



**Afghanistan Independent
Human Rights Commission**

**Economic and Social Rights in Afghanistan II
August 2007**

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This report is the result of a country-wide human rights field monitoring activity established by the Afghanistan Independent Human Rights Commission and UNHCR in 2005 to monitor the observation of human rights in Afghanistan, to promote their advancement and protection. The Human Rights Field Monitoring activity foresees a standardized, systematic and proactive information gathering on selected economic and social rights. In 2006 the Commission was able to ensure its presence in 32 out of 34 provinces of Afghanistan and conduct interviews with over 11,000 Afghans, including the most vulnerable families and those living in remote areas of Afghanistan. This report presents an analysis of these interviews using key economic and social rights indicators.

The foundation of economic and social rights is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Afghanistan ratified in 1983.¹ This Covenant provides details of the scope and content of a State Party's immediate legal obligations in relation to the most basic economic and social rights of its population.² Other international treaties to which Afghanistan is a party also protect economic and social rights, such as the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Civil and Political Rights. Findings of this report have also been assessed against relevant indicators used to measure progress vis-à-vis the achievement of Afghanistan's Millennium Development Goals (MDGs) as well as the benchmarks provided in the Afghanistan National Development Strategy (ANDS) and Afghanistan Compact.

It is important to note that this report is focused on selected human rights and does not attempt to provide an exhaustive overview of the situation of human rights in Afghanistan.

Conclusions

Findings included in this report indicate that the Government of Afghanistan continues to face major challenges in discharging its obligations under the International Covenant on Economic Social and Cultural Rights.

Although the commitments undertaken through the Millennium Development Goal as well as the 5-year development process outlined in the ANDS and the Afghanistan Compact are an important step forward, Afghanistan has a long way to go before the MDG Targets are realized, particularly with regards to achieving universal primary education, access to affordable and quality health care and safe drinking water.

In line with the conclusions of 2005 Economic and Social rights report, the findings of Human Rights Field Monitoring conducted in 2006 show that despite its efforts the Government has not yet met its minimum core obligations to fulfill the economic and social rights of the Afghan people under the ICESCR, as summarized below:

Essential food/economic vulnerability

- Findings confirm an alarming level of chronic or transient food shortages³ among interviewees with only 37.7% of interviewees stating that their household has a stable income source and 60.3% of interviewees earning less than 50 Afghanis (1USD) per day. The latter highlights that the majority of interviewees live in absolute poverty as defined by World Bank⁴. Household indebtedness – a condition indicated by the majority of all interviewees (64.7%) - further compounds a situation of already extreme vulnerability. According to Afghanistan's 2005 Millennium Development Goal Report many of the chronically food

¹ The text of the International Covenant on Economic, Social and Cultural Rights can be accessed at http://www.unhcr.ch/html/menu3/b/a_ceschr.htm

² It is important to note that non-nationals of a State are also accorded rights under international human rights treaties.

³ According to Afghanistan's 2005 Millennium Development Goal report, Vision 2020, page 23, a total of 38% of rural households (about 6 million rural Afghans) are estimated to face chronic or transient food shortages and therefore do not have access to adequate food on a constant basis.

⁴ According to the World Bank Absolute Poverty Line indicator, an individual is 'poor' if his/her income is less than \$1 per day.

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insecure households are female-headed, have disabled household members and large numbers of children, and live in remote rural areas with little or no access to irrigation, markets or other services.⁵

- Economic vulnerability has a significant impact on child labour and an adequate standard of living. The more economically vulnerable the household is, the higher the proportion of children exposed to hazardous forms of work (under age of 15). Findings from the Human Rights Field Monitoring activity indicate a correlation between economic vulnerability and children involved in hazardous forms of work or work preventing the child from attending education. Over a third of interviewees (37.0%) reported that at least one child in their family works and among them 31.0% stated that their children were the only source of income for the family. Conditions of work expressed by interviewed parents point to various forms of hazardous work or work that prevents the child from attending school. Hazardous forms of work include carrying heavy loads (27.9%) and working under excessive heat cold or noise (15.3%)
- Economic vulnerability has also a significant impact on child marriage. The more economically vulnerable a household is the higher the proportion of children who marry underage (before the age of 16). The majority (54.6%) of those interviewees who said their children married before the age of 16, explained that marriages were arranged to address/solve economic problems.
- Lack of employment features as one of the main source of concern not only as a key obstacle to reintegration – 45% of returnees said was the main cause of dissatisfaction and 17.6% of returnees indicated it as the main reason for leaving their places of origin - but also as cause of protracted displacement for 21.5% of IDPs.
- Key aspects of economic vulnerability such as lack of employment (17.5) and food (8%) were ranked among the pressing priorities for the future by all interviewees. In line with the 2005 findings the latter indicates an ongoing frustration among interviewees at the lack of socio economic progress affecting Afghans in general and in particular the most vulnerable sections of the population.

Essential primary healthcare

- Findings from the human rights field monitoring activity indicate that primary health care facilities either governmental (85.9%) or private (60.6%) are available for the majority of interviews. Nonetheless a significant number of interviewees – 36.9% for governmental health care facilities and 21.8% for private- do not use them because of lack of physical accessibility – as indicated by over a third of the interviewees. Poor quality of health care facilities is the second main cause preventing interviews – 21.8% for governmental services and 31.9% for private – from using available facilities.
- Although interviewees indicate a high rate availability of health care facilities, Afghanistan continues to have one of the world highest infant mortality rate and maternal mortality ratio. The latter is confirmed by the findings of the Human Rights Field Monitoring which inform that 65% of interviewees are not availing themselves of skilled health personnel during the birth of their last child.⁶ Early pregnancy resulting from underage marriage further exacerbates the situation by increasing the risk of death during childbirth.⁷ Child marriage continues to be of significant concern in Afghanistan, where the vast majority (84.7%) of interviewees' children who married before the age of 16 are girls.
- Overall, lack of accessibility and poor quality of the existing primary health care facilities remains a key concern amongst Afghans. In particular, improvement of health care facilities ranked third (14.9%) among the priorities for the future indicated by all interviewees.

⁵ *Afghanistan's Second MDG Report* (September 2005): Vision 2020, page 21.

⁶ Although interviewees indicate a high rate availability of health care facilities Afghanistan continues to have one of the world highest infant mortality rates and maternal mortality ratios. The latter is confirmed by the findings which point to 65% of interviewees not availing themselves of skilled health personnel during the birth of the last child.

⁷ Adolescent pregnancy: Unmet Needs and Undone Deeds; Issues in Adolescence Health and Development, WHO, 2007, page 11 available at: www.who.int

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Housing

- Although 65.4 % of interviewees stated that they lived in inherited houses, over a third (36.3%) stated that they face problems with their property. Problems relate to the following key elements of the right to adequate housing: habitability (50.7%) security of tenure (28.9%) affordability (12.5%).
- Lack of housing features as a key obstacle to return and reintegration affecting 67.1% of interviewed returnees who chose not to return to their places of origin, 67.3% who left their places of origin and over a third (43.4%) of interviewed IDPs in protracted displacement. Furthermore, for 32.8% of returnees lack of housing was the main cause of dissatisfaction after returning to their places of origin.
- Overall lack of housing ranked fifth (10.7%) among the priorities for the future indicated by all interviewees.

Basic education

- Findings from the 2006 human rights field monitoring activity highlight that primary education facilities were available to 94.4% of interviewees. However, only 69.5% of children regularly attend school. The attendance of the remaining 31.5% is hindered by a number of factors differing for boys and girls. The key hindrance for girls related physical accessibility (32.8%) primarily linked to long distances between villages and schools as well as to the safety of the journey. For boys (35.8%) regular attendance was affected primarily by child labour.
- Completion of primary education is another key aspect of the right to primary education. In Afghanistan there is a significant discrepancy in the completion of primary education between boys and girls. Just over half of girls who start primary school are able to complete it. The reasons are mainly linked to a situation of socio economic vulnerability as well as cultural/ traditional practices. On the other hand 80.9 % of boys succeed in completing their primary education. School drop out is affected primarily by child labour.
- Overall, child education ranked fourth (11.2%) among the priorities for the future indicated by all interviewees.

Access to water

- Access to water is the second most critical issue presented by interviewees in the course of the 2006 human rights field monitoring activity. Interviewees' ability to enjoy the right to water is significantly affected by lack of access to safe drinking water (52.2%). Furthermore, the vast majority of interviewees (67.8%) stated that they had problems with water relating to the following key elements of the right to water: quality (47.5%) availability 24.1% and physical accessibility (23.1%).
- In relation to physical accessibility, 36.5% of the interviewees have to walk for more than 15 minutes (one way) to fetch water; amongst them, 35.1% have to walk more than one hour. The latter falls short of the benchmarks set by the World Health Organisation whereby water is deemed to be accessible if sources are available within a maximum of 15 minutes walking distance from each household.
- Overall, safe drinking water ranked second (15.0%) among the priorities for the future indicated by all interviewees.

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Recommendations

Recommendations to the Afghanistan Government:

General Recommendations

- The Government should take all necessary measures to ensure that a rights-based approach is applied to the development process outlined through the ANDS and Afghanistan Compact and that its human rights obligations and in particular the minimum core obligations enshrined in ICESCR, constitute the legal framework of implementation for the Afghanistan National Development Strategy (ANDS) and the Afghanistan Compact.
- The Commission calls upon the Government to sign and ratify the Convention on the Rights of Persons with Disabilities and its Protocol adopted by the UN General Assembly on 13 December 2006.⁸

The Right to an adequate standard of living

- The Government should make sure that not only disaggregated indicators and data but also participatory monitoring and assessment tools are used to effectively measure progress in poverty reduction in particular with regard to vulnerable groups such as women, children, people with disabilities and the chronically poor as well as kuchis, returnees and internally displaced persons (IDPs).
- In line with its minimum obligations under the Covenant on Economic Social and Cultural Rights as well as its responsibility underlined within the framework of the Social Protection sector of the Afghanistan Compact, the Government to ensure freedom from hunger -the Government should make sure that development policies and legislative measures will include contingency plans to timely assist harvest shortfall, drought, flood, as well as war affected areas and strategy on employment creation focusing on chronically food insecure households, particularly in the rural areas.

Child labor

As party to the Convention on the Rights of the Child (CRC), the government is committed to fulfill the following minimum obligations:

- The Government should legislate that 15 years will be the minimum age for employment and should take measures to ensure that employment does not affect the child's ability to attend and complete primary school education.
- The Government should adopt regulation of working hours and working conditions in line with international standards.
- The Government should set specific penalties or other sanctions to enforce minimum age of employment and regulation of working hours and working conditions of children aged 15 to 18 years.
- The Government should immediately initiate procedures to ratify the following ILO international conventions for further promotion and protection of children against forced and hazardous labor:
 - The ILO Convention No182 on Worst Forms of Child Labor;

⁸ Convention on the Rights of Persons with Disabilities and its Protocol adopted by the UN General Assembly resolution on 13 December 2006, A/RES/61/106.

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- The ILO Convention No 138 on Minimum Age;
 - The ILO Convention No 29 on Forced Labour.
- The Commission urges the government to undertake research on informal sector economy, where children are mostly engaged, and develop means to prevent children exploitation and abuse.
 - The Government should develop particularly in the rural areas skills training programmes tailored to the needs of out-of-school youth aiming at facilitating youth employment.
 - Since child labor is closely connected to family poverty and the economic situation of the household, the Commission recommends that the reduction in the numbers of children involved in harmful work be considered as a key benchmark for measuring progress in the area of Social Protection Sector both within the ANDS and the Afghanistan Compact.

Right to property and adequate housing

The Commission's recommendations continue to be in line with the main recommendations made by the UN Special Rapporteur on the Right to Adequate Housing⁹, in particular:

- The Government should develop a comprehensive national housing and land policy, taking into particular consideration the vulnerable groups such as households headed by women, people with disabilities and chronically poor, as well as kuchis, returnees and IDPs.
- The Government should immediately declare a moratorium on all forced evictions until a national housing and land policy has been formulated, while taking appropriate actions to address the chronic problems of squatters, in particular within the urban areas.
- The Government should legislate on housing and land rights, incorporating and codifying into one comprehensive source customary law, civil law, Shari'a Law and state law and in compliance with international human rights treaties ratified by Afghanistan; this is of particular importance since the Constitution, while recognizing the need for compliance with international human rights instruments, does not explicitly guarantee the respect of the right to adequate housing and related rights.
- According to the findings of this report over a half of interviewees who tried to solve a dispute either through customary or formal justice mechanisms stated that the dispute was over property. Hence, the government should increase its efforts to enable the judiciary to address complaints and to curtail the widespread corruption in provincial and districts courts.
- The Government should make sure that in all matters relating to housing and land, including land distribution and prevention of illegal land occupation and forced evictions, adequate legislation be complemented by measures to guarantee litigation rights and effective implementation.
- In line with the Human Rights benchmark of the Afghanistan Compact to end illegal expropriation of property the Government should adopt housing and land restitution policies and programmes and enforce legislation consistent with the Principles on Housing and Property Restitution for Refugees and Displaced Persons.¹⁰
- The commission urges the government to establish a process for registration of land and titles with regard to all major urban areas in accordance to ANDS and Afghanistan Compact provisions.

⁹ The complete report and recommendation of special reporter following his visit to Afghanistan on August 2003 (E/CN.4/2004/48/Add) is available at: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/3e519fe3b3b9d779c1256e67004c42a8?Opendocument>

¹⁰ Principle on Housing and Property Restitution for Refugees and Displaced Persons, June 2005.

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Right to water

- Within the framework of the ANDS and the Afghanistan Compact, the Government should make reference to available international guidelines on accessibility and quality of water¹¹, in order to define indicators and monitor progress and it should prioritize available resources to access to safe drinking water in both rural and urban areas.
- The Commission welcomes the adoption of the new Environment Act which sets out specific provisions for managing water resources and for preventing and remedying effects of pollution of water resource; however it calls upon the Government to take all necessary steps to engage in consultations with relevant institutions with a view to enact a specific legislation on water management, covering irrigation and drinking water supply, which incorporates a rights based approach to water regulation and supply.

Right to health

- In line with the findings of the 2005 Economic and Social Rights Report, 2006 findings indicate that the main obstacle to existing health care facilities continue to be accessibility rather than availability. The Commission therefore urges the Government to increase its efforts not only in increasing the number of hospitals and clinics but also in tackling the obstacles related to access to existing health care facilities.
- To improve the quality of the available health care services, the Commission urges the Government, in particular the Ministry of Public Health, to effectively monitor the quality of health services provided by existing health care facilities.
- Findings show that a significant number of people in rural areas indicated outreach by community health workers as health services available to them; in accordance with the ANDS program's strategy¹², the Commission urges the Government to increase its effort in providing basic health services through outreach by community health workers, with a strong focus on women and children as well as those who are poor and live in remote rural areas.
- The Government should prioritise reproductive (pre-natal and post-natal) and child health care, according to its obligations under international treaties to which Afghanistan is a party. Afghan women should have universal access to reproductive health care, including family planning and related information.
- Recognizing the detrimental impact of early marriages on the health of the girl child, the Government should, in co-operation with all relevant actors, implement a wide-ranging educational campaign on the health risks associated with child marriage and early pregnancies of the girl child

Right to education

- In working towards the elimination of girls and boys' obstacles to primary education the Commission calls upon the Government to take all necessary measures to remove hindrances to physical accessibility and address child labour. Furthermore, the Government should take immediate steps to address long-standing cultural/ traditional practices preventing the enrollment of girls in primary school as well as its completion.
- The Commission welcomes the changes made by the Government in the ANDS baseline values for girls' net school enrolment in accordance to the MDG Goal 2 and 3. However, owing to the ongoing significant disparity in the primary education completion rate between girls and boys, it urges the

¹¹ See the WHO health guidelines on the quality of drinkable water, third edition:
http://www.who.int/water_health/dwg/gdwq/en/index.html

¹² Program 1: extending the Basic Package of Health Services, ANDS, Summary Reports, page 46.

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Government to incorporate the reduction of drop-out rates for girls as benchmark in the ANDS for the achievement of universal primary education by 2020 (MDG2) as well as for the elimination of gender disparity in all levels of education no later than 2020 (MDG3).

- The Commission welcomes the inclusion of specific benchmarks in order to improve the quality of education services and it urges the Government to increase its efforts to implement the necessary training programs for teachers, in particular female teachers in accordance with the ANDS and the Afghanistan Compact.

Right to participate in development

- In line with the findings of the 2005 Economic and Social Rights Report, poverty and ethnicity continue to be the main reason - indicated by over half of the interviewees - for exclusion from development projects. The Commission urges the Government to conduct more research to determine the reasons, the causes and the responsibilities of exclusion and to better understand why poverty and ethnicity featured so strongly, not least because the majority of the projects aim at including the most vulnerable members of a given community.

Right to an effective remedy

- Despite the limitations in the use of data on the effectiveness of mechanisms used by interviewees to resolve disputes¹³, this report, in line with 2005 findings, continue to exhibit a low level of trust in the functioning of formal justice mechanisms to which just over a third of interviewees referred to solve their disputes related to access to key resources such as housing, land and water. The Commission calls upon the Government to increase its efforts to finalize a national justice reform strategy aiming at strengthening professionalism, credibility, integrity and impartiality of key institutions of the judiciary system both at the national and provincial level.
- The Government should set out a comprehensive monitoring and evaluation system of the judiciary under the leadership of the Supreme Court and the Ministry of Justice aiming at measuring progress by set of indicators on access to justice for marginalized and vulnerable groups, in particular the poor, women, people with disability and minorities.
- In line with 2005 findings, the majority of interviewees rely on customary justice mechanisms to solve their disputes. It is the Commission's view that customary justice mechanisms must play a complementary – but not supplementary - role in justice administration, so as to ensure cohesion within communities in the settlements of disputes through formal justice mechanisms. The Commission reaffirms the needs for the Government to fully acknowledge the fundamental and complementary role played by customary justice mechanisms and to increase its efforts to support initiatives and programmes aimed at engaging customary justice mechanisms in implementation of law and at providing justice. Furthermore, the Commission urges the Government to provide training to customary justice mechanisms to ensure that a rights-based approach, in particular the fundamental principles of fair trial and due process, is applied in the settlement of disputes at the community level.

Recommendations to civil society

- It is the Commission's view that - other than the monitoring body foreseen within the ANDS and the Compact - complementary monitoring mechanisms to assess the progress made towards the benchmarks set out in the ANDS and the Compact continue to be necessary to ensure accountability and transparency in the evaluation of the progress made. The Commission therefore urges key actors and

¹³ The person or the institution consulted may not, in fact, have the mandate or the ability to resolve a particular dispute. However, interviewees' responses are useful to ascertain the level of confidence and reliance on either formal or customary justice mechanisms.

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organization of civil society to set up coordinated monitoring strategies and mechanisms with the view to identify shortcomings and propose alternative strategies and plans of action to assist the Government in its efforts of progressively achieving the agreed benchmarks by 2010.

- The Commission urges civil society to come together and sensitize the Government that “*a decent standard of living, adequate nutrition, health care, education, decent work and protection against calamities are not just development goals - they are also human rights*”, representing minimum core obligations under the International Covenant on the Economic, Social and Cultural Rights to which Afghanistan is a party.

Recommendations to the International Community and the United Nations

- The International Community and the United Nations should continue to provide the necessary financial and technical support to enable the Government of Afghanistan to meet, within the framework of the ANDS and the Afghanistan Compact, its minimum core obligation under the International Covenant on Economic, Social and Cultural Rights.
- In addition to providing much needed financial and technical assistance, the International Community and the United Nations should enhance the Government’s capacity to effectively and transparently use the assistance through joint monitoring and evaluation mechanisms.
- In accordance with Security Council Resolutions 1662 and 1746¹⁴, the Commission urges the United Nations to continue to assist the Government of Afghanistan in its efforts to fully implement the human rights provisions foreseen by the Afghan Constitution and international treaties to which Afghanistan is a party, in particular those regarding the full enjoyment by women of their human rights.
- In accordance with the ANDS and the Afghanistan Compact, the Commission urges the United Nations to continue to play a significant role in tracking the effectiveness of the measures taken by the Government of Afghanistan to protect the human rights of Afghan people.
- In accordance with the ANDS and the Afghan Compact, the United Nations should support Government’s efforts towards the establishment of effective civil and judiciary reforms.

¹⁴ In Resolutions 1662 (2006), Para 12 and 1746 (2007), Para 18, the Security Council “*Calls for full respect for human rights and international humanitarian law throughout Afghanistan; requests UNAMA, with the support of the Office of the United Nations High Commissioner for Human Rights, to continue to assist in the full implementation of the human rights provisions of the Afghan Constitution and international treaties to which Afghanistan is a state party, in particular those regarding the full enjoyment by women of their human rights*”.