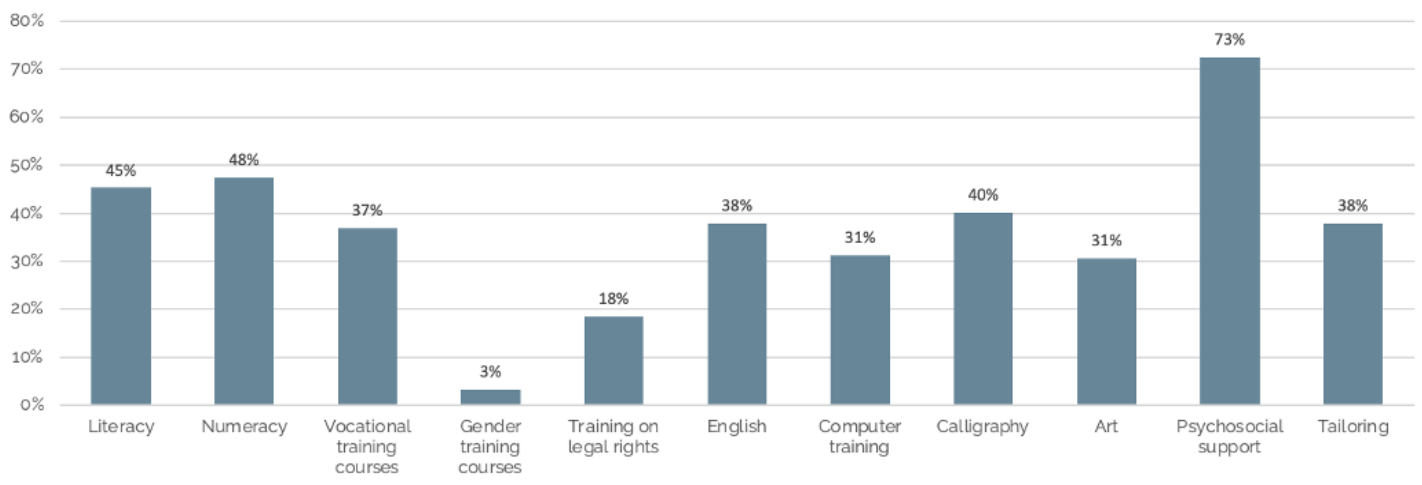
- Children to be at home;
- Children to help support their families;
- Children to go to school; and,
- To avoid communities knowing children's status as CICWTL.

CICWTL unsurprisingly were most positive about any AtD where they had been able to go home to their families and go back to school, as were their families. The Open JRC was not seen as particularly positive, compared to other AtDs, though some CICWTL and families acknowledged that it was better than their experiences in actual detention (for instance, in cases where CICWTL were transferred on appeal from detention to the Open JRC). Cost for families, in particular, was noted as a disadvantage of the Open JRC.

### Services available during AtDs

Most qualitative respondents reported having had good access to a variety of services, both in detention and during AtDs. Specifically, respondents reported varying degrees of access to a range of services including education, vocational training and psychosocial support.

**Figure 7: Responses to "Did you have access to education, including classes like literacy or numeracy, or general education, or to any vocational or skills training? Which?" (Multi-answer) - Past AtD/AtI Survey**



When participants had noted a service, they tended to list it as being always or almost always available – suggesting that provision of services, when it did exist, was fairly regular. However, in many cases, CICWTLs respondents who answered the Past AtD / AtI Survey had also experienced detention; as a result, many did not distinguish between the services they had access to during detention versus those that may have been available during the time they were sentenced to an alternative of some kind. Thus, some programmes referred to (in particular rehabilitation-type programming) may not form part of AtDs.

## Use of Alternatives to Incarceration

Cases of women being sentenced to AtIs are reportedly extremely limited – few were identified through this research, and multiple interviewees working in the justice sector noted in KIs that they are either not being used or being used very infrequently.<sup>46</sup> In fact, some of the interviewees working in the justice sector, including NGOs providing support services, noted that they were not aware of any cases of AtIs being used for women in locations where they worked,<sup>47</sup> highlighting the rarity of their use.

*"...my mother has been sentenced to suspended detention.<sup>48</sup> She was really sick as she has diabetes and her lawyer really helped her. He presented all her prescriptions to the court and asked for an AtI, and the court ordered suspended incarceration."<sup>49</sup>*

*"Yes, I have been sentenced to an AtI and currently I am at home under incarceration and my sentence hasn't been completed yet. I have been sentenced to 8-months incarceration. After I was detained, I was kept in Kabul police headquarters for 25 days and then I was sent to Pule Charkhi prison, women's section, and I was kept about 2 months there. After that, I was sentenced to an AtI at home during my second trial and currently I am living with my children."<sup>50</sup>*

Of these few cases of alternatives to incarceration usage identified in this research, WICWTL and their families mostly reported instances of suspended incarceration and home confinement.

### 4.3. Rehabilitation and reintegration programming

There is significant overlap between the general services provided during AtDs and AtIs and strict rehabilitation and reintegration programming – in many cases, the former are considered to be a type of rehabilitation programming. Rehabilitation and reintegration programming, largely made up of education and vocational training, were widely regarded as critical and having had positive impacts but are often narrow in scope and limited in resourcing. 9% of CICWTL respondents in the Past AtD/AtI Survey said that they had attended rehabilitation programming, mostly focused on education or vocational training (see Figure 7 for example) but which they noted as also including sports, counselling, literacy programmes, and various forms of vocational training.

Children who had experienced detention (as reported in the Entry / Exit Survey) stated having participated in rehabilitation programming ranging from English classes, to computer training, calligraphy, psychosocial support and bag-making.



A child in conflict with the law poses for a photo in the Kabul JRC.

In addition to these, depending on their location, CICWTL and WICWTL may have access to a range of additional rehabilitation and reintegration services supported by NGOs such as CIC / Streetchild, WarChild UK, Terre Des Hommes, AWEC and Tabish, among others. While it was often not clear for those receiving them, there is a distinction between rehabilitation programming which is offered during detention or incarceration and the other services that CICWTL and WICWTL may have access to during their sentencing, experiencing an AtD or AtI, and after their sentence has been completed.

<sup>46</sup>Key Informant Interview #2 & #9

<sup>47</sup>Supplemental Interview, CIC and Key Informant Interview #2.

<sup>48</sup>Note that while this research participant refers to 'suspended detention', this is not a specific sentence in Afghanistan. Many participants did not accurately refer to the form of sentence they had received, or in some cases during qualitative research did not specify their sentence. This lack of clarity on the system was seen across the research.

<sup>49</sup>Family Interview #16 (Balkh)

<sup>50</sup>WICWTL Case Study (Kabul) #29



## 5. ASSESSING GAPS, OPPORTUNITIES & BARRIERS

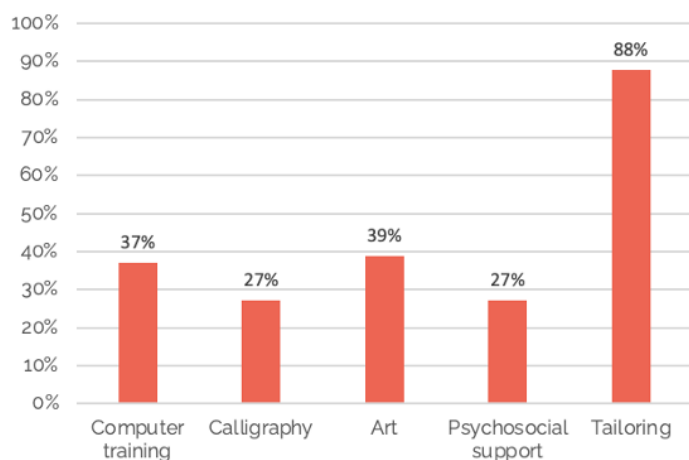
This section considers the key barriers and challenges to continued implementation of AtDs and AtIs and identifies positive impacts found during research and the opportunities to build on them further that these represent.

### 5.1. Perceived positive impacts of AtDs and AtIs

Among WICWTL and CICWTL, feelings about being sentenced to AtDs or AtIs were generally positive:

- The most common reason given being 'because it is easier to go back to life after', which nearly all respondents noted as being the case in the Past AtD/AtI survey.
- Nearly all Past AtD respondents (97.5%) said that they thought being sentenced to an AtD had improved their ability to return to their lives.
- Responses in the Exit/Entry Survey considering the experiences of CICWTL and WICWTL who had been in detention or incarceration were more mixed, with more positive attitudes during Exit surveys, at which point they were more likely to have actually experienced the alternatives themselves.
- A large proportion of Entry/Exit respondents, specifically those exiting who had experienced an AtI or AtD, said that they felt being sentenced to an AtI or AtD had improved how well they could return to life. When they were not positive about AtDs or AtIs, it was primarily because they did not feel they would get the support they needed.
- Similarly, Exit respondents in the Exit/Entry Survey reported being overwhelmingly positive about their future, most commonly due to support received from family and friends (28.4%) but also due to support received during detention from NGOs (26.2%) - less though not significantly so was rated expected support in the future from either NGOs or family/friends.

**Figure 8: Responses to 'What kinds of (rehabilitation or reintegration) programming (did you have access to?)' in Past AtD/AtI Survey (n=471; multi-answer)**



**(72%) in their ability to reintegrate** and that they felt that they had 'very successfully' (67%) or 'successfully' (32.5%) returned to their lives, with few of this cohort reporting challenges in reintegration. Most had returned to work or school (88%). Many reported the positive impacts of having access to ongoing school or education opportunities during AtDs (either through learning facilities in the Open JRC, or being able to attend school regularly due to receiving sentences allowing them to live at home), and how important it was to be able to return to school and be able to help support their families once granted an AtD or AtI. In some forms of AtD, many CICWTL were essentially able to go on with life:

**Perceived ability to reintegrate was an important measure of how positive or negative CICWTL and WICWTL felt across the board**, as was expected support from family and friends. Entry respondents in the Exit/Entry Survey reported being largely positive about their futures after their sentence, attributing this most commonly to knowing they would have the support of friends and family (53.4%). Respondents to the Past AtD/AtI survey confirmed the importance of such support, with most of those who reported feeling positive about their future explaining this as stemming from support received during their sentence from either family/friends or NGOs (as compared to support they expected to receive after).

Most CICWTL surveyed in the Past AtD/AtI Survey (88%) had also taken part in some form of reintegration programming (as well as ongoing rehabilitation programming, with limited ability to distinguish between the two) after their sentence had been completed. These **respondents reported that they felt these programmes had made a 'big positive difference'**

*"Now that I have been sentenced to an AtD, I live at home with my family. I am spending my two years of delayed sentence at home. I have returned to my normal life and I work so that I can help support my family as my father has passed away and my oldest brother is a cleaner at a public hospital; my brother's pay is not enough for our family so I also work [...]. When the winter break is over, I will return to school and continue my studies."<sup>51</sup>*

Another key positive impact noted by participants in AtDs and AtIs and their families was being able to stay close to family and familial support, noting subsequent better mental health and wellbeing and improved reintegration outcomes.

*"Instead of spending all my time behind the gates of the JRC and behind the doors of government offices, now I can address his rehabilitation. He can continue his lessons in a good and calm atmosphere, and he lives happily with his family and can continue his education. Now my son's mood has changed a lot because he is with his family and he is far away from what people say, he is in the community, and all this has caused me to make efforts for his rehabilitation."<sup>52</sup>*

CIC staff who work regularly with CICWTL highlighted how the sentencing process can be extremely stressful for children, who often experience stress, anxiety, irritability and fear – all symptomatic of psychological stress reactions. Arrival in the JRC can often manifest with symptoms of acute stress disorders which lead some children to suicidal ideation or attempts, though these are often temporary and depend on a child's coping strategies and access to early PSS services, when available. Lacking these kinds of support, psychological distress may become chronic. Being in a correctional centre also can lead to long-term effects: being separated from family, CICWTL lose a key support structure and can impact their attachments, resources and perceptions, their beliefs and confidence in family, as well as their future and purpose, and affect their decision-making. In comparison, children who have experienced AtDs were reported to have shown a significant improvement in mental health when they re-join family, though the nature and extent of this improvement depends on some factors like family conditions, their attitude about their child's sentencing, and so on.<sup>53</sup>

*"When the judge sentenced that I can go home with my father, my hopelessness, sadness and worry decreased and I was really happy. I imagined my mother who I really missed."<sup>54</sup>*

Overall, while it is clear that rehabilitation and reintegration programming does offer important support to CICWTL and WICWTL, alternatives to detention and incarceration provide a greater benefit that was highlighted not only by the participants who had experienced them and their families, but also by the contrast between the reported experiences of those who had experienced alternatives and those who had experienced detention or incarceration. **Rehabilitation and reintegration programmes may indeed be able to mitigate some of the negative impacts of detention and incarceration – but alternatives to detention and incarceration provide a means to avoid them altogether.**

## 5.2. Barriers & challenges to AtD / AtI implementation



CICWTL participate in a class at the Kabul JRC.

This research notes a range of structural, financial, social and legal factors that limit the effectiveness or implementation of AtDs and AtIs – limits which also apply to rehabilitation and reintegration programming provided during sentences in detention and incarceration facilities.

Such challenges present a major barrier to positive rehabilitation and reintegration outcomes, to which AtDs and AtIs contribute. Key barriers include funding and resourcing challenges, the need for improvements to sentencing processes, limited awareness and understanding of alternatives, the critical nature of family support, and major gendered challenges. Section 5.1. discusses these challenges, which along with the opportunities and positive impacts outlined in Section 5.2. will form the foundation for the recommendations presented in Section 6.

<sup>51</sup> CICWTL Case Study (Balkh) #12

<sup>52</sup> Family Interview (Kabul) #17

<sup>53</sup> Supplemental Interview – CIC (Psychosocial).

<sup>54</sup> Case Study, Child Mental Health Assessment (CICWTL in home detention) – provided by CIC.

## Major and ongoing funding, resourcing and coordination challenges limit the implementation of AtDs and AtIs

This research frequently highlighted resourcing as a major hurdle for the implementation of AtDs and AtIs and of rehabilitation and reintegration programming. This is the case in a variety of ways:

- There is insufficient funding for capacity building and awareness raising among justice sectors actors
- There is a significant need for more social workers - reintegration programming, for example, is extremely valuable but an intensive process requiring trained social workers.
- There are mixed levels of rehabilitation programming available to CICWLT during AtDs

This need for improved resourcing, funding and coordination is further underlined by the fact that, as many interviewees noted, much of the support and funding for programming on AtDs and AtIs is led by NGOs and the international community. The Government has as yet been unable to resource some existing commitments, let alone any further funding, posing a threat to the sustainability of these efforts and challenging their expansion. It was noted often that there was a need for a greater specific and dedicated budget for AtDs in order to support implementation, and that the lack of such funding was a key barrier for courts in terms of using AtDs:

*"... due to the lack of budget; courts do not provide ATDs for children as they are afraid if the child's family does not accept it and cannot afford the transportation costs for the child."<sup>55</sup>*

For some forms of AtD, budgets for food have become an issue, as has the ongoing challenge – noted as a major hurdle in previous reporting on AtD implementation programming and seen in this research also<sup>56</sup> – of transportation costs for children to the Open JRC or some other forms of AtD. Providing these forms of support is essential, as it ensures that level of income is not a decider of a WICWTL or CICWTL's ability to engage with an alternative. Failure to do so constitutes a form of discrimination against poorer WICWTL and CICWTL, who may then be more likely to be sentenced to detention or incarceration and experience their negative impacts, simply because they lack the resources to engage in alternatives to detention or incarceration.

Programming actors also routinely highlighted the lack of resources as a major barrier. Limited resources impact the ability of courts to utilise AtDs in the first instance, and the impacts their monitoring and the quality of services provided to those engaged in AtDs.

*"In most of the cases, these ATDs are implementable, but courts also have some concerns, such as that the court cannot rely on MoLSA - because if the court decrees the social services ATD for a child, MoLSA may not accept this child."<sup>57</sup>*

Interviewees noted the need for resources to support pre-sentencing processes, such as reporting and monitoring of outcomes but also of behaviour, for judges and other justice system actors.

*"Resource allocation is also key – government don't value the importance of AtDs, but lack of resources is also a factor, not just unwillingness. [...] Any programme requiring funding is difficult for the government."<sup>58</sup>*

This is a particularly critical element needed to empower courts and judges to feel comfortable utilising AtDs. Lacking resources means that many forms of AtDs are not practically viable. Judges are unlikely to feel comfortable giving a sentence when they cannot be certain that it is enforceable. As will also be noted in the Recommendations section of this report, resourcing is a vital enabler for WICWTL and CICWTL, their families and society as a whole to reap the benefits of alternatives to detention and incarceration. This research evidences how the frameworks alone are not sufficient. There are also clear staffing gaps: the same respondents also noted a need for probation and parole officers in particular, while NGO partners highlighted the critical role of social workers. The need to further support additional education programming, vocational training and psychosocial support were all regularly flagged by interviewees, both in reference to those in detention or incarceration and most relevantly here, for those who are sentenced to AtDs and AtIs.

<sup>55</sup> Key Informant Interview #8

<sup>56</sup> Samuel Hall and Children in Crisis, "Safer Children, Safer Communities: Putting the Juvenile Code into Practice," 2017.

<sup>57</sup> Key Informant Interview #5

<sup>58</sup> Key Informant Interview #2

Justice sector programming actors called for improved monitoring and reporting of AtDs. This includes:

- Collecting better and more accurate data across the system;
- Continuing ongoing monitoring at an individual level – tracking CICWTL and WICWTL through improved and greater capacity in case management; and,
- Strengthening system-level capacity to perform monitoring and evaluation and allow for learnings that can improve outcomes.

Finally, some respondents highlighted the need for better use of and access to, such data, which needs to be accessible to justice sector actors such as prosecutors, judges, and lawyers to allow for informed decision making, as well as to policy makers to support the management of these processes. Of particular note is the fact that the current lack of information critically limits the ability of judges and prosecutors to confidently sentence people to an alternative.

*".. lack of a monitoring / observation committee. This committee is dictated in the law to oversee these children but has not yet been established. [As a result] the judge does not know whether his verdict is being implemented or not, lacking a proper reporting mechanism. According to Article 56 (Annex II to the Criminal Procedure Code), the monitoring / observation committee should be established with representatives of 5 organizations (MoLSA, MoJ, Mol, the Attorney General's Office and the Supreme Court), and MoLSA should prepare a comprehensive procedure for AtDs based on article 65 – but none of them have happened yet."<sup>59</sup>*

*"The M&E supervision hasn't cleared yet – if they don't have this then they can't sentence to [AtDs], and this is the job of the Mol, MoJ and MoLSA. They should have a committee of supervision within 90 days but as of two years we still haven't seen this."<sup>60</sup>*

Another particularly critical example of resourcing challenges is the need for social workers to support these processes – currently provided almost entirely by NGOs like Children in Crisis. While the MoJ and MoLSA have committed to providing social workers, this support has not really materialised. Those few hired by MoLSA are not provided funding for the necessary travel and communications for their roles. Much of the AtD process hinges on social workers' support in completing SIR forms, advocating for children, engaging with courts and lawyers, and undertaking rehabilitation and reintegration support during and after sentences. Reintegration can be more difficult that many actors understand or imply, and the process is intensive and requires resources:

*"[Some organisations] have social workers - they go to the homes of these children, meet the adult's family members, visit the schools, meet with local community leaders in this regard. They are seeking solutions for the reintegration of these children. However, we are doing psychosocial support. We hear from the families what are their problems - for instance, if a child is arrested [and] parents are not happy with their child, we talk with them and listen to their demands and then we talk with the child and listen from him that what is the child demands from their parents, we provide an opportunity for dialogue between them. Our counselling process is intricate because it has its own set of principles, and we use different, specific types of counselling or psychotherapy to prepare the family to accept their child."<sup>61</sup>*

In fact, the most commonly and consistently reported challenge from the Exit/Entry Survey, many of whom did not have access to AtDs or AtIs, was that 'I did not feel like I had enough assistance in returning home / to my community afterward' – highlighting how much of a difference such support can potentially make.

Improved programming during detention and AtDs was also flagged by families, communities and social workers as an area requiring further attention and resourcing. As this report notes, while there is provision of services for CICWTL during AtDs, further support may be needed, in particular as the families of CICWTL may be unable to provide these opportunities for children themselves. Community members often mentioned the need for more vocational training and education programming.

Finally, the issue of coordination was mentioned by some interviewees. This is in line with previous reporting on AtD programming, which found major issues in terms of ownership, management and coordination as a result of the wide range of government (and non-government) stakeholders who bear responsibilities for alternatives to detention and incarceration and in terms of service provision within the justice sector more broadly.

<sup>59</sup>Key Informant Interview #1

<sup>60</sup>Key Informant Interview #3

<sup>61</sup>Key Informant Interview #6

## Improvements to sentencing processes and legal frameworks are still needed

A deeper legal analysis would be needed to identify the specific improvements to legal frameworks like the Penal Code that might further facilitate implementation of AtDs and AtIs. However, it is already clear from this research that a number of elements require strengthening. Notably, the fact that some forms of AtD are barely used – and that AtIs appear to be rarely used at all – suggests that adaptations and clarifications could be made to better reflect realistic alternatives or provide further guidance on how these can and should be implemented in the current context. However, this challenge may call as much for further sensitisation and capacity building or improved funding or resourcing.

International best practice guidelines similarly highlight the importance of legal reform, including ensuring adequate frameworks at every level and statutory requirement for implementation, but critically note also that “new legislation is not self-implementing.”<sup>62</sup>

In terms of how sentencing processes are actually carried out, respondents noted key challenges, including:

- The extremely bureaucratic parole system;
- The harsh sentences afforded for drug-related crimes;
- Limitations on when AtDs can be applied related to length of sentence;
- The inability to track or report on behaviour or outcomes during AtDs or AtIs; and,
- The current lack of support mechanisms, like Social Inquiry Reports, for vulnerable adults like WICWTL.

Finally, the point of arrest and period of sentencing seems to be critical in terms of protection issues. Many children go to the Closed JRC initially, only later being transferred out, thus diminishing the value of avoiding detention and promoting reliance on the appeals process which requires additional resources and support.

## Understanding and awareness of AtDs, AtIs, rehabilitation and reintegration is uneven and limited

A critical factor that this research explored was the knowledge of, understandings of, and attitudes towards AtDs and AtIs, towards CICWTL and WICWTL, and the perceptions of the impacts of AtDs, AtIs, and rehabilitation and reintegration programming. It is important to differentiate between (1) what people know of these alternatives, (2) what they understand about justice and the purpose of alternatives, and (3) what their attitudes are towards these options.

Broadly, a lack of awareness around AtDs and AtIs was noted on two levels. First, at the community level, where people had limited knowledge of AtDs and AtIs, and second, among justice sector actors, a critical group among whom knowledge and understandings of these alternatives are reportedly uneven. However, while understandings of justice and the purpose of alternatives were limited, they were not generally negative towards them.

### Awareness of AtDs and AtIs

Generally, among all those who participated in this research, knowledge of AtDs and AtIs was varied and fairly low. Some reported knowing of a few different kinds of AtD, usually in relation to children. Many in the community simply thought that AtDs meant home detention or a suspension of sentence.

*“Alternative to detention means when a child stays home with their family.”<sup>63</sup>*

In the Community FGDs conducted for the research, most often people reported either no knowledge, or minimal knowledge of some forms of AtD (and far less commonly, AtIs), usually framed as being allowed to stay at home rather than go to a prison or detention centre. About half of FGD participants had little or no awareness of AtDs or AtIs. Some noted that more educated people might know about them, but others simply said their communities were not aware of these options. While this may not be unusual for any context, given the limitations in the awareness of alternatives within the justice system, and their likelihood of being applied, this lack of awareness further limits the likelihood of alternatives being applied, with families and CICWTL and WICWTL not able to advocate for them.

<sup>62</sup> United Nations and Office on Drugs and Crime, Alternatives to Imprisonment, 76.

<sup>63</sup> Community FGD (Kabul) #16

When it comes to implementing AtDs or AtIs, families and communities had particularly positive feedback on home confinement over JRCs – either Open or Closed. It was clear that at community level, and to some degree among families also, people thought of AtDs or AtIs primarily as 'not going to prison', with occasional confusion around Open JRCs.

Families of WICWTL and CICWTL unsurprisingly had much higher levels of awareness about AtDs or AtIs. Most reported knowing more as a result of the process of going through sentencing with their family member who was a W/CICWTL, but that they had been unaware of them in the past:

*"I didn't have information about AtDs in the past, but after that my son was put under prosecution for the traffic injury, we were given information by the social worker in this regard and my son was also sentenced to an AtD."<sup>64</sup>*

As one interviewee noted, for many families and for both women and children in conflict with the law, awareness of AtDs dramatically increases as a result of exposure to the justice system.

*"... I think that until someone goes to the court or attorney, or has a case there, they won't know anything about AtDs."<sup>65</sup>*

Reported awareness was better among W/CICWTL, and their families, but even then, few tended to offer a great deal of detail on what constituted an AtD or AtI, with most mentioning home confinement or suspended sentences. Social workers were a very clear source of this information, and the most commonly reported way that families or CICWTL and WICWTL had heard of AtDs or AtIs.

*"When my son entered into the justice system, I got information about AtDs from the social worker. None of the institutions or justice system [actors], especially police, had provided me information about AtDs."<sup>66</sup>*



A teacher at the Kabul JRC instructs children in conflict with the law.

In terms of other sources of information on AtDs and AtIs, some noted lawyers had told families about them. Concerningly, it was most common to hear that police had not been aware of them. WICWTL and CICWTL mostly reported having learned about AtDs or AtIs during their sentencing – it was not uncommon for them to only know about the ones that had applied to them.

About a third of respondents in the Exit/Entry Survey conducted said that they had not been given or made aware of any option to avoid trial or sentencing such as an AtI or AtD. When they did say they were aware of them, it was most commonly of conditional suspension or home confinement. However, most of the participants in the Past AtD/AtI Survey had been made aware of the option for AtDs, likely due to the fact that almost all had received support from CIC during their sentencing.

**This reinforces the importance of social workers, as well as the limited awareness or support from justice system actors during sentencing, and how critical awareness of AtDs and AtIs can be in improving their uptake.**

The limited awareness of AtDs and AtIs among justice system actors, including prosecutors, judges, lawyers, and police, was regularly noted by interviewees in this research – the newness of the law, being brought in only in 2018, often being cited to explain it. As one interviewee noted, "[t]he AtD law is new, and most of the stakeholders do not know it, so we see problems on the provincial level."<sup>67</sup> This is not to suggest that there is no awareness at all, but more accurately, that it is likely to be very uneven, and concentrated among those who have received specific capacity building or training in regard to AtIs and AtDs. In particular for CICWTL, it may be strongest among actors who are focused on child justice and child protection rather than justice sector actors in the broader system who they might encounter during arrest and sentencing.

<sup>64</sup>Family Interview (Balkh) #14

<sup>65</sup>Family Interview (Kabul) #5

<sup>66</sup>Family Interview (Balkh) #9

<sup>67</sup>Key Informant Interview #1

*"The experience I got from the justice system in terms of AtD in my son's case was that they don't have proper information about AtDs in the justice system, especially police who thinks the place of a child in conflict with law is always the Juvenile Rehabilitation Centre, but fortunately child courts are careful in this regard and sentenced my son with AtD."<sup>68</sup>*

Past research on alternatives has highlighted the importance of improving community attitudes and levels of awareness. UNODC guidelines on best practices recommend the concerted promotion of alternatives, noting that **"while the public often appears to be highly punitive when asked about the punishment of offenders in general, it becomes significantly less so when given more detailed information."**<sup>69</sup>

## Understandings of rehabilitation and reintegration

As this report notes in Section 3, understandings of what constitutes rehabilitation and reintegration both practically and conceptually vary worldwide, and certainly on a country, community or individual level. There is no specific definition of what qualifies as rehabilitation or reintegration in law in Afghanistan.<sup>70</sup> While most participants in research were positive about rehabilitation and reintegration, this was not uniformly the case, and nuanced understandings of what rehabilitation might mean, and processes of reintegration, were extremely rare. Past AtD participants most commonly defined rehabilitation and reintegration this as being able to return to family and friends (35%); return to school/work and not reoffending were close seconds.

*"Rehabilitation means the rehabilitation of the child and also his behaviour with others to be good. We give the term 'rehabilitation' to the condition that rehabilitates a person - e.g. when a person commits a sin and makes a mistake, after realizing what he has committed, tries again to rehabilitate himself and regrets what he did and is rehabilitated and returns to his community."<sup>71</sup>*

There were a range of understandings of rehabilitation and reintegration. Some defined it simply as returning home from detention / incarceration. Overwhelmingly there was a strong connection cited between 'contributing to society' – that is, working and not reoffending - or even more simply, returning to 'normal life', significantly overlapping with ideas of reintegration.

*"... integration means reuniting and whenever a child commits a crime and is arrested by police and is transferred to rehabilitation centre and is away from his family, relatives and brothers and sisters for some time and after that his detention period is over or gets an alternative and reunites with the family is called integration."<sup>72</sup>*

Understandings of rehabilitation were often very instrumental, with some describing rehabilitation as just 'classes' that children took during their sentence. Additionally, a fair number of respondents described ideas of rehabilitation as 'learning a lesson', including some CICWTL themselves. In these cases, they would note that it was necessary that persons in conflict with the law not see AtDs as a 'light' sentence that might encourage or enable recidivism and that this was a possible concern around alternatives, that it may increase crime.<sup>73</sup>

Despite mixed openness to the effectiveness of rehabilitation, most appeared to believe that rehabilitation was possible and positive as an approach. Most participants generally seemed to see the idea of AtIs and AtDs as deeply connected to rehabilitation and reintegration, or to believe this was a logical relationship. Many noted the need for opportunities or ongoing learning and support after release to support integration.

## Attitudes towards alternatives and WICWTL / CICWTL

Generally, there were mostly positive attitudes towards the idea of AtDs and AtIs. Support was good in particular for home confinement for CICWTL, and attitudes towards the Closed JRC were negative for CICWTL and families alike. Virtually all of the CICWTLs who were interviewed for the Past AtD/AtI Survey reported that they thought AtDs were positive. Community members who participated in research were open to AtDs and AtIs, and many were concerned about the potential negative impacts upon children in particular of being in detention centres. Most reported seeing AtDs and AtIs as a good way to prevent someone from re-offending, rather than encouraging it.

<sup>68</sup>Family Interview (Balkh) #4

<sup>69</sup>United Nations and Office on Drugs and Crime, Alternatives to Imprisonment, 77.

<sup>70</sup>Key Informant Interview #3

<sup>71</sup>Family Interview (Balkh) #9

<sup>72</sup>Community FGD (Kabul) #3

<sup>73</sup>Community FGD (Balkh) #7

However, some research participants did qualify support, noting that AtDs and AtIs might be most appropriate for first or minor offenders, or for children in particular. Leniency was much more likely in reference to children – alternatives for adults, including women, were more debated, as these two different opinions raised in the same FGD demonstrate:

*"Children and women should be provided with alternatives to help them save their image and honour within the community."*

VS

*"I think there is more possibility for having alternatives for children because they are minors, but the women are adults and they know [better]. They should not commit crimes and if they do, they should be rehabilitated in prison, though there is also possibility of having alternatives for them."<sup>74</sup>*

This reflects attitudes towards CICWTL and WICWTL: while many were open to rehabilitation or restorative approaches, there were strong reported concerns around stigma for children in particular, suggesting commonly held negative attitudes towards persons in conflict with the law, and some participants noted disapproval for them. Some noted that if 'children are raised well' such problems might be avoided.

### **The fear of such stigma was a major concern for CICWTL and WICWTL, and their families.**

*"Our community were not aware about the imprisonment of our sister. If she would have stayed in the prison for a long time, our neighbours would have [said something]. Since she got [the] AtI, she is at home and we got rid of those problems."<sup>75</sup>*

This came across strongly in surveys with CICWTL and WICWTL - respondents in the Exit/Entry Survey who were entering their sentence cited fear of stigma reported as the most common concern about returning to life after sentence. Respondents who were exiting echoed this concern as the most common response, and Past AtD/AtI Survey respondents also reported this as the most common concern.

### **Support from, and attitudes of, family and community are vital**

The support of families for CICWTL was highlighted as being vital, but not always guaranteed. Programming actors highlighted that the reliance on families to support AtDs can be challenging, as some are either not willing or able to support them in the various ways that are needed for children to take part in AtDs. For instance, attending an Open JRC requires parents to ensure children reach the Open JRC each day, and some either cannot afford to transport them there, or cannot or will not take time out of their schedules to escort them. Families may often also be less supportive of efforts to provide education during AtDs, and rather focus on vocational training and the child's potential to help support the family, a strain of argument commonly noted among families and communities of CICWTL when discussing their rehabilitation and reintegration.

Finally, as noted earlier, while there are many positive attitudes to AtDs and many families who are pleased to have their children be able to take advantage of them, some retain a retributive approach to justice that sees children (or indeed, any person in conflict with the law) as needing to 'learn a lesson', or not being worthy of support. For children, such attitudes from family can prevent them from engaging in AtDs as families must act as supporters and guarantors – a role not all families are willing to play. Alternatively, in some cases, families may simply not understand the value of AtDs, or have the necessary awareness to advocate for them for their child – particularly if lacking support from a social worker or lawyers and judges who are familiar enough with these alternatives to offer them. Families may also wish to divert CICWTL or WICWTL to informal justice systems, where possible, limiting their support for formal AtDs or AtIs. Finally, poverty can play a very real role in limiting the capacity of even willing and open-minded families to support their children in engaging in AtDs

*".. once one of the children's mothers came to me and told me it was better when her child was in the Closed JRC than in the Open JRC, because then his brothers and sisters were sure that he was in the JRC. Now when he returns back home, her other children think that he has brought food or money. She asked me to release this child completely to work and bring money home, or just keep him in the [Closed] JRC."<sup>76</sup>*

<sup>74</sup> Community FGD (Kabul) #12

<sup>75</sup> Family Interview (Balkh) #16

<sup>76</sup> Key Informant Interview #4



## There are significant gendered challenges that have yet to be documented or addressed

This report sought to engage more deeply on the challenges faced by WICWTL in terms of accessing AtIs and their experiences of them. However, the very small number of women who had experienced AtIs in our sample (likely a direct result of the limited number of women who are receiving them at all) has limited findings on WICWTL. It is clear that the system of alternatives to imprisonment (or incarceration) may not be working as well for women – or indeed, for young girls – and appears to be much less commonly used for adult women, while adolescent girls are practically restricted in their options compared to boys (for instance, by the fact that there is no Open JRC for girls).

*“The Open JRC is available only to boys. Girls are more vulnerable and cannot travel like boys can on their own – this is for their protection. Moreover, a lot of charges against girls are because the girls have been ‘misguided’ – so their families are more sensitive to this. Now however, we have only 3 or 4 girls in the Kabul JRC – down from around 15 in past years – because now the Penal Code is better, and they receive more pardons.”<sup>77</sup>*

Additionally, as also noted earlier in this report, the issue of moral crimes is a significant challenge not explored here, and whose interplay with AtDs and AtIs is not clear based on existing research. This should be a priority for future research to consider the needs of the group of CICWTL that young girls represent.

## 6. CONCLUSION & RECOMMENDATIONS

This research, and other reports published prior to the new 2018 Penal Code which formalised the alternatives to detention and incarceration discussed in this report, have highlighted the depth and breadth of the challenges facing the Afghan justice system. In a context where the justice system is complicated by many other factors, and where many people have no access at all to justice institutions, it may seem that alternatives to detention are a low priority, or an unattainable goal.

However, research worldwide suggests that the challenge is one that must be taken on, and that alternatives must no longer be a ‘last resort’. **Alternatives to detention and incarceration are a critical step to protect child rights and create better outcomes for women and children in conflict with the law.** This research finds that in the Afghan context, as in many others, alternatives can have positive impacts at individual, community and societal levels. While rehabilitation and reintegration programming during detention or incarceration can offer benefits to WICWTL and CICWTL, these benefits must be weighed against the likely harms of detention or incarceration itself. By their nature, alternatives can to a great extent avoid these potential negative impacts.

Based on these findings, this report strongly recommends continued commitment to implementing alternatives to detention and incarceration for women and children in conflict with the law. This will require concerted efforts from Afghan government, including financial and other resources, as well as ongoing support from the international community to advocate, advise and support through programming, such as that which provided for this research.

Section 6.1. following provides a list of specific key recommendations, in response to the challenges identified in this report. These recommendations are not exhaustive but rather focus on elements that this research’s findings suggest are needed to facilitate improvements to, and continued use of, alternatives in Afghanistan.

*“Our community people don’t have any information about AtDs, and their education level is very low. It would be good if the organisations would **conduct programmes about AtDs for the community leaders and mosque clerics and through them provide public awareness to people about AtDs**, in this case no one would show negative attitudes towards people who have been in conflict with the law.” FI #23*

*“It would be great if **public awareness could be provided for people through televisions, seminars, workshops and other mediums** so that people should know about these terms not only in Kabul but also in other provinces.” FGD #11*

*“The government should work with families of the children in conflict with the law too, because they are not aware of their children’s rights and they have a very bad economic condition. There should be awareness sessions for the families and working opportunities for fathers or guardians of these children to solve the financial problems of their families, so the children don’t commit crimes.” KII #8*

<sup>77</sup> Key Informant Interview #4

## 6.1. Recommendations

Building on the findings of the research presented in this report, this section outlines key recommendations to improve and reduce barriers to the implementation of alternatives in Afghanistan.

### Recommendation 1. Improving resourcing, support and facilities

The need for a greater and ongoing commitment to implementing alternatives to detention and incarceration in Afghanistan is clear. AtDs and AtIs are evidenced to provide positive outcomes across a variety of areas, and are not only international best practice, but in line with international conventions to which Afghanistan is signatory, such as the UN CRC.

Furthermore, as some of the justice sector and government research participants noted, AtDs and AtIs can reduce costs in the sense that they do not require supporting the ongoing costs of detention or incarceration, which can be high and are borne by the government. While this argument is often made, and some research has noted very high costs for running JRCs,<sup>78</sup> it is not clear whether better implementation of AtDs and AtIs would reduce costs, especially given the funding challenges noted earlier. It would certainly **shift costs towards a better, more sustainable, rights-based approach to use of funding and resources.**

Recommendation 1.		
Recommendation	Actor	Justification
Improve services and facilities available during detention and incarceration	GoIRA	The positive impacts of such programme and services were highlighted, but past reporting has made clear that in many cases these are limited.
(Continue to) invest in social workers	GoIRA and NGOs	Social workers perform a vital role facilitating AtDs and investing in them will be key to any effort to expand use of AtDs, and AtIs. Currently there are insufficient actors to fully utilise AtDs and AtIs.
Make AtDs and AtIs 'no-cost' for C/WICTWL and their families	GoIRA	CICWTL and WICWTL should not be priced out of access to justice, and NGO / international funding is not a sustainable solution. Ensuring all AtDs / AtIs can be used where applicable regardless of income should be fundamental to their use.
Create mechanisms and resources to enable use of all legally prescribed forms of AtDs / AtIs	GoIRA with the support of NGOs and international community	Currently some forms of AtD / AtIs are not practically used due to a lack of required support systems, such as monitoring arrangements or guidelines / agreements for usage, as in the case of community service. Leaving these underutilised weakens the AtD/AtI legal apparatus and misses a significant opportunity for CICWTL and WICWTL to reap the benefits of AtDs/AtIs.
Allocate specific budget to cover the expenses of CICWTL, particularly the Open JRC and performing community services.	GoIRA	A key element needed to address these challenges is consistent, sufficient funding. Developing and ensuring specific budget lines to operationalise AtDs/AtIs consistently would allow for appropriate resourcing and subsequent increased uptake of AtDs and AtIs.

### Recommendation 2. Raising awareness of the existence and purpose of alternatives, building family and community support

Stigma around being in conflict with the law for both women and children is a clear issue – or at least, as this report notes, the fear of such stigma is very real among communities, families and CICWTL and WICTWL.

<sup>78</sup>Islamic Republic of Afghanistan Ministry of Higher Education and Herat University Legal Clinic, "COMPARATIVE STUDY BETWEEN ALTERNATIVES TO DETENTION AS AGAINST COST ON THE GOVERNMENT AND EFFECTS OF DETENTION TO CHILDREN," 2016.

However, AtDs and AtIs were seen by families as a good way to combat this stigma. Community attitudes also suggest openness to alternatives to detention and incarceration, meaning that improving community awareness in combination with increased uptake of alternatives could improve the reintegration and rehabilitation experiences of WICWTL and CICWTL.

Better awareness of AtDs and AtIs can also contribute to improved uptake, enabling CICWTL / WICWTL and their families to advocate for themselves more effectively, reducing reliance on the role of social workers and lawyers in bringing these options into play.

Recommendation 2.		
Recommendation	Actor	Justification
Conduct awareness raising activities across Afghanistan through C4D approaches that improve awareness of AtDs and AtIs	GoIRA and NGOs	Not only is stigma a major concern for families and C/WICWTL, but knowledge of AtDs and AtIs is limited at individual / community level. Better awareness of these options would allow C/WICWTL and their families to advocate for themselves even in cases where they may not have additional legal support, or where justice sector actors they are engaging with also are not aware of them.
Consider school-based programming to work with children to raise awareness about their rights, including module on rights when in conflict with the law	GoIRA and NGOs	This approach would enable CICWTL to advocate for themselves and also improve community awareness over time, likely contributing to reducing stigma.
Consider targeted awareness raising for areas where there are Open JRCs and where AtDs and AtIs are being most commonly implemented	GoIRA and NGOs	Engaging with C/WICWTL as well as justice sector actors in particular to ensure that all currently available forms of AtD in that area (for instance, an Open JRC, or community service arrangements) are utilised will facilitate increased uptake of AtDs and AtIs.
Use public health approaches / campaigns to work to reduce the stigma associated with CICWTL & WICWTL	GoIRA and NGOs	Education on legal rights and justice systems alone is unlikely to reduce stigma – engagement with communities on the purpose of utilising alternatives and the value of restorative approaches may help to reduce stigma experienced by C/WICWTL from both families and communities, and increase uptake and impact of AtDs/AtIs by garnering family and community support.
Increase provision of family counselling, including psychosocial support, to help families support C/ WICWTL	GoIRA, and NGOs, CSOs, international organisations	Families are known to be a key enabler for engaging in AtDs in particular. Providing support to families so they can in turn support W/CICWTL will improve outcomes overall, and may also increase AtD/AtI uptake.

### Recommendation 3. Improving legal frameworks, the judicial system and justice sector capacity

While the current justice system and the existing laws and legal frameworks provide a solid foundation for the implementation of AtDs and AtIs, the system's ability to support CICWTL and WICWTL and implement alternatives can be improved, as it currently lacks appropriate monitoring and engagement mechanisms.

Recommendation 3.		
Recommendation	Actor	Justification
Codify practical procedure for sentence amendment.	GoIRA	Sentence amendments were identified by legal / justice sector respondents as an area where clarification of procedure is needed to enable increased use of this option.
Adopt mechanisms to avoid corruption in sentence amendments	GoIRA	Ensuring that systems are fair and equitable is key to positive outcomes for all children, and introducing eligible children for sentence amendment is a key process.

Recommendation 3.		
Provide clear interpretation for existing ambiguities in the current AtD framework / legislation.	Supreme Court (i.e., GoIRA)	Ambiguities in legal definition are limiting the use of certain forms of AtD which judges, prosecutors and lawyers are not comfortable advocating for or utilising due to lack of clarity. <sup>79</sup>
Focus on continued advocacy and awareness raising regarding the existence, purpose and application of alternatives with justice sector actors	NGOs and CSOs	The role of justice sector actors - including court staff, judges, lawyers, prosecutors, police and any other relevant actors - is fundamental to any effort to protect W/CICWTL and increase uptake of AtDs/AtIs. Without their awareness, and buy-in, uptake of AtIs/AtDs will be inherently limited as it is their role to apply them and manage their usage. However, this research once again highlighted that this awareness is varied between types and locations of justice system actors.
Develop specific engagement mechanisms - including further training, sensitisation, or placement of social workers within police departments	GoIRA and NGOs	Police departments were noted as sites of limited awareness around AtDs/AtIs, and of risk of C/WICWTL being exposed to maltreatment including corruption and violence. Addressing this is an important protection issue as well as a potential enabler of improved outcomes for C/WICWTL.
Develop and implement fulsome monitoring mechanisms, in line with existing provisions, to better enable justice system to utilise AtDs / AtIs	GoIRA - with NGO, CSO and international organisation support	Monitoring is critical at two levels for AtDs and AtIs. 1) In case management, where better data on C/WICWTL improves the ability of justice systems actors to make decisions regarding sentencing. 2) Monitoring of outcomes at individual and system-level to ensure that issues can be identified and addressed, minimising risk and improving outcomes.
Implement broader use of Social Inquiry Reports - i.e., for WICWTL - to support increased uptake of AtIs	GoIRA	SIRs were noted as extremely useful for justice system actors involved in sentencing, and the expansion of their use as well as increased resources to gather information to contribute to them can be a strong enabler for justice system actors such as judges and prosecutors to take up AtDs/AtIs in sentencing with confidence.
Advocate for a renewed focus on AtIs for WICWTL - and uptake of AtIs more broadly	NGO, CSOs and international community	AtIs offer the same positive benefits to women who may have equal, if not different, levels of vulnerability when engaging with the justice system, particularly given known gendered challenges in existing legal frameworks. Broader use of AtIs for WICWTL is a positive step towards addressing the needs of WICWTL and the inequalities experienced by women in the Afghan justice system.
Review sentencing procedures that limit eligibility periods for alternatives	GoIRA and the justice sector	To increase the uptake of AtDs and AtIs, a broader eligibility criterion - for instance, a shorter period before qualifying for consideration for sentence amendment - should be considered.

## Recommendation 4. Developing a greater evidence base around the impacts of AtDs / AtIs and the processes of rehabilitation and reintegration

Current literature on the justice system in Afghanistan offers important lessons on the barriers to use of alternatives and the challenges across the justice system more broadly. However, the advent of changes to the Penal Code in 2018, as well as significant developments in the political and economic situation in Afghanistan during the last decade, mean that more research is needed to understand the current context, and the specificities of the situation faced by afghan children, in particular girls, and to ensure evidence-based, appropriate responses are developed that support the needs of C/WICWTL.

<sup>79</sup>For instance, a form of AtD titled 'court trial' is indicated in Article 109 of Penal Code in Juvenile Code, however, there are no known cases of its use, reportedly because the contents are not clear for judiciary professionals.

Recommendation 4.		
Recommendation	Actor	Justification
Leverage better reporting (see Recommendation 3) to gather and analyse resulting better data on existing use of AtDs and AtIs post-2018 updates to the Penal Code	GoIRA	If better monitoring and reporting practices are utilised, a greater body of data will be available to consider the specific impacts of AtDs and AtIs in comparison to other sentencing options, and will allow for further learning and improvement, supporting better overall outcomes for W/CICWTL.
Conduct further and/or continued research on CICWTL and WICWTL experiences of reintegration, and how these are impacted by programming and AtD/AtIs	GoIRA, NGOs and the international community	While this and other previous research have contributed to understandings of the challenges of reintegration, the literature and data available on this remains comparatively limited. Further research would strengthen approaches and provide basis for improved responses.
Conduct research focused on experiences of WICWTL and girl CICWTL to investigate the interaction of AtDs and AtIs with moral crimes	GoIRA, NGOs and the international community	There is very limited data specifically around the experiences of women and girl children who are currently engaged in AtDs / AtIs. This gap should be addressed as soon as possible, gathering information on their differentiated experiences and needs, to ensure that women and girls are not left behind in the justice system, and AtDs / AtIs are adapted to their use.
Conduct research focused on how AtDs and AtIs interact with informal justice mechanisms in Afghanistan	GoIRA, NGOs and the international community	This research and most other previous literature has not deeply engaged with how alternatives to detention align or interact with the informal justice mechanisms used throughout Afghanistan. To ensure improved outcomes for all CICWTL and WICWTL, this is a gap that should be addressed.



Officials at the Kabul JRC escort children in conflict with the law to a different wing in the facility.

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## ABOUT SAMUEL HALL

Samuel Hall is a social enterprise that conducts research in countries affected by issues of migration and displacement. Our mandate is to produce research that delivers a contribution to knowledge with an impact on policies, programmes and people. With a rigorous approach and the inclusion of academic experts, field practitioners, and a vast network of national researchers, we access complex settings and gather accurate data.

**Our research connects the voices of communities to change-makers for more inclusive societies.** Samuel Hall has offices in Afghanistan, Kenya, Germany and Tunisia and a presence in Somalia, Ethiopia and the United Arab Emirates. For more information, please visit [www.samuelhall.org](http://www.samuelhall.org)



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