



Afghanistan Independent Human Rights Commission



Economic and Social Rights in Afghanistan II August 2007

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1. Introduction

The purpose of this report is to present the findings of the 2006 human rights field monitoring activity conducted between January and December 2006 by the Afghanistan Independent Human Rights Commission (AIHRC) in partnership with the United Nations High Commissioner for Refugees (UNHCR). This report also provides recommendations aimed at strengthening the observation of economic and social rights in Afghanistan, at promoting 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 AIHRC and UNHCR conducted over 11, 000 interviews in 32 out of 34 provinces of Afghanistan paying particular attention to vulnerable groups and people living in remote areas.

Afghanistan's core obligations towards the economic and social rights of its population are laid out in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Afghanistan ratified in 1983. The Covenant thus provides the legal framework for the analysis of findings provided in this report. Findings have also been assessed against Afghanistan's economic and social rights obligations under other international treaties to which it is a party such as the Convention on the Elimination of all Forms of Discrimination against Women and the Convention on the Rights of the Child. Other relevant assessment indicators are Afghanistan's Millennium Development Goals (MDGs) targets as well as the benchmarks provided in the Afghanistan National Development Strategy (ANDS) and the Afghanistan Compact.

This report focuses on selected economic and social rights and therefore it is not meant to provide an overview of the human rights situation as a whole. The main issues covered are as follows:

- The right to an adequate standard of living – household vulnerability.
- Child labor.
- The right to property and the right to adequate housing.
- The right to water.
- The right to health.
- The right to education.
- The right to participate in development.
- The right to an effective remedy.
- Priorities for the future.

1.1 The mandate of the Afghanistan Independent Human Rights Commission

According to Article 58 of the 2004 Constitution of Afghanistan, the Afghanistan Independent Human Rights Commission was established with the purpose of '*monitoring the observation of human rights in Afghanistan, to promote their advancement and protection.*'

Article 5 of the new Law on the Structure, Duties and Authorities of the Afghanistan Independent Human Rights Commission (*Official Gazette*, Issue No. 855, 21 June 2005), sets out the Commission's objectives and responsibilities, including:

- The promotion and protection of human rights (Article 5);
- Monitoring the implementation of the Constitution and other laws as well as Afghanistan's commitment to human rights (Article 21, 2);

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- Monitoring the performance of State authorities and NGO's regarding the equal distribution of services and welfare (Article 21, 4).

Where violations and abuses of human rights are identified, the Commission is mandated to take steps to protect and to promote human rights, including through advocacy and submission of reports to the Government.

The role of national human rights institutions in monitoring economic, social and cultural rights has been recognised by the United Nations Economic and Social Council, in particular in conducting research to assess the extent to which these rights are being realised, either within the country as whole or for specific vulnerable groups.¹

The Round Table of National Human Rights Institutions Implementing Economic, Social and Cultural Rights has emphasized the role of national human rights institutions in ensuring that economic, social and cultural rights are enforced and protected, and to ensure that the Millennium Development Goals are consistent with state obligations under international human rights instruments.²

1.2 The Government of the Islamic Republic of Afghanistan's national and international human rights commitments

Afghanistan is a party to the following international human rights instruments³:

- International Covenant on Economic, Social and Cultural Rights (ICESCR)– ratified April 1983;
- International Covenant on Civil and Political Rights (ICCPR) – ratified April 1983;
- Convention Against Torture and other Cruel Inhuman or Degrading Treatment (CAT) – ratified June 1987;
- International Convention on the Elimination of all forms of Racial Discrimination (CERD)- ratified August 1987;
- Convention on the Rights of the Child (CRC) – ratified April 1994;
- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography – ratified October 2002;
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – ratified March 2003;
- Optional Protocol on the involvement of Children in Armed Conflict – ratified September 2003.

Afghanistan has been a member of the International Labour Organization (ILO) since 1934. The ILO has played a major role in the developing and defining the scope of various economic and social rights, namely the right to work and the right to participation and freedom of association.

Afghanistan has ratified 15 ILO conventions⁴, inter alia:

- Night Work (Women) Convention, 1919 (No. 4), ratified in June 1939;
- Night Work (Women) Convention (Revised), 1934 (No. 41), ratified in June 1939;

¹ *CESCR General Comment No. 10* (1998): The role of national human rights institutions in the protection of economic, social and cultural rights.

² *Statement by the Round Table of National Human Rights Institutions Implementing Economic, Social and Cultural Rights*, 29 November to 01 December 2005, New Delhi, India.

³ See *Human Rights in Afghanistan, National and International Legal Standards*, published by AIHRC-UNHCR, Kabul 2006.

⁴ See ILO website: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?Afghanistan>

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- Protection of Wages Convention, 1949 (No. 95), ratified in January 1957;
- Equal Remuneration Convention, 1951 (No. 100), ratified in August 1969;
- Abolition of Forced Labour Convention, 1957 (No. 105), ratified in May 1963;
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified in October 1969.

The 2004 Constitution of Afghanistan reaffirms the Government's commitment to human rights:

Article Six

The state shall create a prosperous and progressive society based on social justice, preservation of human dignity, protection of human rights, realization of democracy, attainment of national unity as well as equality between all peoples and tribes and balance development of all areas of the country.

Article Seven

The state shall abide by the UN Charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.

Other provisions of the 2004 Constitution incorporate International Human Rights Law, such as the principle of equality between all peoples (Article 6) and between men and women (Article 22). Afghanistan is a party to the Cairo Declaration on Human Rights in Islam.

1.3 The Government of the Islamic Republic of Afghanistan's obligations under the International Covenant on Economic, Social and Cultural Rights

In outlining States Parties obligations, the ICESCR takes into account that a State Party may not have the resources or the capacity to achieve these standards immediately, therefore the ICESCR foresees the progressive realization of these rights.

However, the ICESCR does impose on States Parties some obligations which are of immediate effect, for example, the Government has an immediate obligation to take at least some steps towards the realization of the rights in the ICESCR. Such steps must be deliberate, concrete and targeted towards the full realization of the rights in question. In other words, it is not permitted for a State to use progressive realization and resource availability as an excuse for inaction.⁵

At a minimum this means a commitment by States Parties to take immediate steps towards ensuring that all their citizens are able to meet their basic needs under conditions of dignity. These steps can include paying particular attention to providing reasonable accommodation and services for potentially vulnerable persons such as those with disabilities, children and others who are denied their economic, social and cultural rights.

Economic, social and cultural rights, as defined in the ICESCR, are equally applicable to all persons, without discrimination (Article 3). The International Covenant on Civil and Political Rights (ICCPR) also sets out the Government's obligation of non-discrimination in the application of all human rights, not limited to those rights defined under the ICCPR: Article 26 entitles all persons to equality before the law and guarantees to all persons equal and effective protection against discrimination on any ground.⁶

The Government's immediate obligations under the ICESCR, regardless of available resources, can be summarized as follows:

⁵ CESCR General Comment No. 3 (1990): The nature of States parties obligations, Para. 9.

⁶ Human Rights Committee General Comment No. 18 (1989): Non-discrimination, Para. 1.

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- The obligation to take steps towards the **progressive realization** of the rights in the ICESCR;
- The obligation to exercise these rights **without discrimination** on any of the grounds stated in Article 2 of the ICESCR;
- The prohibition against the Government implementing any **regressive measures** in relation to any of the rights in the ICESCR, unless under specific circumstances;
- The **core obligation** to ensure at least minimum essential levels of economic, social and cultural rights, including the rights to adequate food and housing, health protection and education.⁷

The obligations deriving from human rights may be analysed by reference to the duties to respect, protect and fulfil:

- *The duty to respect* requires the Government not to breach directly or indirectly the enjoyment of any human right;
- *The duty to protect* requires the Government to take measures that prevent third parties (non-state actors) from abusing the right;
- *The duty to fulfil* requires the Government to adopt appropriate legislative, administrative and other measures towards the full realization of human rights.

Therefore, in relation to the right to health, for example, the duty to *respect* requires the State not to interfere directly or indirectly with the enjoyment of the right to health; the duty to *protect* requires the State to take measures that prevent third parties from interfering with the right to health; and the duty to *fulfill* requires the State to adopt appropriate legislative, administrative and other measures towards the full realization of the right to health.⁸

According to the Committee on Economic, Social and Cultural Rights,⁹ the legally binding international human rights standards contained in the ICESCR should operate directly and immediately within the domestic legal system of each State party, which means that individuals must be able to seek enforcement of their rights in national courts and tribunals.

Increasingly, economic, social and cultural rights are being protected in this way, through domestic legal systems: the Supreme Court of India has set an important example by recognizing that the right to life includes the right to food and shelter¹⁰ and the right to healthcare¹¹. By doing so, India has shown that economic, social and cultural rights can be enforced through domestic courts, and that they are inseparable from, and vital components of civil and political rights.

The 2004 Constitution of Afghanistan contains some provisions relating to economic social and cultural rights such as the right to health (Articles 51 and 52), the right to education (Articles 43 and 44), the right to property and adequate housing (Articles 14, 38 and 40), the right to an adequate standard of living (Articles 13, 14 and 15) enabling these rights to be directly enforceable in national courts.¹²

By ratifying human rights treaties, the Government of Afghanistan has agreed to submit regular reports to treaty bodies, thereby subjecting itself to external monitoring and accountability. This includes submission of reports to the Committee on Economic, Social and Cultural Rights which is mandated to monitor the implementation of the ICESCR provisions in Afghanistan.¹³

⁷ *CESCR General Comment No. 3* (1990): The nature of States parties obligations.

⁸ *CESCR General Comment No. 14* (2000): The right to the highest attainable standard of health, Paras. 33-37.

⁹ *CESCR General Comment No 9* (1998): The domestic application of the covenant, Para. 4.

¹⁰ *People's Union for Civil Liberties (2001)*, Supreme Court of India. For an online case summary:

<http://www.communitylawcentre.org.za/ser/casereviews.php>

¹¹ *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996), Supreme Court of India. An online case summary is available at:

<http://www.communitylawcentre.org.za/ser/casereviews.php>

¹² See *Human Rights in Afghanistan, National and International Legal Standards*, published by AIHRC-UNHCR, Kabul 2006.

¹³ Through its Afghanistan Democratization and Civil Society Empowerment Programme and in particular the Human Rights Treaty Reporting Project, UNDP has been supporting the Government of Afghanistan in building a sustainable capacity to meet its implementation and

1.4 Human rights and the Millennium Development Goals, Afghanistan National Development Strategy and Afghanistan Compact

“A decent standard of living, adequate nutrition, health care, education and decent work and protection against calamities are not just development goals – they are also human rights,”

(UNDP, Human Development Report, *Human Rights and Development*, 2000)

The Millennium Development Goals (MDGs) are UN-sponsored poverty reduction and development goals signed by the international community in 2000 with an implementation target date of 2015. In March 2004, Afghanistan signed the Millennium Declaration and committed itself to achieve the MDGs, with an additional goal on security, by the year 2020. The MDGs provide framework for all development activities in Afghanistan over the next 14 years.¹⁴

As is shown in this report and described in the Afghanistan’s Millennium Goals Report 2005, there is a close correlation between the Government’s obligation to protect human rights and that of achieving the MDGs targets, since many of the objectives coincide.¹⁵ For example, this can be seen through the Government’s overlapping responsibility under the Convention on the Rights of the Child to reduce child mortality (Article 24), which is also the fourth Millennium Development Goal. Therefore, in recommending actions to be taken by the Government to improve the protection of key economic and social rights, this report draws on the recommendations and targets for achieving the MDGs, as detailed in the Afghanistan 2005 report.¹⁶

In 2005, the Government of Afghanistan also launched the Afghanistan National Development Strategy (ANDS) for promoting security, governance, economic growth and poverty reduction. The 5-year plan (2006-2010) provides a framework for the development of government policies as well as guidance to resources allocation and programmes towards the achievement of the Millennium Development targets.¹⁷

At the end of the London Conference (31 January-1 February 2006), the Government of Afghanistan and the International Community agreed on the Afghanistan Compact, a five-year plan (2006-2010) to achieve development and reconstruction goals/benchmarks.¹⁸ These goals are linked and consistent with the ANDS process, in fact every benchmark of the Compact is reflected as a five-year strategic objective of the ANDS.

Both the ANDS and the Afghanistan Compact are based on three pillars: (1) Security, (2) Governance, Rule of Law and Human Rights and (3) Economic and Social Development. Counter-narcotics and gender are reflected as vital cross-cutting issues. Of particular relevance to the human rights field monitoring activity undertaken by the AIHRC is the part included in both the Compact and in the ANDS, which indicates “(...) *human rights monitoring will be carried out by the Government and independently by the AIHRC, and the UN will track the effectiveness of measures aimed at the protection of human rights; the AIHRC will be supported in the fulfillment of its objectives with regard to monitoring, investigation, protection and promotion of human rights*”.¹⁹

reporting obligations. The Afghan Government has agreed to submit its first report to the ESC Committee on the progress made in meeting its obligations under ICESCR in 2007.

¹⁴ *Afghanistan’s Millennium Development Goals* are available at: <http://www.and.s.gov.af/mdsgroups.asp>

¹⁵ It is important that the Government’s commitments under Afghanistan’s Millennium Development Goals are not seen only in terms of development priorities, but also as human rights, which the Government is legally bound to respect, protect and fulfill, according to the international treaties which Afghanistan has ratified.

¹⁶ *Afghanistan’s Second MDG Report* (September 2005): Vision 2020.

¹⁷ The *Afghanistan National Development Strategy* is available at: <http://www.and.s.gov.af/main.asp>

¹⁸ The *Afghanistan Compact* is available at: <http://www.unama-afg.org/>

¹⁹ See Human Rights benchmark in *Afghanistan Compact*, pg 8 and priority No 16 in *Afghanistan National Development Strategy – Executive Summary* – pg. 9.

1.5 Monitoring economic, social rights

In 2003 the Committee on Economic Social and Cultural Rights issued Concluding Observations on the implementation of the ICESCR in Afghanistan.²⁰ The Committee highlighted the following issues which were of particular concern after the initial report, and asked the Government of Afghanistan to give more information – *inter alia* - on these aspects in their next treaty report:

- The main obstacles currently facing the Afghan Government in its attempts to improve the fulfillment of its obligations under the ICESCR.
- Information about girls' and boys' access to education.
- Information about reintegration of returnees.
- Obstacles to the enjoyment of economic and social rights of women and the protection of their physical and mental health.
- Information on vulnerable groups and the number of persons living below the poverty line and on measures adopted and resources allocated to improve their situation.
- The general legal framework within which economic, social and cultural rights are protected.
- Ways in which the Covenant and other international treaties are incorporated into national legislation.

Some of these issues have been covered in this report, which is particularly relevant to issues of returnees' reintegration, since the majority of interviewees are returnees.

It is important to note that some of the indicators that have been used in 2006 Human Rights Field Monitoring (HRFM) questionnaire, such as the primary school availability and attendance rate or child birth assistance, are the same indicators that are used to measure progress relative to the achievement of Afghanistan's Millennium Development Goals as well as ANDS and Compact targets. Hence the systematic gathering of information on these indicators through the HRFM activity is essential for measuring the implementation of the MDGs as well as the ANDS and the Afghanistan Compact.

2. Human Rights Field Monitoring methodology

2.1 Interview methodology

From January to December 2006 Human Rights Field Monitoring missions were conducted throughout Afghanistan.

Interviews conducted by the Human Rights Field Monitoring teams were based on a questionnaire designed to facilitate an assessment of the human rights situation by using specific indicators relating to selected economic, social and cultural rights – these are explained in detail in each section below.

The findings of this report are based on 11,186 interviews: 43.8% of interviews (4,906) were with women and 56.2% of interviews (6,280) were with men.

2.2 Limitations of the interview sample

It is important to note that information gathered through interviews and summarized in this report does not represent a random-sample survey of the population of Afghanistan for the following reasons:

²⁰ CESCR Afghanistan Concluding Observations adopted up to December 31, 2003: CESCR E/1992/23 (Arts 1-15).

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- Districts and villages in which missions were conducted were chosen on the basis of the following criteria: areas with previously-identified protection or human rights problems; areas of high return and recent return; areas with groups of particular concern (i.e. ethnic minorities); and areas in which a particular crisis or potential crisis affecting human rights arose. This means that the choice of locations was not random, but focused on interviewing individuals belonging to groups who may be more vulnerable or at risk than the general population.
- Within the districts and villages monitored, individual interviewees were selected with the aim of including members of all ethnic groups and members of the population who are potentially vulnerable (minorities, potentially disadvantaged individuals, including women-headed households and the elderly; returnees and IDPs).
- Due to security reasons, monitors were not able to access two provinces (Uruzgan and Farah); in other provinces, in particular in the south and south-east, only certain districts or villages could be accessed.
- As shown below (Section 3.3), 90.9 % of interviews (9,555) were conducted in rural areas; therefore the data in this report is predominantly representative of rural populations and does not capture the situation of those living in urban areas.

Other important issues relevant to the interview sample are as follows:

- During human rights field monitoring interviews, questions answered by individuals were often answered on behalf of the entire family. Very few questions in the questionnaire directly refer to individual status.
- The questionnaire was designed to gather specific information on children's rights, such as access to education and child labour. However, the methodology involved interviewing adults on behalf of their family. Therefore, parents answered relevant questions on behalf of their children. This methodology was considered to be important to ascertain parent's perspectives, as decision-makers, and the reasons they chose not to send their children to primary school.
- It should be noted that potential bias may characterize interviewee's responses with regards to describing more problems than is the reality, or exaggerating existing problems. This is based on the natural assumption on the part of the interviewee that the interviewer may be able to provide some form of humanitarian assistance, and results in the tailoring of the answers accordingly. However, since all interviews begin with the Human Rights Monitor clearly explaining their mandate and the fact that no humanitarian assistance will result from the interview, this bias is considered to be limited.
- Although interviewees were assured that interviews would be confidential and no information would be shared without their consent, not all interviewees felt confident to respond to specific questions in a way that may be seen to be critical of traditional values, local authorities, commanders and anti-governmental elements. Therefore for issues relating to security, for example, it is considered that responses do not capture the entire reality.

3. Demographic breakdown

3.1 Interviews with women and men

As stated above, out of 11,186 interviews, 43.8% were conducted (**Fig 3.1**) with women (4,906) and 56.2% with men (6,280).

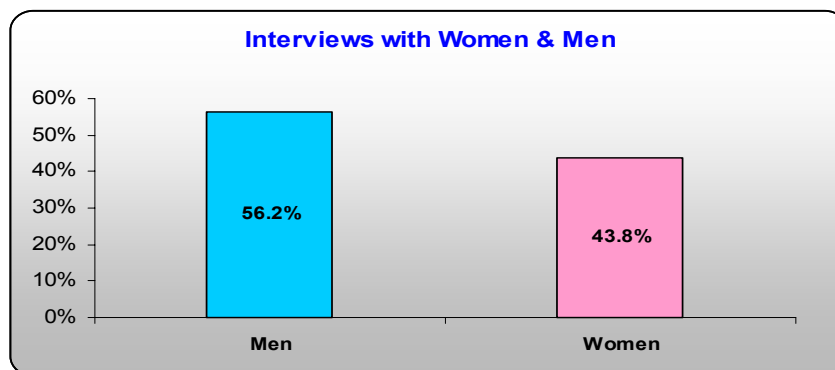


Fig 3.1

3.2 Geographical areas covered

Human Rights Field Monitoring missions were conducted in 32 out of 34 provinces (94.1%) and 169 out of 399 districts (42.3%).

Annex I and **II** respectively give a detailed breakdown of the numbers of interviews conducted by provinces and by districts.

3.3. Interviews in rural and urban environments

90.9% of the total number of interviews (9,555) were conducted with persons living in rural areas, and 9.1% (957) were conducted with persons living in urban areas (**Fig 3.3**). Interviews in 'urban' areas are counted as those with persons living in the five main cities of Afghanistan (Mazar, Herat, Jalalabad, Kandahar and Kabul) as well as the district centers. Any interviews conducted with persons living outside the main cities (its *nahiyas*) and the district centers are counted as 'rural'.

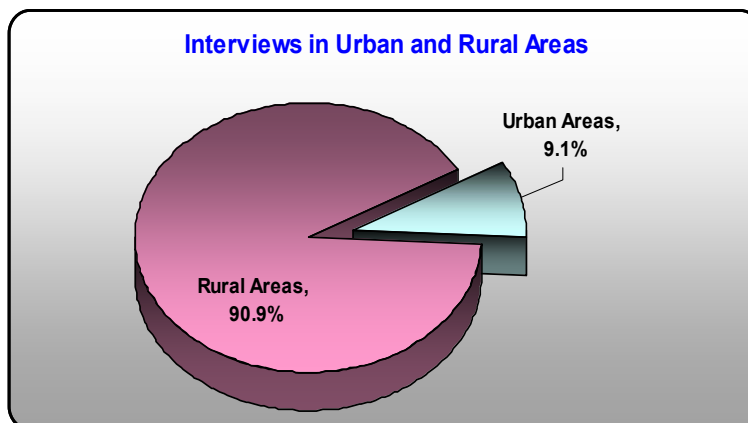


Fig 3.3

3.4 Ethnicity and religion

The group of persons interviewed includes most ethnic groups in Afghanistan (Pashtun, Tajik, Hazara, Uzbek, Turkmen, Baloch, Pashayee, Arab, Hindu-Sikh, Nuristani, Barahawee, Aymaq, Qirghiz). Interviewees were from Shia, Sunni and other minority religions.

3.5 Returnees

Interviewees were recorded as returnees based on self-identification. The term 'returnee' applies both to returned refugees (persons who were displaced outside Afghanistan and have now returned to the country) and returned IDPs (persons who were displaced inside Afghanistan and have now returned to their place of origin).

54.3% of interviewees (6,077) were returnees. Of these, 66.7% were from Pakistan (4,023) and 22.5% were from Iran (1,359); 10.2% of returnees (615) were returned Internally Displaced Persons (previously displaced within Afghanistan); 0.5% of returnees (31) were from countries outside the region. The vast majority of returnees (95%) who answered the question (4,259), said that they returned after 2002 whilst only 5.2% before 2002.

88.5% of returnees interviewed said they returned to their place of origin whilst 11.5% of returnees did not return to their place of origin. 90.7% of returnees who returned to their place of origin stated that they still live there (4,739), whilst 9.3% left (484).

34.1% of returnees stated that they were away, either as refugees or IDPs, for a period ranging between 4 to 10 years (2,039), 31.2% between 11 to 20 years (1,866), 19.3% for more than 20 years (1,157) and 0.9% less than a year (50).

56.3% of returnees (3016) who answered the question said that they returned spontaneously to Afghanistan whilst 41.2% of returnees (2,208) were assisted by UNHCR and 2.5% of returnees (135) were deported.

3.6 Internally Displaced Persons

Interviewees were recorded as IDPs based on self-identification. The term IDPs refers to those persons who are not currently living in their place of origin in Afghanistan and do not consider themselves to have locally integrated in their place of displacement.²¹

10.4% of interviewees (1,150) were Internally Displaced Persons, originating primarily from Nangarhar (11.8%), Kandahar (8.1%), Ghazni (7.8%) and Paktya (7.6%) provinces.

3.7 Kuchis

Interviewees were recorded as Kuchis based on self-identification. Many Kuchis that settled a long time, if not decades ago, still consider themselves Kuchis. It is as much a lifestyle as it is a cultural identity. Long-range migratory Kuchis are those who migrate between provinces, short-range Kuchis are those who migrate within the province and settled Kuchis are those who do not migrate at all.²²

²¹ See *UN Guiding Principles on Internal Displacement* for definition of IDPs (Para. 2), available at: http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html

²² Frauke de Weijer, *National Multi Sectoral Assessment on Kuchi*, May 2005, page 7.

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4.7% of interviewees (524) were Kuchis. Among those who answered the question 44.2% were short-range migratory (172), 30.6% were long-range migratory (124) and 25.2% were settled Kuchis (102).

3.8 Vulnerability

Among those who answered the question related to potential vulnerability²³:

- 19.9% of interviewees (2,948) were families with more than 8 children.
- 16.5 % of interviewees (2,446) were elderly heads of household.
- 11.2 % of interviewees (1,650) were women heads of household.
- 3.0 % of interviewees (445) were disabled heads of household.

²³ Interviewees were able to indicate more than one vulnerability. For further information on vulnerability see UNHCR EVI assistance Guidelines.

4. The right to an adequate standard of living



Indicators:

- (1) Main family household income source.
- (2) Average daily income of interviewees who stated they have a job.
- (3) Number of families in debt.
- (4) Number of families in which children under 15 years are working.
- (5) Number of child marriages because of lack of income.
- (6) Main reasons for current displacement.
- (7) Main obstacles to the reintegration of returnees.
- (8) Main reasons given by returnees for leaving after returning to the place of origin.

The right to an adequate standard of living is the central right in the ICESCR and is comprised of several component rights such as the right to adequate housing (Section 6); the right to water (Section 7); the right to health (Section 8); and the right to adequate food (freedom from hunger). This section focuses on the right to adequate food as a key aspect of the right to an adequate standard of living, the latter is linked to the Millennium Development Goal 1 - to eradicate extreme poverty and hunger - in line with Afghanistan MDGs, the Afghanistan Compact and ANDS benchmarks at progressively decreasing poverty levels, and at increasingly providing reintegration opportunities to returnees and IDPs. In addition, a number of factors from other rights assessed in this study can contribute to an understanding of the situation of the right to an adequate standard of living and therefore listed also as indicators.

According to Afghanistan's 2005 Millennium Development Goal report,²⁴ indicators for poverty are difficult to ascertain, particularly in Afghanistan where there is a lack of basic data. Hence the level of household food insecurity is currently used as an indicator. Food insecurity and the right to adequate food are also intrinsically linked to levels of household income.

²⁴ Afghanistan's Second MDG Report (September 2005): Vision 2020, page 13.

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According to Afghanistan's 2005 Millennium Development Goal Report,²⁵ the average annual per capita income in Afghanistan is estimated to be below US\$ 200.

4.1 Main family household income source

61.8% of those interviewees who answered the question (10,978) stated that the main source of family income was non-farm labour, whilst 36.8% was farm labour. For those who answered that their main source of income was non-farm labour (6,767), unskilled daily wage labor (52.5%) remains the main source of income. 58.1% of those interviewees who stated that farm labor was their main source of income (2,339) owned land, the rest were either tenant farmers (14.6%), share –croppers (14.2%) or daily wage workers (11.1%).

64.8% of the interviewees (7,175) stated that they were working, while 35.2% (3,899) were not engaging in any economic activity. Among the interviewees who answered the question, 60.3% (4,252) said that they earn less than 50 Afs²⁶ per day, while only 39.7% (2,800) said they were earning more than 50 Afs.

4.2 Debt

Among those interviewees who answered the question (11,074), 64.7 % stated that their family was in debt (7,218). Of these, over half of interviewees (53.4%) said to be in debt to either a member of the family or a friend (3,828) while 41.0% of interviewees (2,941) stated they were in debt to either a shopkeeper or a trader.

4.3 Economic vulnerability

Among those interviewees who answered the question (11,071), 37% stated that their children under 15 years old were working in their family (4,098). Of these, 48.9% said that most of their children were working (1,986), 42.9% said that some of the children were working (1,745) and 8.2% stated that all of their children were working (334). 31% of interviewees (1,255) stated that children were the only source of income for their family.

Among those interviewees who answered the question (10,900), 12.3% stated that their children had been married before the age of 16 (1,343). Of these, 54.6% stated that the marriage took place to address economic problems (695).²⁷

4.4 Current displacement (IDPs)

The main reasons why a number of persons in Afghanistan are currently displaced from their place of origin (**Fig 4.4**) relate to key elements of the right to an adequate standard of living, such as lack of employment or lack of access to housing, land or water resources.

10.4% of all interviewees (1,150) are currently internally displaced (IDPs). Of these, over 75% attributed their displacement directly to the right to an adequate standard of living, the main reason being the lack of access to housing (43.4%) and lack of employment (21.5%). 15.0% of IDPs are displaced for security reasons.

²⁵ *Afghanistan's Second MDG Report* (September 2005): Vision 2020, page 21.

²⁶ 50 Afs = 1 US\$ (approx). According to *World Bank Absolute Poverty Line*, an individual is categorized as 'poor' if his/her income is less than \$1 per day.

²⁷ Similar findings also arise from the Children Rights Field Monitoring activity where 91% of children interviewed (265) stated that they married before the age of 16. Of these, 43.6% said that their marriages were arranged to enable their family to address their economic problems (106).

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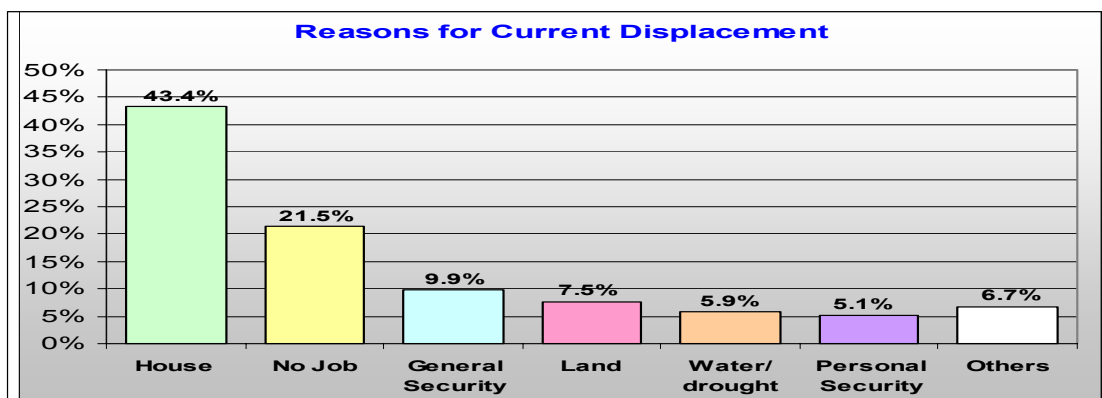


Fig 4.4

4.5 Reintegration of returnees

11.5% of interviewed returnees (694) said that they did not return to their place of origin. Out of 453 returnees who explained the reason why they did not return to their place of origin, 94.5% gave reasons relating directly to the right to an adequate standard of living (lack of access to housing or land, unemployment and lack of access to water). The main reason given was lack of housing (67.1%). Only 2.6% gave reason relating to the security situation in their places of origin.

Of those returnees (5,277) who answered questions related to satisfaction of return, 70.6% said that they were happy that they had returned (3,727), whilst 29.4% of returnees stated that they were unhappy (1,550).

Out of the 1,508 returnees who explained why they were unhappy (**Fig 4.5**), over 85% gave reasons relating directly to the right to an adequate standard of living (lack of access to housing or land, unemployment, and lack of access to water). The main reason given was unemployment (45%).

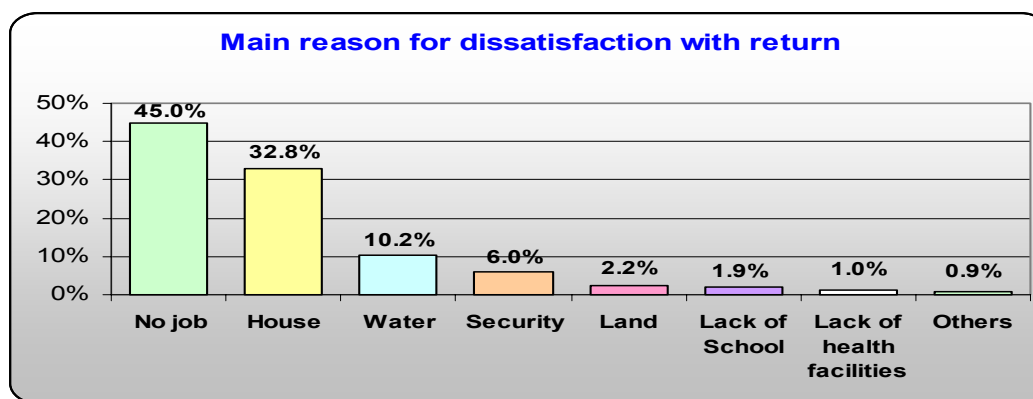


Fig 4.5

4.6 Reasons for leaving after returning to the place of origin

Of the returnees (5,223) who answered the question related to their reintegration, 90.7% decided to remain in their place of origin (4,739), while 9.3% stated that they were no longer living there (484). Of these, 67.3% left because of housing problems (303), 17.6% because of unemployment (79), 9.6% because of land problems (43) and only 2.7% due to lack of security (12).

4.7 Conclusions

- The main source of income amongst interviewees was identified as non farm labour (61.8%). Unskilled daily wage labour (52.5%) remains the main typology of income earning within a non farm labour activity.
- 64.7 % of all interviewees stated that their household was in debt. Of these, over half of interviewees (53.4%) said to be in debt to either a member of the family or a friend while 41.0% of interviewees stated they were in debt to a either a shopkeeper or a trader.
- According to the World Bank Absolute Poverty Line used to compare poverty rates across countries and to assess progress in poverty reduction, an individual is ‘poor’ if his/her income is less than \$1 per day. 60.3 % of interviewees who answered the question live below the Absolute Poverty Line.
- Poverty has a significant impact on child labour and an adequate standard of living. The more economically vulnerable a household is the higher the proportion of working children (under age 15), and the less likely it is that the household will be able to afford to educate their children. Of those who stated that their children worked, 37.0% of interviewees reported that at least one child in their family works and, among them, 57.1% of interviewees said that most or all of the children in their family work.
- Poverty has also a significant impact on child marriage. The more economically vulnerable a household is the higher the proportion of children who were married underage. The majority (54.6%) of those interviewees who stated that their children were married before the age of 16 explained that marriages were arranged to address/solve economic problems.
- 10.4% of all interviewees were internally displaced. Of these, over 75% attributed their displacement directly to the right to an adequate standard of living, in particular lack of housing (43.4%) and lack of employment (21.5%).
- 54.9% of all interviewees were returnees. Of these, 29.4% stated that they were not happy to have returned. Out of those interviewees who explained why they were unhappy, over 90% gave reason relating directly to the right of an adequate standard of living, in particular lack of employment (45.0%) and lack of housing (32.8%).
- 94.5% of those returnees interviewed who explained why they did not return to their place of origin gave reasons relating directly to the right to an adequate standard of living (lack of access to housing or land, lack of employment and lack of access to water). The main reason given was lack of housing (67.1%). Only 2.6% gave reasons relating to the security situation in their place of origin.
- 97.2% of those interviewed returnees, who had to leave their place of origin after returning back, gave reasons relating to the right to an adequate standard of living (lack of access to housing or land, lack of employment, and lack of access to water). The main reason given was lack of housing (67.3%).

4.8 Government obligations

According to the ICESCR, the Government has the responsibility to take steps towards the realization of the right to an adequate standard of living for everyone (Article 11). Article 11 (2) of the ICESCR confirms that States Parties recognize the fundamental right of everyone to be free from hunger.

The Committee on Economic, Social and Cultural Rights established that under the ICESCR: “Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.”²⁸

²⁸ CESCR General Comment no.12 (1999): The right to adequate food, Para.14.

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By ratifying the ICESCR, the Government has undertaken a commitment to implement measures to address hunger, including through international co-operation. The Government has a specific responsibility towards guaranteeing the right to adequate food for vulnerable or disadvantaged groups.

The responsibility of the Government under the ICESCR is consistent with the Millennium Development Goal 1 - to eradicate extreme poverty and hunger. Whilst baseline values for some indicators for measuring the achievement of this Goal are yet to be determined, it is clear from available data on the proportion of underweight children under 5 years of age (currently estimated to be 39%)²⁹ that the Government has a long way to go in order to reduce this proportion to 15% by the year 2015.

The responsibility of the Government is also underlined within the framework of the Social Protection Sector of the Afghanistan Compact and the ANDS which aims by 2010 at decreasing by 3% a year the proportion of people living on less than US\$1 a day and by 2010 decreasing by 5% a year the proportion of people who suffer from hunger and poverty. The Afghanistan Compact and the ANDS further aims at providing by 2010 enhanced reintegration facilities for returnees and IDPs and to reduce of 20% the number of chronically poor female headed households and to increase their employment rates by 20% by 2010.

Whilst eradication of poverty is linked to economic growth, the MDG Report recommendations also state that the Government must ensure that any economic growth increases the assets of the poor sufficiently for them to produce or purchase enough food and other basic goods to assure them food security and better nutrition:³⁰

“There is an immediate need to develop policies that will strengthen the capacity of the poor and the vulnerable to diversify their sources of income, making it possible for them to draw on a combination of farm and non-farm activities to move out of poverty and accumulate sustaining wealth.”³¹

In addition to the above recommendation to assist vulnerable groups to broaden their sources of income, it is important to that the Government protects existing income sources.

In line with the recommendations of the 2005 Millennium Development Goal Report, the Afghanistan Compact sets benchmarks to strengthen rural development by end-2010 for the benefit of 19 million people in over 38,000 villages; this will be achieved through the election of at least a further 14,000 voluntary community development councils in all remaining villages, promoting local governance and community empowerment; access to safe drinking water will be extended to 90% of villages and sanitation to 50%; road connectivity will reach 40% of all villages, increasing access to markets, employment and social services; 47% of villages will benefit from small-scale irrigation; 800,000 households (22% of all Afghanistan's households) will benefit from improved access to financial services; and livelihoods of at least 15% of the rural population will be supported through the provision of 91 million labour days.

²⁹ See UNICEF statistics on Afghanistan available at: http://www.unicef.org/infobycountry/afghanistan_afghanistan_statistics.html

³⁰ *Afghanistan's Second MDG Report* (September 2005): Vision 2020, page 21.

³¹ *Afghanistan's Second MDG Report* (September 2005): Vision 2020, page 21.

5. Child labor



Indicators:

- (1) Number of families in which children under 15 years are working.
- (2) Proportion of children under 15 years in each family who are working.
- (3) Children working conditions.
- (4) Number of families where children are the only source of income for the family.
- (5) Number of families whose children are not attending primary school because they have to work.

The age of 15 years is the international standard for the minimum age for a child to work (Article 32 CRC). The proportion of children under 15 years working in each family is indicative of the prevalence of child labour.

It is important to note that there is a distinction between a ‘child worker’ and a ‘child laborer’.³² A child worker is broadly defined as a child who is ‘economically active’, meaning that the child is engaged in any work for pay, or unpaid work for the family. Child work in itself is not necessarily negative.

However, the negative aspects of child work are captured by using the definition of ‘child laborer’, which means that a child’s work is inconsistent with the principles of the Convention on the Rights of the Child (Article 32), protecting children from economic exploitation and from performing any work that would fall into one or more of the following categories:³³

1. The child is below the minimum age for a certain type of work;
2. The child works excessive hours;
3. The child works under bad conditions / performs work which is harmful;
4. The child’s work interferes with their education.

5.1 Prevalence of child labor

37.0% of all interviewees who answered the question (11,071) stated that in their family at least one child under 15 years is working. Out of the total interviewees (4,065) who provided answer on how

³² International Labor Organization Report: *Development of Indicators on Child Labor*, available at: <http://www.ilo.org/public/english/standards/ipecc/simpec/jensen/page4.htm>

³³ See *ILO Convention 182* (1999) on the Worst Forms of Child Labor.

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many children are working in their family (**Fig 5.1**), 48.9% of the interviewees (1,986) stated that most of their children are working, 42.9% of the interviewees (1,745) said that some of their children are working and 8.2% of interviewees mentioned that all of their children are working.³⁴

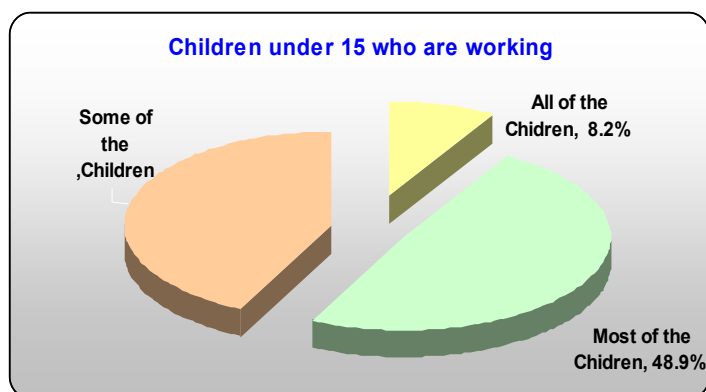


Fig 5.1

5.2 Children as the only source of income

Among interviewees who said that their children are working (1,255), 31.0% stated that their children are the only source of income for the family, whilst 69.0% (2,788) had other sources of income.

5.3 Working conditions of children

Among the interviewees who answered the question³⁵ (5,158), 27.9% said that children carry heavy loads as part of their regular duties, 15.3% (787) that children are working in excessive heat, cold or noise, 13.5% of the interviewees (694) stated that children are unable to go to school because they have to work, and 10.0% (515) said their children are working on the streets (**Fig 5.3**).

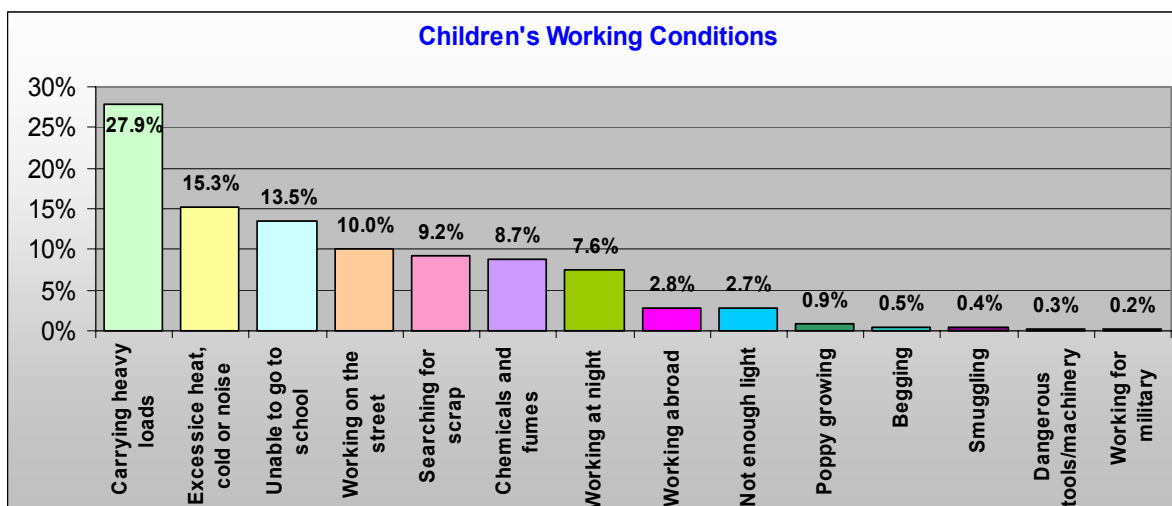


Fig 5.3

³⁴ Similar findings also arise from the Children Rights Field Monitoring activity where 47.9% of the children interviewed (1,401) stated that the children under 15 in their communities were working. The children focused monitoring activity provides us additional information on length of time children spend at work as follows: 65.5% of children interviewed stated that they work for a period ranging between 1- to 6 hours, 26.0% for a period between 7 and 12 hours and 8.5% said more than 12 hours a day.

³⁵ The question relating to children working conditions was a multiple-choice answer.

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5.4 Reasons why children are not regularly attending primary school because of work

Out of those interviewees whose primary school-age children in their family are not attending school regularly (Section 9 below), the main reason (27.9%) given by the interviewees for boys (706) was that they have to work whilst it is the third main reason (9.7%) given for girls (1,312).

5.5 Conclusions

- More than a third of interviewees (37%) stated that their children work. Of those interviewees who gave response for how many children work in their family, almost half of them (48, 9%) reported that most or all of their children work.
- 31% of interviewees stated that their children's work is the only source of income for the family.
- 27.9% of interviewees who explained the working conditions of their children said that they carry heavy loads as part of their regular duties and 15.3% of interviewees stated that their children work in excessive heat, cold or noise.
- 13.5% of the interviewees stated that their children are unable to go to school because they have to work. Children's work impact on their right to education can be further ascertained from Section 9: out of those interviewees whose primary school-age children in their family are not attending school regularly, child labour is the main reason given for boys (35.8%) whilst it is the third reason given for girls (11.9%).
- According to the findings from the AIHRC Children Field Monitoring activities, a third of the children interviewed spend more than 6 hours at work and 8.5% of them work more than 12 hour a day.

5.6 Government obligations

The Convention on the Rights of the Child (CRC), which Afghanistan has ratified, sets out the right of the child to be protected from economic exploitation; and from any work that is likely:

- To be hazardous, or
- To interfere with the child's education, or
- To be harmful to the child's health or physical, mental, spiritual, moral or social development.

The 2004 Constitution of Afghanistan prohibits forced labour for children (Article 49).

The minimum responsibility of the Government according to Article 32 of the CRC is to take measures, including issuing the appropriate legislation to provide the following:

- A minimum age for employment – not less than 15 years;
- Regulation of the hours and conditions of employment;
- Penalties or other sanctions to enforce the above standards.

The Government should also implement programmes to provide alternative sources of income for families whose only source of income is from child labour. The Government should consider relevant provisions of the following international instruments: The International Labour Organisation Worst Forms of Child Labour Convention, 1999 (No.182); The International Labour Organisation Minimum Age Convention 1973 (No. 138); International Labour Organisation Forced Labour Convention, 1930 (No.29).

6. The right to property and the right to adequate housing



Indicators:

- (1) Type of house in which families live.
- (2) Number of families who have house/land problems.
- (3) Main problems relating to tenure and housing conditions.
- (4) Number of current disputes over property and main parties to the dispute.
- (5) Number of families who said they solved their problems.

The main indicators for the right to property and the right to adequate housing were the type of house in which families live, as well as the prevalence and type of problems experienced by interviewees. These problems relate directly to issues - *inter alia* affordability, habitability and security of tenure³⁶ - relevant for assessment of the right to adequate housing.

6.1 Types of house in which families live

The majority of interviewees (65.4%) stated that their family was living in inherited houses (7,318); 10.2% of interviewees (1,138) in relatives/friends' houses, 8.0% of interviewees (892) purchased their house and 7.4% of interviewees (824) lived in rented houses (**Fig 6.1**).

³⁶ CESCR General Comment no 4 (1991): The right to adequate housing, Para. 8.

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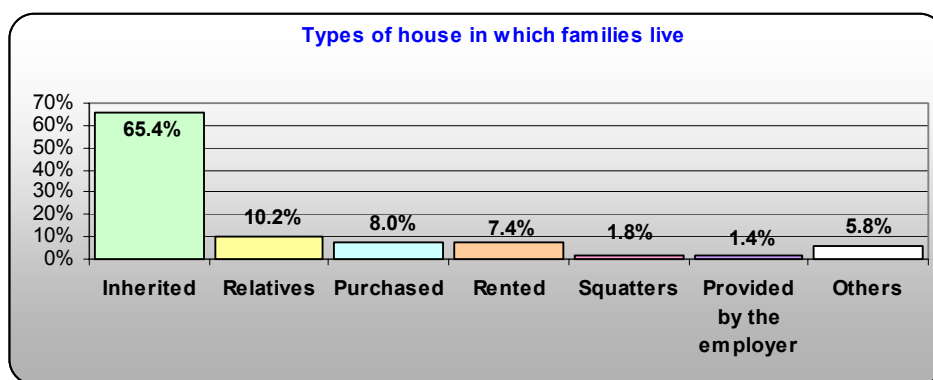


Fig 6.1

6.2 House and land problems

36.3% of all interviewees (4,030) stated that they had some form of problem with their property whilst 63.6% of all interviewees (7,060) stated that they had no problems. As can be seen from the graph below (Fig 6.2), the main issues identified³⁷ by those who stated they had problems relate to the following aspects of the right to adequate housing:

- **Habitability** – 50.7% of interviewees (2,452): not enough space; damaged / destroyed or burnt.
- **Security of tenure** – 28.9% of interviewees (1,142): house / land occupied; multiple ownership claims; facing eviction; sold unauthorized; were forced to sell his/her land; no documentation.
- **Affordability** – 12.5% of interviewees (607): unable to pay the rent.

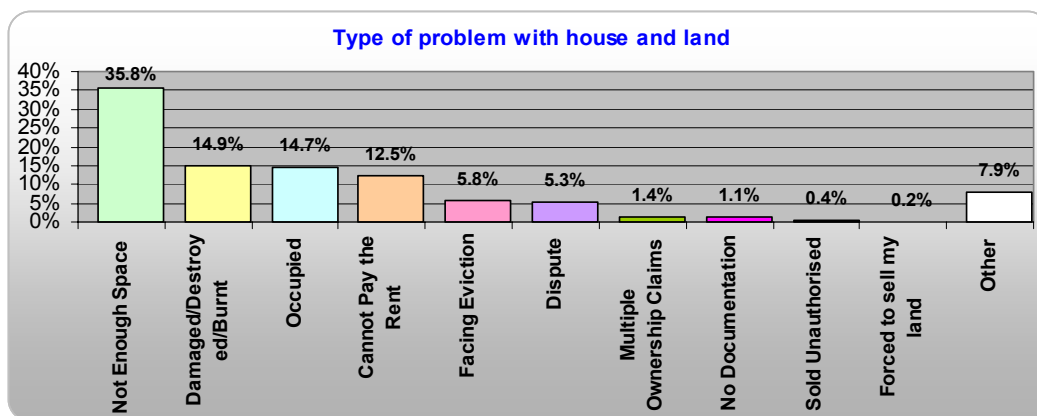


Fig 6.2

6.3 Persons involved in house / land disputes

Persons interviewed were from a range of groups including house and land-owners and families renting or squatting. 5.3 % of interviewees (259) who stated they had problems in relation to house and land said that they were involved in some form of dispute over their property. The main parties (Fig 6.3) to the dispute were described as follows:

³⁷ Interviewees were able to list more than one problem.

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- Another community/village – 37.0% of interviewees (96);
- Family/Relative – 36.3% of interviewees (94);
- People within the community – 18.9% of interviewees (49);
- Others (such as Government, MoRR, commanders) – 7.8% of interviewees (20).

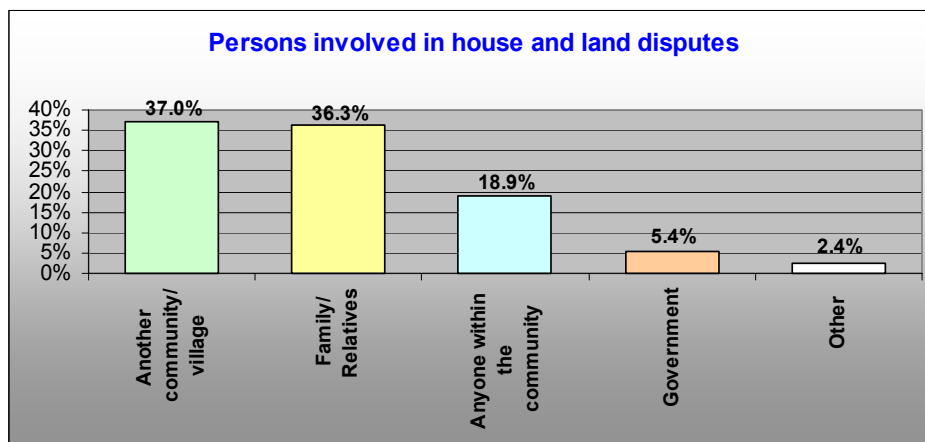


Fig 6.3

6.4 House/ land dispute resolution

The overwhelming majority (96%) of interviewees who had disputes over house and land (259) stated that their disputes were not solved and only 4.0% of the interviewed (10) said that their problems have been solved. 37.8% of those who answered the question (230), had no faith that their dispute would be resolved while 37.0% said that they were positive on the possibility to solve the dispute.

More broadly, when interviewees were asked if they ever had to solve a dispute, 92.9% answered negatively while only 7.1% stated that they had tried. Of these, 55.6% stated that disputes were related to house and land and 44.4% to water.

6.5 Conclusions

- 65.4% of interviewees said that their family was living in inherited houses. Over a third of interviewees (36.3%) stated that they have problems with their property. The main problems interviewees experience are related to the following key elements of the right to adequate housing: habitability, security of tenure and affordability. Over a third of interviewees (35.8%) stated that they were living in overcrowded housing.
- The level of disputes over property is related to security of tenure as an aspect of the right to adequate housing: 5.3% of all interviewees reported that they have a dispute over their property; more than a third of these reported that disputes were with family/relatives (37.0%) as well as with another community (36.3%).
- Over a half of interviewee IDPs (50.9%), who explained the reason of their current displacement, indicated lack of housing (43.4%) and lack of land (7.5%) as the main causes.
- Over a third of those returnees interviewed, who explained the reason of their dissatisfaction with return, indicated lack of housing (32.8%) and lack of land (2.2%) as the main causes.

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- Over 75% of those returnees interviewed who explained why, after returning to their places of origin were compelled to leave, indicated lack of housing (67.3%) and lack of land (9.6%) as the main causes.
- The availability of safe and healthy water is a key component of the right to adequate housing. As shown in Section 7, 52.2% of interviewees do not have access to potable water in their household. Of all interviewees who stated that they have problems with water, 26.7% stated that the water was not safe to drink and 17.5% that they use water source which is also shared with animals.

6.6 Government obligations

According to the ICESCR, the Government has the responsibility to take steps towards the realization of the right to an adequate standard of living for everyone, which includes the right to adequate housing (Article 11). The right to adequate housing should not be understood narrowly as the right to have a roof over one's head. Rather, it should be seen as the right to live somewhere in security, peace and dignity.

Under CEDAW the Government is obliged to eliminate discrimination against women in rural areas in relation to the right to adequate housing (Article 14.2 (h)).

Under the Convention Against Racial Discrimination the Government is prohibited from discriminatory practices and obliged to eliminate racial discrimination in the right to adequate housing (Article 5(e)(iii)).

The ICCPR states that no one shall be subjected to arbitrary or unlawful interference with his, or her, privacy, family, home or correspondence (Article 17 (1)).

The 2004 Constitution of Afghanistan recognizes the right of every individual to the peaceful enjoyment of his or her property or possessions (Article 38 and 40). Furthermore, the Afghanistan Compact and the ANDS set forward a benchmark to guide the government in addressing, within a give time frame, issues related to land and property disputes in Afghanistan. As part of the Governance, Rule of law and Human Rights benchmarks, the Afghanistan Compact foresees *‘that a process for registration of land in all administrative units and the registration of titles will be started for all major urban areas by end-2006 and all other areas by end-2008. A fair system for settlement of land disputes will be in place by end-2007. Registration for rural land will be under way by end-2007.’*

7. The right to water



Indicators:

- (1) Number of families who use covered water source as their source of drinking water.
- (2) Number of families who have to walk more than 15 minutes to fetch water.
- (3) Main problems relating to access to water.
- (4) Type of disputes over water.

Under the International Covenant on Economic, Social and Cultural Rights (Article 11) the right to water is essential to the right to an adequate standard of living and the right to health.³⁸ Safe drinking water is an intrinsic component of the right to water.

The indicators for the right to water focused on the main source of drinking water used by households and the walking distance to that water source. This relates directly to the quality and availability of drinking water.³⁹ It is assumed that water obtained from an uncovered water source cannot be described as potable and therefore indicates that the household does not have access to clean drinking water⁴⁰.

7.1 Water source

52.2% of interviewees (5,246) do not use a covered water source as their source of drinking water. This means that half of the interviewees do not use potable water for their household.

48.8% of interviewees (5,004) use a covered water source as their main source of household drinking water.

³⁸ CESCR General Comment no 15 (2002): The right to water, Para 3.

³⁹ CESCR General Comment no 15 (2002): The right to water.

⁴⁰ According to UNDP, an 'improved' water source is one that is likely to provide 'safe' water, such as a household connection, borehole, public standpipe, protected dug well, protected spring, or through rainwater collection. *Afghanistan Second MDG Report (September 2005): Vision 2020, Footnote 89.*

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7.2 Distance to water source

The walking distance⁴¹ to water source includes both covered and uncovered water source. 63.5% of all interviewees who answered the question (6,913) reported that they collect water from a source within 15 minutes walk of their house:

- More than 15 Minutes – 23.7% of interviewees (2,580);
- More than 1 hour – 12.8 % of interviewees (1,394).

7.3 Water problems

Interviewees were asked to describe their main problems with regard to access to household water which relate directly to an assessment of the right to water, such as availability, quality, physical accessibility, and economic accessibility.⁴²

As can be seen from the graph below (**Fig 7.3**), the main issues identified by those (67.8% of all interviewees) who stated they had problems⁴³ include the following aspects of the right to water:⁴⁴

- **Availability** – 24.1% of interviewees (4,158): not enough wells; frequent disruption; well is dry; well is broken.
- **Quality**
 - - 47.5% of interviewees (7,324): source shared with animals; not safe/unclean water; salty water;
 - - 52.2% of interviewees (5,246) do not use a covered water source as their source of drinking water.
- **Physical accessibility**
 - - 23.1% of interviewees (3,553): queue more than 1 hour; security problems; distance too far;
 - - 12.8% of interviewees (1,394) who indicated the walking distance to the water source, reported that they have to walk for more than one hour.
- **Economic accessibility** – 1.5% of all interviewees (237) have to pay for water.

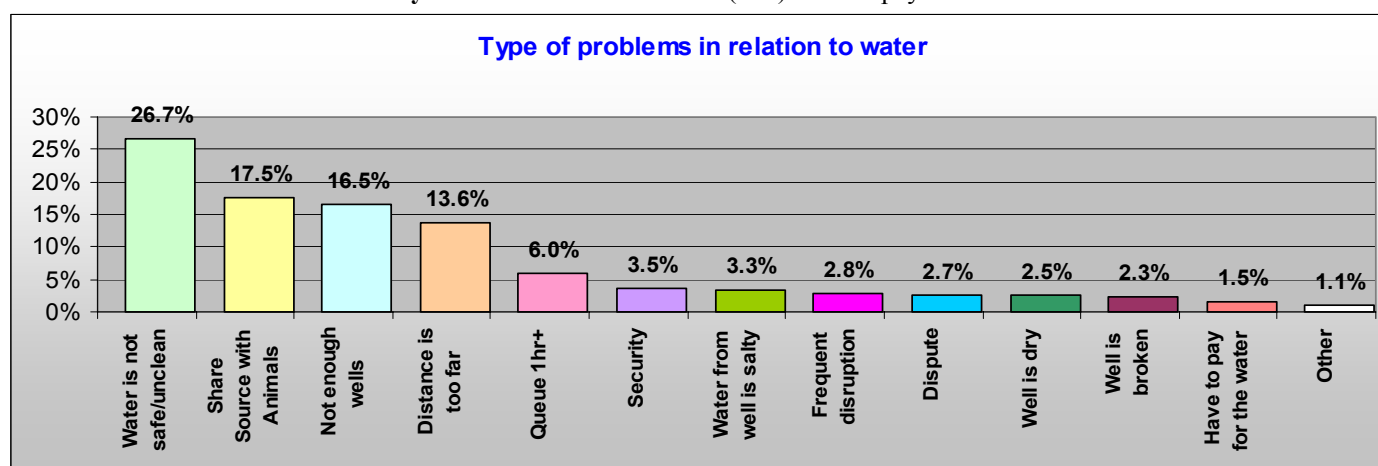


Fig 7.3

⁴¹ The World Health Organisation sets the benchmark at under 15 minutes distance to each household's water source (30 minutes round trip).

⁴² *CESCR General Comment no 15* (2002): The right to water.

⁴³ Interviewees were able to list more than one problem.

⁴⁴ The different aspects of the right to water (availability, quality, accessibility etc.) are defined in *CESCR General Comment no 15* (2002): The right to water.

7.4 Water disputes

6.3% of all interviewees (499) reported that they are currently engaged in a dispute over water. The main parties (Fig 7.4) to the dispute are as follows:

- Within the community – 54% of interviewees (134).
- Another community - 41.5% of interviewees (103).
- Official/ Government – 3.6% of interviewees (9).

7.5. Conclusions

- More than half of all interviewees (52.2%) do not get their household water from a covered water source, which means that the water cannot be described as safe for drinking purposes.
- The main problems interviewees experienced in relation to water are with the quality (47.5%) and availability (24.1%) of their drinking water.
- 12.8% of interviewees who indicated the walking distance to the water source have to walk for more than one hour. 23.7% of interviewees had to walk more than 15 minutes to their nearest water source. The World Health Organisation sets the benchmark at under 15 minutes distance to each household's water source (30 minutes round trip).
- 6.3% of all interviewees are involved in a dispute over water; over half of these (54.0%) said this dispute is with someone within the same community, whilst 41.5% with someone from another community.
- 10.2% of those returnees interviewed, who explained the reasons for their dissatisfaction with return, indicated water as the main cause.
- Safe drinking water ranked second (15.0%) among the priorities for the future indicated by all interviewees.

7.6 Government obligations

According to General Comment 15 on the Right to Water, the Government has a minimum core obligation to ensure that the quantity and quality of water available for each person should correspond to World Health Organization international guidelines.⁴⁵

Afghanistan's Millennium Development Target 13 is to halve, by 2020, the proportion of people without sustainable access to safe drinking water and sanitation. Currently the baseline value is estimated to be 77% of the population in Afghanistan without access to an 'improved water source'.

Both the ANDS and the Afghanistan Compact benchmarks set the following target: access to safe drinking water will be extended 90% of villages and irrigation investments will result in at least 30% of water coming from large waterworks by end-2010 and that 50% of households in Kabul and 30% of households in other major urban areas will have access to piped water.

Furthermore, In line with Afghanistan's MDGs, environmental regulatory frameworks and management services will be established for the protection of air and water quality, waste management and pollution control, and natural resource policies will be developed and implementation started at all levels of government as well as the community level, by end-2007.

⁴⁵ See *World Health Organisation Guidelines for Drinking Water Quality*, 3rd Edition, available at: http://www.who.int/water_sanitation_health/dwq/gdwq3/en/index.html

8. The right to health



Indicators:

- (1) Number of families for whom health care services are available.
- (2) Type of health care facilities available.
- (3) Main reasons for not using health care facilities.
- (4) Number of families with access to safe drinking water.
- (5) Type of assistance provided during birth of the last child.
- (6) Number of girl children who got married before the age of 16.

One of the indicators for the right to health is the availability of health services, i.e. whether the Government or private sources have provided medical services to interviewees. To some extent this response depends on a subjective assessment on the part of the interviewee, who may describe health services as 'available', but at the same time state that they are too far away as a reason for not using them.

In order to have a broad understanding on what interviewees consider based on their subjective assessment as health care services available to them, pharmacies and traditional healers as well mobile health centers/mobile outreach clinics were reflected in the questionnaire as multiple answer choices together with hospitals and clinics.

The reasons interviewees do not use health care services whether private or governmental, were identified and categorized in terms of the key elements of the right to health, such as: equal access, physical accessibility, economic accessibility, acceptability, quality and availability.⁴⁶

⁴⁶ The different aspects of the right to health (availability, quality, accessibility, acceptability etc.) are defined in *CESCR General Comment no.14* (2000): The right to the highest attainable standard of health.

8.1 Availability of health services

85.9% of those interviewees who answered the question (9,579) stated that governmental health care facilities were available to them; 13.9% of interviewees (1,547) stated that governmental health care facilities were not available (**Fig 8.1.1**).

60.6% of those interviewees who answered the question (5,699) stated that private health facilities were available to them; 38.1% of interviewees (3,588) said that health care facilities were not available (**8.1.2**).

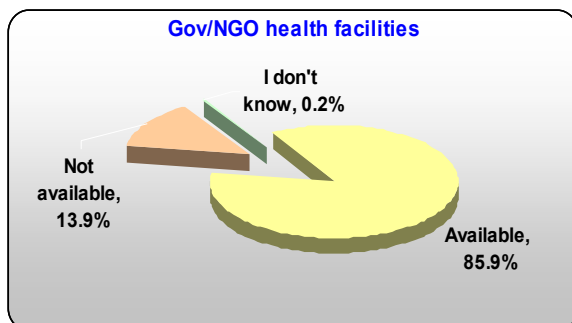


Fig 8.1.1

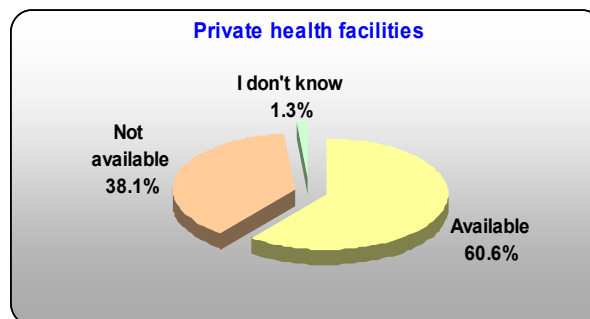


Fig 8.1.2

8.2 Types of health facilities available

The type of services used by interviewees were identified and categorized to assess key aspects of the right to health such as economic accessibility, acceptability, quality. Hence interviewees were asked to specify what types of government and private health facilities were available to them and their families.

Of those interviewees who answered the question on what type of government health care facilities was available to their families, 64.5% stated that health centers/mobile outreach clinics were available, 35.2% hospitals.

Of those interviewees who answered the question on what type of private health facilities was available, 57.1% stated that pharmacies were available, 27.9% traditional healers and 14.4% clinics.

8.3 Reasons for not using health services

Despite the fact that over 85.9% of interviewees stated that Gov/NGOs health care facilities were available 36.9% of those interviewees (3,501) reported that they do not use the existing Gov/NGOs health facilities.

The main reasons interviewees gave for why they do not use **Gov/NGOs health facilities** are as follows (**Fig 8.3.1**):

- **Physical accessibility** – 57.4% of all interviewees (1966) said that it is difficult to get to Gov/NGOs health facilities;
- **Quality** –29.8% (1,022) stated that poor quality and lack of medicine/equipment of Gov/ NGOs health facilities were the main causes for not using these facilities;
- **Economic accessibility** – 3.3% of interviewees (112) stated inability to pay for services and medicines provided by Gov/NGO;

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- **Acceptability** – 5.3% of interviewees (181) said no female staff were present in health care facilities provided by Gov/NGOs;
- **Equal access** – 2.0% of interviewees (70) stated that they felt discriminated in their access to Gov/NGOs health facilities.

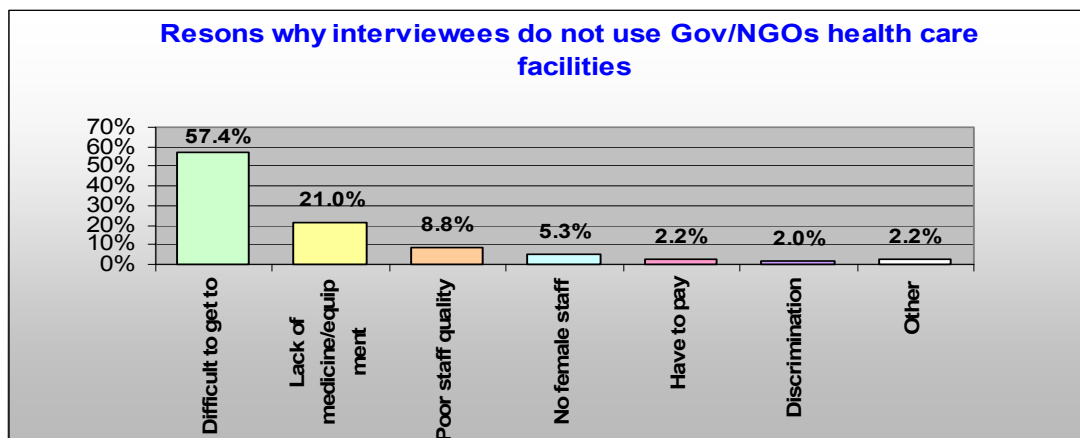


Fig 8.3.1

Similarly, although over 60.6% of interviewees stated that **private health care facilities** were available, 21.8% of them (1,221) reported that they do not use them for the following reasons (Fig 8.3.2):

- **Physical accessibility** – 54.0% of interviewees (293) said that it is difficult to get to private health facilities;
- **Quality** – 31.9% of interviewees (173) stated that the poor quality of the staff and lack of medicine/equipment in private health facilities were the main causes for not using these facilities.
- **Economic accessibility** – 3.5% of interviewees (19) stated inability to pay for services and medicines provided by private health care facilities;
- **Acceptability** – 5.9% of interviewees (32) stated no female staff were present in the private health care facilities;
- **Equal access** – Only 0.6% of interviewees (3) said discrimination affected their ability to access private health facilities.

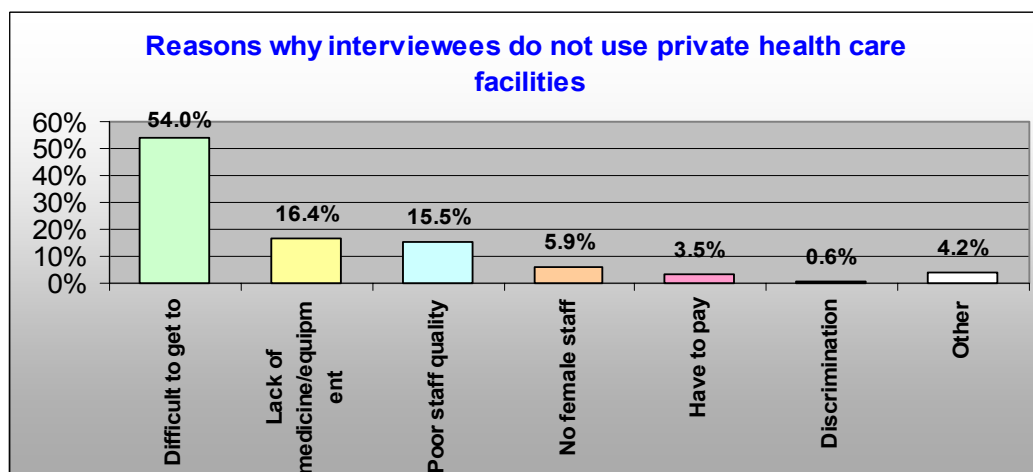


Fig 8.3.2

8.4 Families having access to safe drinking water

52.2% of interviewees (5,246) do not use a covered water source as their source of drinking water. This means that half of the interviewees do not use potable water for their household. 48.8% of interviewees (5,004) use a covered water source as their main source of household drinking water.

8.5 Maternity health care

In terms of availability of maternity health care services, 46.4% of interviewees (4,627) stated that relatives/friends assisted with the delivery of their last child; 21.5% said that they were assisted by a midwife/trained birth attendant (2,143), 14.3% said by nobody (1,432), 4.6% were assisted by local untrained midwives (465).

8.6 Children married before 16

12.3% of interviewees (1,343) stated that children in their families married before the age of 16. Of these, 84.7% were girls (1,314) whilst 15.3% were boys (238).

8.7 Conclusions

- Although 85.9% of all interviewees stated that Governmental/NGOs health care services are 'available', only 35.2% indicated hospitals as available facilities and 36.9% of interviewees mentioned not using these facilities.
- Although 60.6% of interviewees stated that private health care facilities were available, only 14.4% of interviewees indicated clinics as available facilities and 21.8% of interviewees reported not using the existing private health care facilities.
- The main reason identified by interviewees for not using health care facilities, either Gov/NGOs (57.4%) or private (54.0%), is linked to physical accessibility, *i.e.* health care facilities are too far and difficult to reach.
- Quality is another reason given by interviewees for not using health care facilities – 29.8% of interviewees consider the Gov/NGOs health facilities to be of poor quality and lack of medicine and equipments, the same was said by 31.9% of interviewees with regards to private health facilities.
- Over half of all interviewees (52.2%) do not have access to potable water for their household.
- Child marriage continues to be of significant concern in Afghanistan. Among the children who married before 16 years of age, the large majority (84.7%) were girls.
- 65% of interviewees said that the birth of their last child was attended by unskilled health personnel. Afghanistan's 2005 Millennium Development Goal Report also documents that Afghanistan has one of the worlds' highest maternal mortality ratios (1600 deaths per 100,000 live births). It is estimated that nearly 78% of maternal deaths can be prevented by increasing the proportion of births attended by skilled health personnel.⁴⁷
- According to the findings from the AIHRC Children Field Monitoring activities, 77.2% of children interviewed stated that they had been vaccinated; whilst 17.9% had not been vaccinated.

⁴⁷ *Afghanistan's Second MDG Report* (September 2005): Vision 2020, page 55. See also UNICEF updated statistics on Afghanistan available at: http://www.unicef.org/infobycountry/afghanistan_afghanistan_statistics.html

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- Improvement of health care facilities ranked third (14.9%) among the priorities for the future indicated by interviewees. According to Afghanistan's 2005 Millennium Development Goal Report, 60% of deaths amongst children younger than 5 years of age are preventable.⁴⁸

8.8 Government obligations

Under the ICESCR (Article 12) the Government recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The ICESCR (Article 12 (2) a) also sets out specific steps to be taken by States Parties to achieve the full realization of the right to health, which includes the reduction of the stillbirth and of infant mortality rates and for the healthy development of the child.

This is reinforced by the Government's ratification of the Convention on the Rights of the Child under which the Government has committed itself to take appropriate measures to diminish infant and child mortality and to ensure appropriate pre-natal and post-natal health care for mothers (Article 24 (2)).

By ratifying CEDAW, the Government has committed itself to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning (Article 12, (1) CEDAW). Under Article 14 (2) b the Government has a specific commitment to eliminate discrimination for rural women in access to health care facilities.

The 2004 Constitution of Afghanistan states that the Government is obliged to provide preventative health care, medical treatment and proper health facilities to all citizens of Afghanistan (Article 51), with a particular emphasis on medical services and assistance for vulnerable groups such as disabled persons, the elderly, women heads of households and orphans (Article 53).

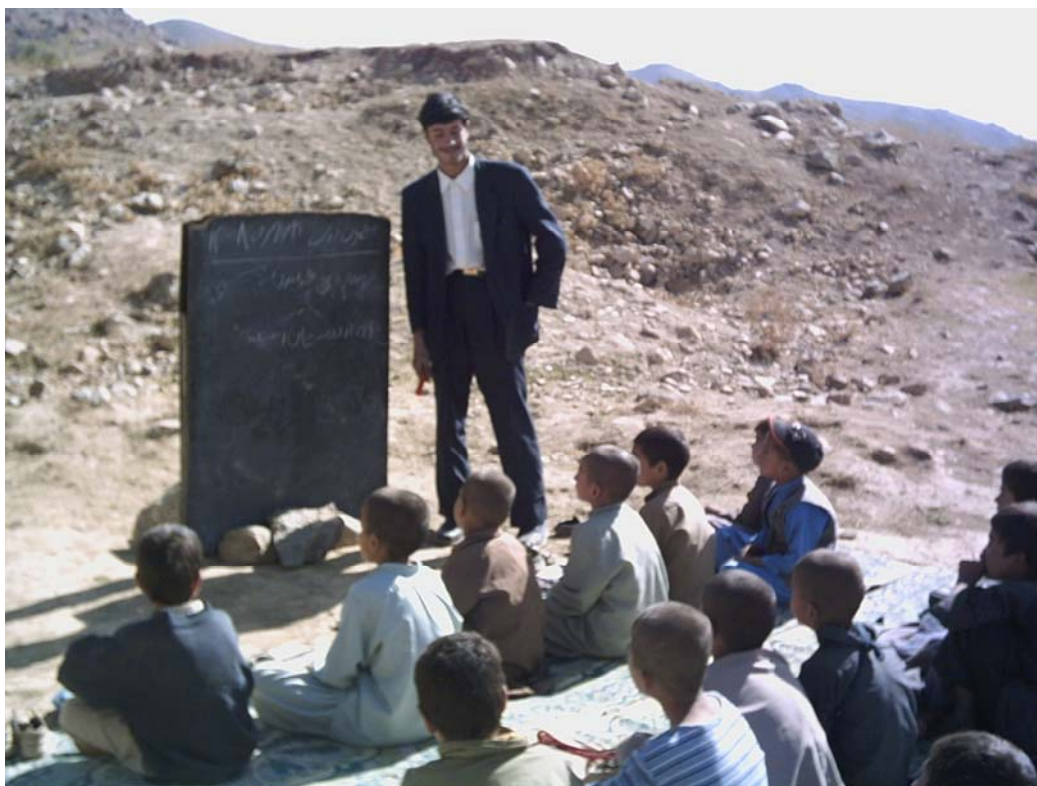
According to Article 70 of the Civil Code of Afghanistan "*marriage shall not be considered adequate until the male reaches the age of 18 and the female the age of 16.*"

The obligations of the Government under international treaties and the Constitution with regards to the right to health are consistent with the Millennium Development Goals to Reduce Child Mortality (MDG 4) and to Improve Maternal Health (MDG 5):

- The Millennium Development Goal Target 8 for Afghanistan is to reduce by 50% between 2003 and 2020, the under-5 mortality rate – the current baseline value is estimated to be 230 deaths of under-5 children per 1000 live births.
- The Millennium Development Goal Target 9 for Afghanistan is to reduce by 50%, between 2002 and 2020, the maternal mortality ratio – the current baseline value is estimated to be 1600 deaths per 100,000 live births.
- Under MDG 5: Improve Maternal Health, the Government has pledged to increase the number of births attended by skilled personnel in Afghanistan from 14.3% to 50% by 2020.
- The Afghanistan Compact foresees, in line with Afghanistan's MDGs, that by end-2010, the Basic Package of Health Services will be extended to cover at least 90% of the population. Maternal mortality will be reduced by 15%; and full immunization coverage for infants under-5 for vaccine-preventable diseases will be achieved and their mortality rates reduced by 20%.

⁴⁸ Most deaths among children under 5 years of age in Afghanistan result from infectious causes, with diarrhea, acute respiratory infections and vaccine-preventable illnesses accounting for nearly 60% of deaths. *Afghanistan's Second MDG Report* (September 2005): Vision 2020, page 46.

9. The right to education



Indicators

- (1) Number of families for whom primary education facilities are available.
- (2) Type of primary education facilities.
- (3) Number of families whose primary school-age children are attending school regularly.
- (4) Main reasons for not using primary education facilities.
- (5) Number of families whose primary school-age children complete primary school.

Education is both a fundamental human right and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults, in particular women, and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. For the purposes of monitoring the achievement of the right to education in the context of Afghanistan, the focus is on primary education.⁴⁹

The two main indicators for the right to education were the availability of primary education for girls and boys, children primary education attendance and completion rate. It is important to note that there is a distinction made between formal education (provided by government and NGOs) and informal education (home-based schooling and madrasas). This is because government and NGO schools follow the national curriculum, which is not usually followed by home-based schools and madrasas.

⁴⁹ See *Human Rights in Afghanistan, National and International Legal Standards*, the Right to Education, page 77.

9.1 Availability of primary school education

94.4% of interviewees (10,520) stated that primary education facilities were available for their children; whilst 5.3% of interviewees (596), stated that primary education facilities were not available for their children.

The graph below (**Fig 9.1**) shows which type of primary education was available. It can be seen that 98.6% of education facilities for **boys** and 96.1% of education facilities for **girls** are provided by the Government/NGOs.⁵⁰

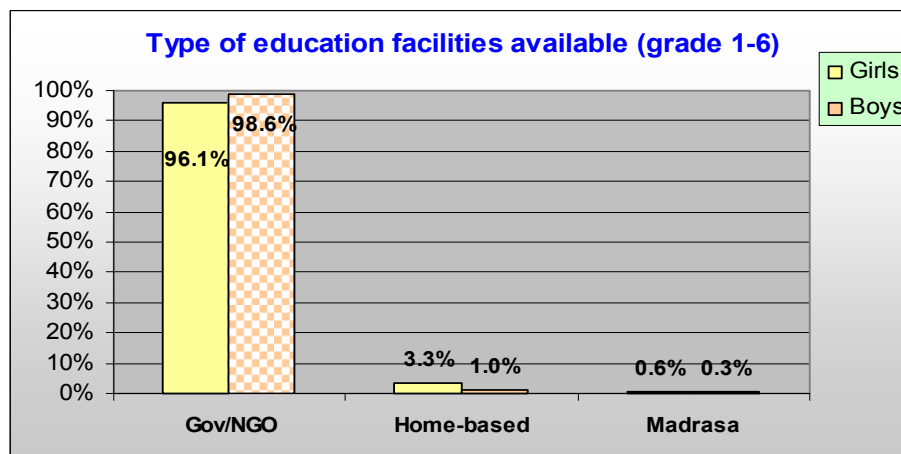


Fig 9.1

9.2 Primary school attendance

Rather than focusing on school enrolment, this indicator looked at the regular primary school attendance of girls and boys. This is in order to capture factors such as child labor, which would not necessarily prevent a child from enrolling at school, but may affect the time spent at school classes during the school year.

Despite the fact that over 94.4% of interviewees stated that education facilities were available only 68.5% of interviewees said that all their primary school-age children are attending school regularly (**Fig 9.2**). Of those:

- 73.6% of interviewees said that their **boys** go to school regularly.
- 63.3% of interviewees said their **girls** go to school regularly.
- 31.5% of interviewees reported that not all primary school-age children in their family were attending school regularly. Of those:
 - 26.4% of interviewees said that their **boys** do not go to school regularly. Instead they go sometimes (12.5%) or rarely (2.5%). 11.4% of them stated that their boys never go to school.
 - 36.7% of interviewees said that their **girls** do not go to school regularly. Instead they go sometimes (11.1%) or rarely (3.0%). 22.6% of them stated that their girls never go to school.

⁵⁰ Similar findings arise from the children focused monitoring where 96.7% of children interviewed stated that primary education from grade 1 up to 6 was available to them and 97.6% said that education facilities were provided by the government/NGOs.

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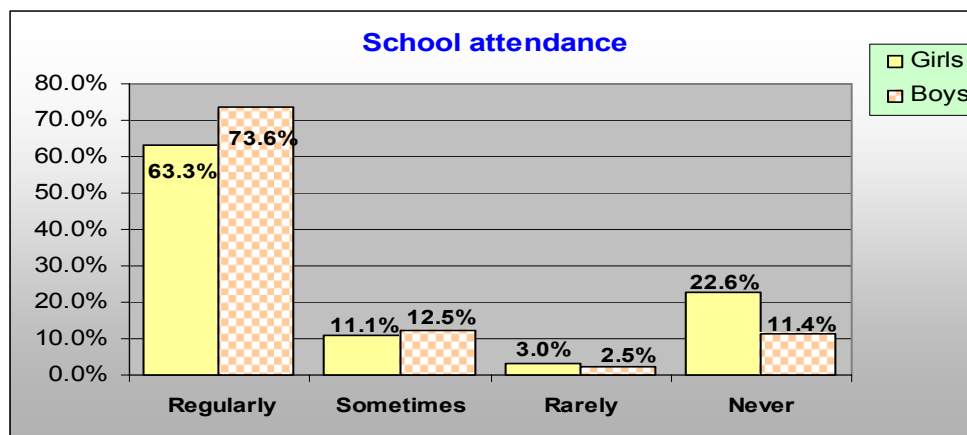


Fig 9.2

9.3 Reasons for not attending primary school

The main reasons why girls and boys do not attend primary school were identified during interviews and relate directly to the main aspects of the right to education, such as physical accessibility/affordability, economic accessibility, acceptability and quality.⁵¹ Child labor and child marriage also influence primary school attendance.

The main reason given by interviewees (Fig 9.3) to explain why their school-age children were not attending primary school regularly differed in priority for girl's attendance and boy's attendance.⁵²

The following reasons were given for girls:

- **Physical accessibility** – 32.8% of interviewees (981): distance too far; journey to school is not safe;
- **Acceptability** – 17.9% of interviewees (535): no female schools; no female teachers; traditionally not allowed;
- **Child labor** – 11.9% of interviewees (355): have to work;
- **Economic accessibility/affordability** – 7.5% of interviewees (224): cannot afford cost of transportation; cannot afford uniform/books;
- **Quality** – 7.0% of interviewees (209): bad conditions in school, not enough teachers, teachers are not good; no books/equipment;
- **Child marriage** – 5.0% of interviewees (152): marriage.

The following reasons were given for boys:

- **Child labour** – 35.8% of interviewees (716): have to work;
- **Physical accessibility** – 29.5% of interviewees (591): distance too far; journey to school is not safe;
- **Economic accessibility/affordability** – 7.9% of interviewees (157): cannot afford cost of transportation; cannot afford uniform/books;
- **Quality** – 13.8% of interviewees (276): bad conditions in school, not enough teachers, teachers are not good; no books/equipment;

⁵¹ CESCR General Comment No. 13 (1999): The right to education.

⁵² The different aspects of the right to education (availability, physical accessibility etc.) are defined in CESCR General Comment No 13 (1999): The right to education.

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- **Child marriage** – 1.3% of interviewees (26): marriage.

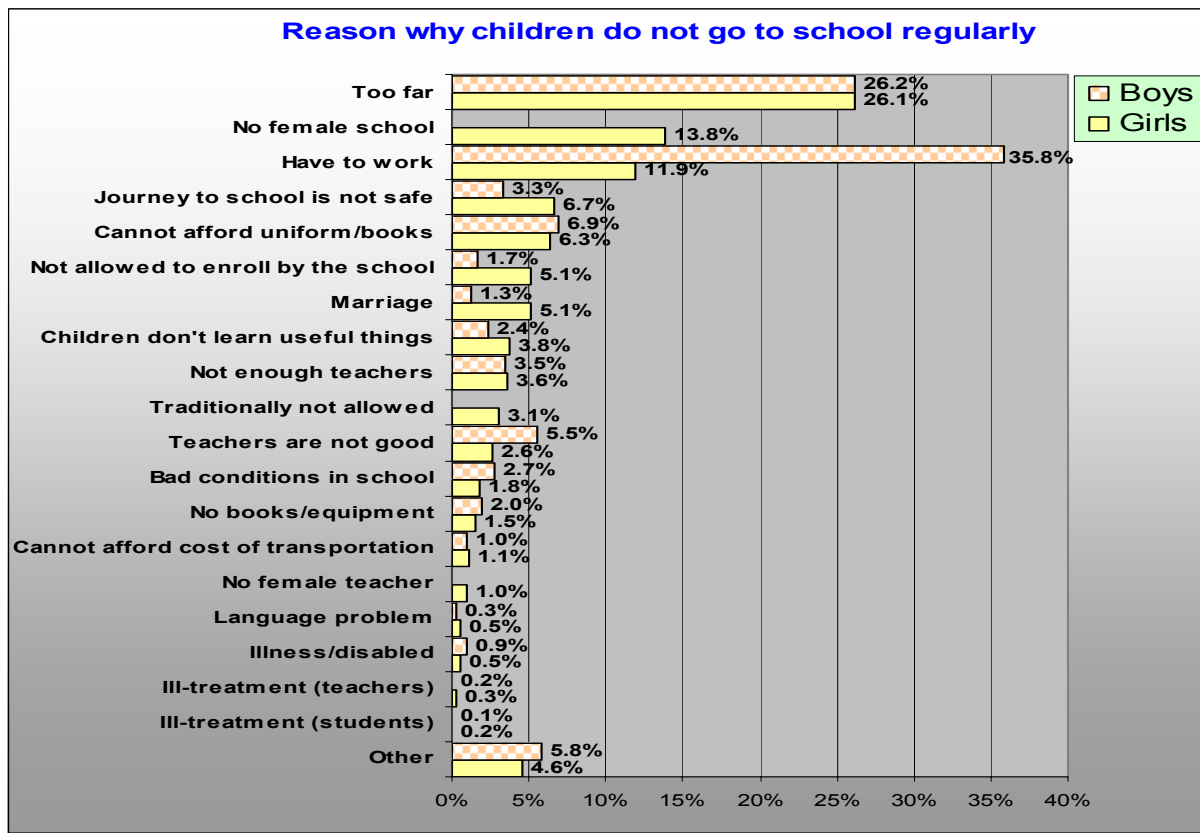


Fig 9.3

9.4 Primary school completion rate

The grade at which girls and boys left school was assessed in order to ascertain the number of families whose girl children and boy children completed primary school education. It is important to note that this indicator does not include those primary school-age children who do not attend primary school within a family, only those who attend school.

Out of the 7,943 interviewees who answered the question relating to the age at which their **girl** children left school, 39.7% stated before grade 6, compared to 60.3% who stated after grade 6.

Out of the 8,946 interviewees who answered the question relating to age at which their **boy** children left school: 19.1% stated before grade 6, compared to 80.9% who stated after grade 6.

As shown in **Fig 9.4**, 60.3% of girls who start primary school actually complete their primary education compared with 80.9% of boys who are able to finish their primary education.

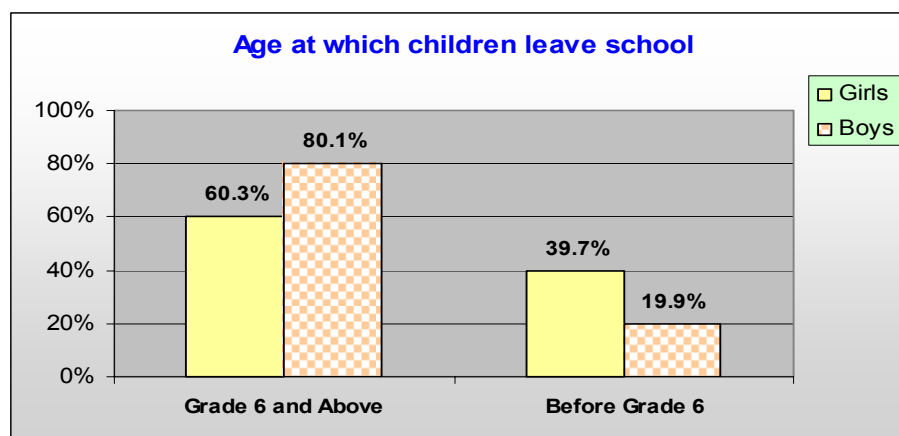


Fig 9.4

9.5 Conclusions

- 94.4% of interviewees stated that Governmental/NGO primary education facilities were available for their children, in particular 96.1% for boys and 98.6% for girls.
- Although interviewees reported a high level of availability of primary education, 31.5% of interviewees said that their primary-school age children are not attending school regularly. In particular, 36.7% of girls and 26.4% of boys.
- Out of 36.7% of interviewees who stated that their girl children do not attend school regularly, over a half (61.5%) stated that their girl children never go to school.
- Out of 26.4% of interviewees who stated that their boy children do not attend school regularly, over a third (43.1%) stated that they never go to school.
- The main factors preventing **girls** from attending primary school are linked to physical accessibility – 27.5% of interviewees whose girl children do not go to school stated that the distance to school was too far or the journey to school was not safe.
- A significant number of interviewees (17.9%) indicated factors linked to acceptability – no female schools, no female teachers, girls traditionally not allowed - as reasons for their **girls** not going to school.
- The main factor preventing **boys** from attending primary school is linked to child labour – 35.8% of interviewees whose boy children do not attend school regularly stated that their boys have to work.
- There is a significant discrepancy in completion of primary education between girls and boys: just over half (60.3%) of girls who start primary school complete their primary education (up to Grade 6), whilst 80.9% of boys who start primary school complete Grade 6.
- Child education ranked fourth (11.2%) among the priorities for the future indicated by all interviewees.

9.6 Government obligations

Under the ICESCR the Government recognises the right of everyone to education (Article 13 (1)), which as a minimum is a commitment to providing free and compulsory primary education to all (Article 13 (2) a).

The Convention on the Rights of the Child emphasizes that the child's right to education is essential for all children (Article 28) and stresses the right must be achieved on the basis of equal opportunity,

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reflecting the fact that vast numbers of children suffer discrimination in access to education (particularly children in rural areas, girls, minorities and disabled children).

Under CEDAW, the Government has committed itself to taking all appropriate measures to eliminate discrimination against women in order to ensure equal rights with men in the field of education (Article 10). The Committee on Economic, Social and Cultural Rights emphasizes the responsibility of the Government to take action to ensure the safety of children, particularly girls, on their way to and from school.⁵³

Although a State's obligation to meet the educational needs of their children will need to be achieved progressively, Article 28 of the Convention on the Rights of the Child states the core minimum of this obligation: free compulsory primary education for all, and different forms of secondary education and vocational guidance available and accessible to all.

The ICESCR also stipulates that States parties should work out and adopt, within two years after ratification, a detailed plan of action for the progressive implementation of the obligation of compulsory primary education free of charge for all (Article 14).

The Government reaffirms these commitments in the 2004 Constitution of Afghanistan (Articles 43 and 44), and specifically recognizes the right to teach native languages in areas where they are spoken. In these provisions of the Constitution, the Government has committed itself to taking special measures towards addressing illiteracy and improving the education of women and nomads.

Through the Millennium Development Goals the Government has committed itself to achieve universal primary education (Millennium Development Goal 2) and to promote gender equality (Millennium Development Goal 2):

- The Millennium Development Goal Target 3 for Afghanistan is to ensure that, by 2020, all Afghan children, boys and girls alike, will be able to complete a full course of primary education – the current baseline value is estimated at 54% of children enrolled in primary education and 45% of pupils who start primary education reaching grade 5.
- Both the ANDS and the Afghanistan Compact set key benchmarks to achieve universal primary education in Afghanistan. It foresees that by end-2010: in line with Afghanistan's MDGs, net enrolment in primary school for girls and boys will be at least 60% and 75% respectively; a new curriculum will be operational in all secondary schools; female teachers will be increased by 50%; 70% of Afghanistan's teachers will have passed a competency test; and a system for assessing learning achievement such as a national testing system for students will be in place.

⁵³ *CESCR General Comment No. 16* (2005): The equal right of men and women to the enjoyment of all economic, social and cultural rights, Para. 30.

10. The right to participate in development

Indicators:

- (1) Number of families who have been excluded from development projects.
- (2) Type of projects from which families were wrongly excluded.
- (3) Main reasons for exclusion from development projects.

Although the right to participation is outlined as a civil and political right in the ICCPR (Article 25) the right to participation in development has been included in this analysis because it is an integral part of ensuring equality of opportunity in accessing basic resources, education, health services, food, housing, employment and the fair distribution of income.⁵⁴ Hence all community members should be able to participate in development: the emphasis in the ICESCR on the needs of vulnerable and marginalized groups means that the Government has a particular responsibility to ensure inclusion of the poorest sectors of society.

There are several aspects of the right to participation in development, such as the right to participate in planning and implementation of development strategies. The indicator used in Human Rights Field Monitoring was the inclusion of interviewees in development projects as beneficiaries. This approach has limitations in the sense that not all members of a community are able to participate directly in development as beneficiaries, but it has some value as an indicator, particularly when seen in the context of the main reasons interviewees considered that they had been excluded (Section 10.2).

10.1 Exclusion from development projects

The large majority of interviewees (87.3%) stated that they had not been excluded from development projects (9,634), whilst 12.1% of interviewees (1,330) said to have been excluded. Out the interviewees who answered the question⁵⁵, 24.8% stated that they had been excluded from water (724), 17.7% from educational (517), 16.1% from health (469), 16.1% house/land (471) and 14.8% from road projects (432).

10.2 Reasons for exclusion

Interviewees were asked to give their perspective of why they were not included as beneficiaries in development projects⁵⁶.

The main reasons (**Fig 10.2**) why interviewees considered that they had been excluded from development projects were linked to economic reason – 49.7% of interviewees said they were excluded because they were too poor or did not want (corruption/recommendation) to pay a bribe.

⁵⁴ *UN Declaration on the Right to Development* (1986), General Assembly Resolution 41 / 128, Article 8.

⁵⁵ The question relating to types of development projects was a multiple-choice answer.

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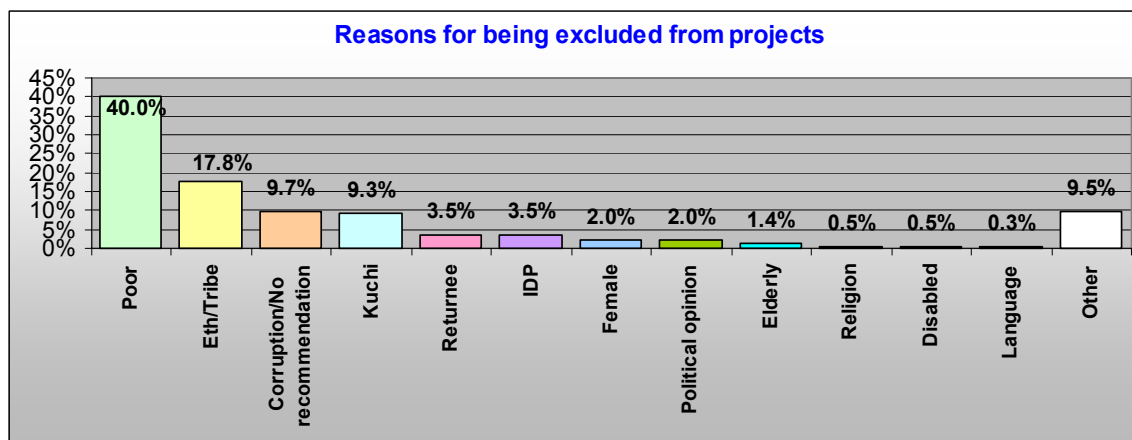


Fig 10.2

10.3 Conclusions

- 12.1% of all interviewees reported that they had been excluded from development projects.
- The main reasons why interviewees (49.7%) considered that they had been excluded from development projects were linked to economic reasons – too poor or did not want to pay a bribe.
- 16.7% of interviewees who were excluded from development projects considered their ethnicity to be the main reason.

10.4 Government obligations

Under the ICESCR the Government has undertaken to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant (Article 3), therefore any programmes aimed at improving access to economic and social rights should be based on equality of participation.

Under CEDAW, the Government has an obligation to take all appropriate measures to eliminate discrimination against woman in rural areas, including by participating in development at all levels and in the benefits of rural development (Article 14 (a)).

Under the Agricultural and Rural Development Sector, the ANDS and the Afghan Compact set out key benchmarks to enhance a comprehensive rural development for the benefit of 19 millions people in over 38,000 villages; road connectivity will reach 40% of all villages, increasing access to markets, employment and social services; 47% of villages will benefit from small-scale irrigation; 800,000 households (22% of all Afghanistan's households) will benefit from improved access to financial services; and livelihoods of at least 15% of the rural population will be supported through the provision of 91 million labour days.

11. Right to an effective remedy

Indicators:

- (1) Number of families who tried to solve a dispute.
- (2) Number of families who approached customary justice mechanisms.
- (3) Number of families who approached formal justice mechanisms.
- (4) Number of families who stated the dispute was solved.
- (5) Number of families who agreed with the decision taken on the dispute.

Interviewees were asked if they tried to solve their disputes and, if so, to explain how they tried to solve their disputes and if they agreed with the decision taken.

There are limitations in the use of data on the effectiveness of mechanisms used by interviewees to resolve disputes as an indicator, since in some cases the person or institution consulted may not have the mandate or the ability to resolve a particular dispute. Interviewees' responses are however still useful in terms of identifying interviewees' level of confidence and reliance on either formal or customary justice mechanisms.

11.1 Mechanisms for solving disputes

From Section 6 it can be seen that 5.3% of interviewees (259) reported that they were in a dispute over property (house and land), whilst from Section 7 it can be seen that 2.7% of interviewees (413) reported that they were in a dispute over water. Out of 10,696 interviewees who answered the question, 7.1% stated that they have tried to solve a dispute (701). Of those, 55.6% of interviewees tried to solve a dispute over house/land (524) whilst 44.4% tried to solve a dispute over water (419).

Interviewees reported that they attempted to resolve their problems in a range of ways (**Fig 11.1.1** and **Fig 11.1.2**), through customary mechanisms (*Shura/Jirga*, elders, family, mullah) and formal mechanisms (Government, court, ANP, ANA, Special Property Court).⁵⁷

- **Customary justice mechanisms** – 59.1% of interviewees (1,051).
- **Formal justice mechanisms** – 36.2% of interviewees (644).

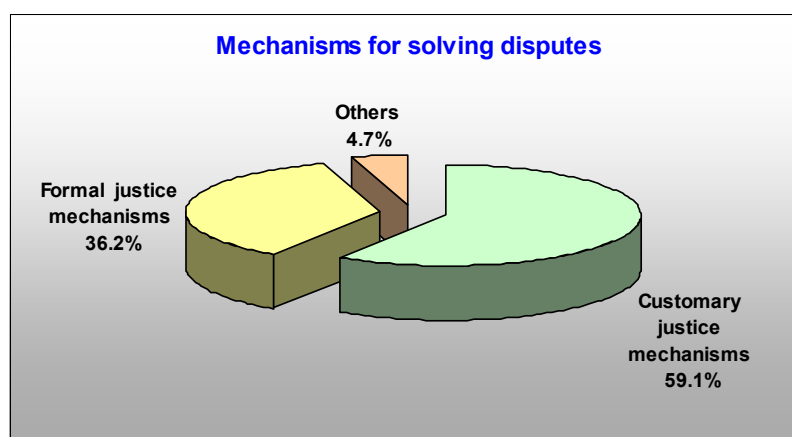


Fig 11.1.1

⁵⁷ Interviewees were able to list more than one person / institution that they approached for help.

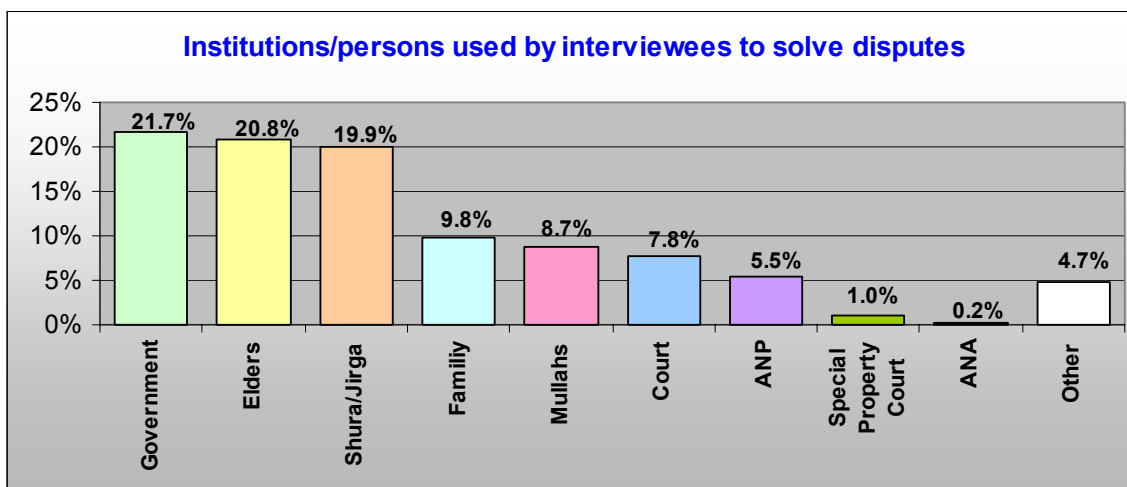


Fig 11.1.2

11.2 Effectiveness of the mechanisms used to solve disputes

Out of 596 interviewees who answered the question, 58.6% reported that the dispute was not solved whilst 41.1% said that the dispute was solved.

85.9% of interviewees who answered the question agreed with the decision taken to solve the dispute, in particular, 87.3% agreed with decisions taken by formal justice mechanisms and 80.6% agreed with decision taken by customary justice mechanisms.

11.3 Conclusions

- 7.1% of interviewees who answered the question stated their families tried to solve the dispute they were involved. Of those, 55.6% tried to solve a dispute over house/land whilst 44.4% over water.
- Over half of interviewees (59.1%) who tried to solve their disputes approached customary justice mechanisms, namely: Elders (20.8%), Shura/Jirga (19.9%), family (9.8%) and Mullah (8.7%).
- 36.2% of interviewees who tried to solve their disputes approached formal justice mechanisms, namely: Government (21.7%), Courts (8.8%), ANP (5.5%).
- Among those interviewees who answered the question, 58.6% reported that the dispute was not solved.
- Out of those interviewees who said that their disputes were solved, 85.9% agreed with the decision taken to solve it, in particular, 87.3% agreed with decisions taken by formal justice mechanisms and 80.6% agreed with decision taken by customary justice mechanisms.

11.4 Government obligations

Individuals not only have a right to enjoy the economic and social rights that the Government has subscribed under the ICESCR, but they also have a procedural right to an effective remedy before a domestic court or tribunal in case their human rights have been violated.

The United Nations Economic and Social Council has stated that the central obligation in relation to the ICESCR is for States parties to give effect to the rights contained in the Covenant. This means that the provisions of the Covenant must be recognized in appropriate ways within the domestic legal order, and that

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appropriate means of redress or remedy must be available to an individual or group whose human rights have been violated (see Section 1.3).⁵⁸

Therefore, under the ICESCR, the Government has an obligation to ensure that any person claiming a remedy for a violation of an the right to adequate standard of living, the right to water, the right to adequate housing, the right to health care, the right to education etc. are able to have their complaint determined by a competent judicial, administrative or legislative authority.

Furthermore, under the ICESCR, the Government has an obligation to ensure that the competent authorities enforce such remedies when they are granted.

The 2004 Constitution of Afghanistan reiterates the right to an effective remedy as set out under international law by stating in Article 51 that any person who suffers harm by government action is entitled to compensation, through referral to a competent court. International Human Rights Treaties that Afghanistan has signed, such as the ICCPR (Article 26), also provide the right to an effective remedy for violations by non-state actors.

By ratifying the International Convention on the Elimination of All Forms of Racial Discrimination, the Government has committed to provide an effective remedy to all persons in their jurisdiction, including minorities, particularly for acts which discriminate against any group in the exercise of their human rights (Article 6).

Under CEDAW (Article 15(2)) the Government has made a commitment '*shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity.*'

This is also recognized in the Constitution of Afghanistan (Article 22) which states that '*the citizens of Afghanistan, man and women, have equal rights and duties before the law*'.

According to Afghanistan's Millennium Development Goal, Target 7 is to Reduce Gender Disparity in Access to Justice by 50% by 2015 and completely by 2020. In order to achieve this target, the Government will have to adopt, review and amend legislation that protects employment, family, property and inheritance rights of women in accordance with the Afghan Constitution as well as to enact a legislation that criminalizes all forms of gender and sexual based violence.

⁵⁸ *CESCR General Comment No 9* (1998): The domestic application of the Covenant.

12. Priorities for the future

Interviewees were asked to choose their three main priorities for the future. This question was asked in order to be able to make an assessment of the way that interviewees prioritize any problems that they face and what they perceive as being their biggest challenge in the future.

Interviewees were also asked whether or not they feel positive about the future.

12.1 Priorities for the future

The following main priorities were listed by interviewees (**Fig 12.1**):

- Job opportunities (17.5%);
- Safe drinking water (15.0%);
- Improvement of health facilities (14.9%);
- Child education (11.2%);
- Housing (10.7%).

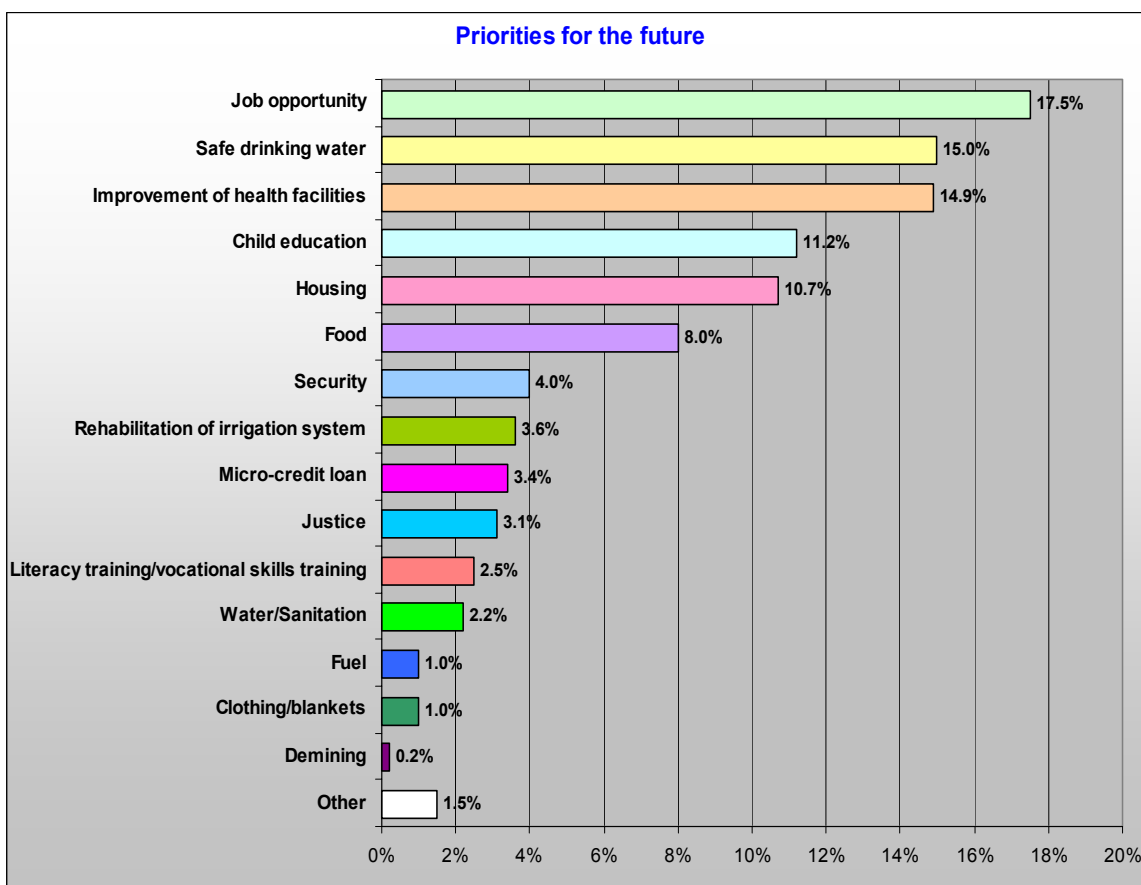


Fig 12.1

12.2 Perspective for the future

78.8% of interviewees (8,500) stated that they feel positive about the future whilst 10.1% do not feel positive (1,088) and 11.2% do not know (1,205).

12.3 Conclusions

- Over 85% of interviewees listed economic and social rights as their main priorities for improvement in the future.
- Job opportunities (17.5%), drinking water (15.0%), improvement of health facilities (12.3%), child education (11.2%) housing (10.7%), food (8.0%) were all given a higher priority than security (4.0%) and justice (3.1%).
- The priorities given by interviewees correspond to the main problems and issues highlighted throughout this report.
- Over 78.8% of interviewees said that they are positive about the future.

13. 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.

The UN Committee on Economic, Social and Cultural Rights points out that Governments which have ratified the ICESCR have a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights contained in the Covenant, for all persons equally:⁵⁹

“For example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant.”

There is a close correlation between the Government’s minimum core obligations under the ICESCR and the Government’s commitments under the Millennium Development Goals, the Afghanistan National Development Strategy and the Afghans Compact since many of the objectives coincide. 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, as set out in Sections 4-12, 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:

13.1 Essential food/economic vulnerability

- Findings confirm an alarming level of chronic or transient food shortages⁶⁰ 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 Bank⁶¹. 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 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.⁶²
- 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

⁵⁹ CESCR General Comment No. 3 (1990): The nature of States parties obligations Para. 10.

⁶⁰ 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.

⁶¹ According to the World Bank Absolute Poverty Line indicator, an individual is ‘poor’ if his/her income is less than \$1 per day.

⁶² Afghanistan’s Second MDG Report (September 2005): Vision 2020, page 21.

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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.

13.2 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.⁶³ Early pregnancy resulting from underage marriage further exacerbates the situation by increasing the risk of death during childbirth.⁶⁴ 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.

13.3 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.

⁶³ 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.

⁶⁴ 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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- Overall lack of housing ranked fifth (10.7%) among the priorities for the future indicated by all interviewees.

13.4 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.

13.5 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.

14. Recommendations

14.1 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 2006.⁶⁵

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 kuchi, 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.

⁶⁵ 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 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;
 - 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 Housing⁶⁶, 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 programme and enforce legislation consistent with the Principles on Housing and Property Restitution for Refugees and Displaced Persons.⁶⁷
- 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.

⁶⁶ 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.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/3e519fe3b3b9d779c1256e67004c42a8?Opendocument>

⁶⁷ Principle on Housing and Property Restitution for Refugees and Displaced Persons, June 2005.

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 water⁶⁸, 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 strategy⁶⁹, 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.

⁶⁸ See the WHO health guidelines on the quality of drinkable water, third edition:
http://www.who.int/water_health/dwg/gdwq/en/index.html

⁶⁹ Program 1: extending the Basic Package of Health Services, ANDS, Summary Reports, page 46.

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- 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 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.

The right to an effective remedy

- Despite the limitations in the use of data on the effectiveness of mechanisms used by interviewees to resolve disputes⁷⁰, 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.

⁷⁰ 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.

14.2 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 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.

14.3 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 1746⁷¹, 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.

⁷¹ 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*".