



## **Afghanistan Independent Human Rights Commission**



## **Economic and Social Rights Report in Afghanistan-III**

**December, 2008**

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Note: worthy to mention that victims' names, which are used in the report, are alias names.

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## List of Acronyms

ACBAR – Agency Coordinating Body for Afghan Relief  
AFS – Afghani, national currency  
AIHRC – Afghanistan Independent Human Rights Commission  
ANDS – Afghanistan National Development Strategy  
CAWSS – Central Authority for Water Supply and Sewerage  
CDC – Community Development Council  
CEDAW – Convention on the Elimination of all forms of Discrimination Against Women  
CRFM – Children Rights Field Monitoring  
FAO – Food and Agriculture Organization  
GDP – Gross Domestic Product  
HRFM – Human Rights Field Monitoring  
ICCPR – International Covenant on Civil and Political Rights  
ICESCR – International Covenant on Economic Social and Cultural Rights  
IDP – Internally Displaced Person  
IMF – International Monetary Fund  
IOM – International Organization for Migration  
IRIN - Integrated Regional Information Network  
LAS – Land Allocation Scheme  
MDG – Millennium Development Goals  
MoE – Ministry of Education  
MoF – Ministry of Finance  
MoFA – Ministry of Foreign Affairs  
MoLSAMD – Ministry of Labor, Social Affairs, Martyrs and Disabled  
MoPH – Ministry of Public Health  
MoRR – Ministry of Refugees and Returnees  
MoUD – Ministry of Urban Development  
NABDP – National Area Based Development Programme  
NGO – Non-governmental Organization  
NRC – Norwegian Refugee Council  
NRVA – National Risk and Vulnerability Assessment  
NSP – National Solidarity Programme  
NWFP – North-Western Frontier Province  
PPP – Purchasing Power Parity  
PRT – Provincial Reconstruction Team  
UNAMA – United Nations Assistance Mission to Afghanistan  
UNDP – United Nations Development Programme  
UNHCR – United Nations High Commissioner for Refugees  
UNICEF – United Nations Children’s Fund  
UNIFEM – United Nations Development Fund for Women  
UNODC – United Nations Office on Drugs and Crime  
USAID – United States Agency for International Development  
WFP – World Food Programme

## List of Special Terms

*Amayesh cards* - A registration exercise led by the government of Iran and the UNHCR in 2001. This process is administered in 3 waves.

*Bad dadan* – a type of forced marriage when a woman from the side of the accused is married to the victim’s close relative.

*Badal* – a form of marriage where male and female siblings of one family are married with siblings of another family.

*Dhobi* – A person who washes and irons cloths.

*Halal sheep* – lamb that was slaughtered by cutting the front of the throat first.

*Jirga* – a gathering of elders to resolve a dispute or other communal issues

*Jirib* – unit measurement of land area equivalent to 2,000 m<sup>2</sup> (5 *jerib* = 1 hectares)

*Karez* – underground canal system that taps aquifers by gravity through a series of subsurface tunnels; often extends for many kilometers before surfacing to provide water for drinking and irrigation

*Maharam* – a male relative chaperoning women outside of their house.

*Mahr* - given by the groom to the bride upon marriage, one to be given the bride at marriage, the other to be given the wife if she is widowed or divorced.

*Mujaheddin* – literally, a Muslim involved in a jihad, in Afghanistan refers to various loosely-aligned Afghan opposition groups, initially fought against the incumbent pro-Soviet Afghan government.

*Shura* – a gathering of elders to resolve a dispute or other communal issues

*Zakat* – one of the five fundamental pillars of Islam, mandatory on all Muslims who are of eligible wealth. It consists on an amount of money due from and payable by a person on his/her wealth (not his/her income), which has remained with him/her for one Islamic year.

*Zina* – extra or premarital sex, under *Sharia* law considered to be a crime.

## Executive Summary

This report measures progress of the government of Afghanistan towards securing the social and economic rights of its people in Afghanistan, covering the period between January 2007 and March 2008. The Commission released two previous reports on Economic and Social Rights in Afghanistan in 2006 and 2007, respectively. These reports are available at the AIHRC's web page, at [www.aihrc.org.af](http://www.aihrc.org.af).

Establishing a stable state with a functional bureaucracy, accessible and affordable basic services, rule of law and gender equality requires long-term investments and careful planning.

To ensure economic and social rights, Afghanistan's legal and policy framework is drawn from two main legal documents, the 2004 Constitution of Afghanistan and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>1</sup>, coupled with the Millennium Development Goals (MDGs) for Afghanistan, and the Afghanistan National Development Strategy (ANDS)<sup>2</sup>. Under these legal and policy provisions, the government of Afghanistan has a responsibility to its citizens in protecting and promoting labor rights, providing social security, creating an environment to achieve an adequate standard of living, reintegrating returnees and internally displaced persons (IDPs), protecting family life, and providing education and health services to the Afghan citizens.

Fulfilling obligations to guarantee Afghan citizens an adequate standard of living and protect their economic and social rights is a difficult task. Despite the facts that 2007 saw some economic growth and hosted one of the best crop productions in years, the situation of average Afghans still remains precarious. Rising food prices in the world and the onset of the severe drought of 2008 created unprecedented numbers of food-insecure people. The security situation has continuously deteriorated throughout the year. And the global economic crisis has yet to take its toll on the development of Afghanistan. These are only some of the challenges that the government has to address. Regardless, these cannot be made to excuse the current slow progress in securing social and economic rights for the Afghan people.

### **Vulnerable Populations**

Vulnerable populations in Afghanistan continue to be excluded from development programs. Human Rights based development is one of the important prerequisites to exercising social and economic rights. It is a fundamental component of a dignified life ensuring access to basic resources, education, health services, food, housing, employment, and the fair distribution of income. However, vulnerable populations in Afghanistan are excluded on three levels: (I) Donor-driven priorities strip Afghan citizens from their right to shape their lives. (II) The policy-makers in Afghanistan fail to hear the needs of the people despite extensive consultations and remain largely tuned in to the desires of the international funding environment. (III) Poor Afghans are excluded at the community level where poverty creates pockets of chronically underserved populations.

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<sup>1</sup> Afghanistan acceded to the ICESCR on 24/01/1983.

<sup>2</sup> The ANDS serves as the country's Poverty Reduction Strategy Paper (PRSP). As such it establishes the joint Government/international community commitment to reducing poverty; describes the extent and patterns of poverty that exist; presents the main elements of its poverty reduction strategy; summarizes the projects and programs that will assist the poor; and provide a three five-year macroeconomic framework and three five-year policy matrix relevant to the poverty reduction efforts. (ANDS, Chapter 1, An Overview). Comment: ANDS is from 2008-2013.

## **Law Enforcement**

No law enforcement, weak protection mechanisms and a dysfunctional civil registry undermine access to and the enjoyment of economic and social rights. Under Afghanistan Constitution and ratified International human rights laws which on paper guarantee access to the social and economic rights. However, the system of law enforcement and justice remains weak and inefficient. Few legal provisions are accompanied of administrative instructions or other means for implementation, limiting the effectiveness of rights protection, prevention of violations, and law enforcement in general. Furthermore, the main government registries for issuing IDs, birth and marriage certificates, and divorce registrations are dysfunctional. At best, the system reaches provincial centers, leaving out the majority of population concentrated in rural areas. Without a functional and efficient administrative system, the government of Afghanistan will continue to struggle in understanding the needs and protecting and promoting the rights of its population.

## **Labor Rights**

Labor rights remained largely unprotected due to failure of the government to develop regulations and protection mechanisms to enforce the law. In particular, this refers to the workers employed in the informal economy, child labor, labor migrants, and women. At the time of writing this report, there were no legal provisions addressing irregular and casual labor, including the lack of mechanisms to estimate numbers or to understand the needs and protect the rights of workers employed in the informal economy and relying on a daily-wage labor. Casual workers have no access to skills upgrading or avenues for collective bargaining to improve their quality of life. Child labor is prevalent; nearly a quarter of children in Kabul work despite the legal ban on any full-time labor under 18 years of age. The conditions of work are hazardous: long hours in unhealthy environments with unsafe equipment. The situation of casual workers and children make them vulnerable to trafficking and forced labor. An anti-trafficking law is being developed and two units were formed to combat trafficking in persons; their work, however, is sporadic. Of particular concern is the deportation of irregular labor migrants from Iran during the winter of 2007-2008. A portion of these deportees might have been trafficked or worked in forced labor situations. Afghan irregular labor migrants in Iran are unprotected and the government of Afghanistan failed to secure their rights to due process during deportation and to protection upon their arrival in Afghanistan. Rights and protection of women in both formal and informal employment need special attention. Currently, maternity leave is the only measure implemented to protect the rights of working women. There is a need to extend their protection, in particular, with regard to sexual abuse and harassment at the workplace. As of now, there are no existing mechanisms to protect women and offer safe avenues to report incidents. There are also no incentives to attract more women into the workforce such as the provision of childcare and job training as well as gender-sensitive workforce policies.

The Constitution of Afghanistan offers an excellent basis for an equitable and just society. Law enforcement, however, needs to be strengthened. The government needs to implement labor codes, particularly in regards to daily-wage workers, health care, a safe work environment, and child labor.

## **Social Security System**

The social security system in Afghanistan is focused only on the provision of pensions to persons with disabilities, former government employees, and families of martyrs, and services for children. Despite constitutional provisions for support to older persons, ill or women without caretakers, no protection mechanisms were developed and the



implementation of the law remains sporadic. Extremely vulnerable households that are headed by females, children, older persons, IDPs, returnees, and those who have more than eight children have no additional protection even as they have less social tools to cope. At the time of writing this report, civil society organizations and international community were the sole providers of social services to these groups; service delivery relies entirely on international donors.

### **Situation of Women**

Based on the Constitution and commitments of the government, women saw little improvement in exercising their right to protection in family life. In Afghanistan, this would include a right to marry consensually without coercion, freedom from underage marriage, the right to equality between men and women during marriage and its dissolution, and protection from domestic violence. Prevalence of child marriage is a particular concern since roughly 60% of females in Afghanistan marry before their 16th birthday. Forced marriage is prevalent, and couples that decide to marry without parental consent are often prosecuted and persecuted by respective family members. Despite the fact that both underage and forced marriage are illegal and punishable by up to two years in prison, not one sentence has been issued under this article of the law. Violence against women is pandemic and remains largely unpunished even when it results in murder. The pressure of repayment of debt is a potential threat to women's rights; a number of documented cases and anecdotal evidence show that women are sometimes compelled to marry to settle debts and re-pay credits. This has particular implications for micro credit schemes and for policy makers since currently there is neither tracking mechanism nor efficient bankruptcy laws to ensure that women are not adversely affected by the credit practices of their families.

### **Adequate Standard of Living**

Security of tenure, housing, water and sanitation, and food are the four main issues that hinder the adequate standard of living for a significant part of Afghanistan. These issues are disproportionately affecting returnees, IDPs, and Kuchis, acting as an impediment to the return of the refugees. A number of competing legal claims to land and housing leave a significant number of Afghan citizens without security of tenure, thus preventing them from enjoying their right to adequate housing and livelihood. There are no programs to alleviate housing needs in rural areas beyond assistance to returnees and IDPs. The majority of urban dwellers do not have access to affordable housing. The majority of residents living in urban slums do not have options to formalize their existence. Access to safe potable water is minimal throughout the country. Very few resources have been invested in the development of sanitation systems and maximizing existing water resources.

### **Health and Education**

Both health and education systems suffer from under funding, a small number of women professionals, and security problems. The under funding of clinics and schools translates into inadequate facilities and few professional, qualified staff. Clinics do not have adequate stocks of medication or appropriate equipment. Schools do not have adequate textbooks or resources to teach. The limited number of women practitioners prevents girls and women to access health and education services. Low enrolment of girls in school has a detrimental impact on future development opportunities in expanding access of health and education services to women. The deteriorating security situation has forced the Ministry of Public Health to shutdown significant number of clinics. In the reporting period, Afghanistan saw the disruption of classes during conflict, attacks on schools, and the intimidation of teachers and female students by militant groups.

## **Family Life**

Family law is another area of concern; the government needs to enforce a ban on forced and under-age marriage according to the law and make mandatory the registration of all marriages and divorces. Enforcement of a non-discrimination policy is paramount in securing access to services such as education and health care by women and minorities.

The government of Afghanistan needs to reform laws that violate the adopted international legal standards and the Constitution of Afghanistan. The major concern remains the difference between the age of marriage for males and females. It is necessary to enact and implement family law in accordance with the Constitution and commitments of the government. Necessary rules and regulations should be enacted to protect the rights of family members relating to marriage, divorce and elimination of domestic violence and illegal expenses. There is a need to adopt anti-trafficking measures and develop anti-sexual harassment policies in work and school legislation.

To address these issues and uphold its obligations under the ICESCR, the government of Afghanistan has to take a series of measures, including enforcing the existing laws, reform laws that conflict with principles of signed international legal norms and Afghanistan's Constitution, implement basic social services, develop protection mechanisms, and enforce security to allow for access to and realization of the rights outlined in the ICESCR.

The government needs to implement basic social services such as:

- Skills upgrading and ensuring of sound and healthy work environment for people employed in the informal economy;
- protection units responsible for outreach, mobilization and coordination of the services to vulnerable populations;
- basic infrastructure to provide access to safe potable water;
- land and water dispute resolution mechanisms;
- pre- and post-natal care for mothers and children; and
- Health care and education services that is accessible and affordable for all citizens.

These measures need to be combined with protection of security of tenure, environment for viable livelihoods options, and a functional bureaucracy allowing for issuing birth certificates and identification documents, as well as marriage and divorce registration. The government also needs to provide better security for co-education schools and clinics.

## Introduction

Economic and social rights are guaranteed by the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was adopted the United Nations General Assembly on December 16, 1966. The Covenant is usually paired with the International Covenant on Civil and Political Rights (ICCPR). These two documents cover nearly every human right that is contained in international human rights legislation.

Human rights, whether civil, political, economic, social or cultural, impose three types or levels of obligations on States parties: the obligations to *respect*, *protect* and *fulfill*. The obligation to *respect* requires States parties to refrain from interfering directly or indirectly with the enjoyment of a right. The obligation to *protect* requires States parties to take measures that prevent third parties from interfering with the enjoyment of rights. The obligation to *fulfill* includes the obligations to provide, facilitate and promote that right. It implies that States parties should adopt appropriate legislative, administrative, budgetary, judicial and other measures to ensure its full realization.

Among many others, the ICESCR covers: the right to work, the right to social security, the right to family life, the right to an adequate standard of living, the right to health, and the right to education. All these rights must be enjoyed equally and in a non-discriminatory way. Every State Party has a responsibility ensure the enjoyment of these rights. This report is an attempt to disseminate accurate information about the access to and exercise of the rights outlined in the ICESCR as well as the efforts on the part of the Government of Afghanistan to realize them.

2007-2008 has been among the most difficult periods in Afghanistan since the ousting of the Taliban in 2001. The rapidly deteriorating security situation, rising food prices and poor economic situation have all placed considerable obstacles in the path of Afghanistan's development. Though the economy is growing, Afghanistan is still one of poorest nations in the world. Many of its citizens lack access to basic health, education, and housing facilities. Livelihood opportunities, particularly outside the major urban centers, are increasingly scarce and nearly fifteen years of drought is making traditional livelihoods unsustainable across great swathes of the country. The widespread government corruption and inefficiency, as well as donor driven funding, have compounded Afghanistan's inability to ensure basic services and adequate standard of living for its people.

Afghanistan's considerable problems and unique challenges do not eliminate the obligations that the government of Afghanistan under the ICESCR. Afghanistan's recent emergence from thirty years of sustained conflict makes its poverty and underdevelopment understandable. After the establishment of an elected civilian government, the interest and money poured in by the international community present an opportunity for Afghanistan to begin to secure basic social and economic rights for its people. Unfortunately, much of this opportunity has been squandered by massive government inefficiency. The government of Afghanistan must be made responsible for the lack of law enforcement and inadequate programs. The needs of the Afghan people should be prioritized by both the government and international community. This report is an attempt to identify those needs; it also highlights the areas in which the government does not fulfill its responsibilities to the Afghan people.

Too often, Afghanistan's security situation is used as an excuse by the government for its failure to realize economic and social rights in the country. While the impact of the security situation is undeniable, Afghanistan's inability to ensure social and economic freedoms among vulnerable populations in secure areas of the country is testament to the lack of political will, widespread corruption and massive inefficiency. It is the AIHRC's

position that one of the main reasons for the growing insurgency is the inability of the government of Afghanistan to provide an all round economic development for the people.

In this context, it becomes extremely important to monitor the situation of economic and social rights on the ground. Freedom from hunger, access to basic education, health and housing facilities are not ideal social conditions but rather fundamental rights that all humans are entitled to. Often these issues cannot be separated from each other because they involve several cross-cutting factors such as disability, gender, access to education, and livelihood opportunities. Rarely does one type of violation take place independently of others. For this reason, extensive and detailed monitoring is necessary to understand different factors that prevent the realization of social and economic rights in Afghanistan.

Lastly, it is important to understand that these issues transcend Afghanistan's borders. The government of Afghanistan is able to fund only about 60% of its administrative budget from tax revenues. About 40% of administrative and 100% of operational budget is funded by international aid. This leaves Afghanistan deeply vulnerable to fluctuations in the economy, public opinion, and the political will of donor countries. Global trends such as rising food prices, along with the economic downturn witnessed in 2007 and continued into 2008, affect Afghanistan twofold, because they tend to reduce donor funding while driving up prices of essential items in a country where the majority of the population lives below the poverty line. The problems of Afghanistan are global problems that require global support. It is our hope that this report will help: identify Afghanistan's most vulnerable populations, explore the different factors that keep these populations vulnerable, and assist in formulating solutions that will enable the people of Afghanistan to enjoy their rights.

## About the AIHRC

The Afghan Independent Human Rights Commission (AIHRC) is a core National institution, and its mandate, structure, and authority are enshrined and defined in Article 58 of Afghanistan's Constitution of 2002. Through its 2006-2008 Action Plan, the AIHRC identifies three key areas of focus: 1) Protection of human rights by working with the police, judiciary, and Parliament and advising on the enhancement of laws, systems and procedures from a rights-based perspective; 2) Promotion of human rights through research, analysis, and policy advice to public authorities (e.g. producing training manuals, holding workshops for public authorities, etc.); and 3) Monitoring/investigation of human rights by tracking qualitative and quantitative information and trends related to Government action. Particular attention and resources are devoted by the AIHRC to addressing the rights of women, children and detainees, ensuring that the protection duties of Afghan authorities, such as the judiciary and the police, are conducted with full respect of Constitutional rights. The AIHRC firmly believes that economic and social rights are essential to the realization of a free, peaceful and equitable society.

In the period from January 1, 2007 to March 31, 2008 the AIHRC received 2830 complaints in the 12 regional and provincial offices; as a result 1162 of human rights violations were identified, registered and followed up. The interventions were conducted in partnership with a range of governmental and non-governmental structures on both the regional and provincial levels.

Particular attention was given to women's rights – 815 women received legal advice and 154 family disputes were resolved through the AIHRC's mediation. As a result of the AIHRC's advocacy efforts with the Supreme Court, registration of marriage was made enforceable for the first time in Afghan history. The AIHRC aided in the drafting and launching of the marriage certificate. Marriage registration is an extremely important step in ending the practice of child marriage, forced marriage and *bad dadan* – a practice where woman is given into a marriage to settle blood debts. The AIHRC has been working with civil society organizations on the drafting of the Family Code and, again in coordination with civil society organizations, has drafted a law on prevention of the violence against women. The draft law was submitted to the Ministry of Justice, Ministry of Women Affairs and Parliament for revision in December 2007.

The AIHRC has also been instrumental in attempting to secure women's rights guaranteed to them by the Holy Quran. Towards that end, the AIHRC has been working with the Ministry of Haj and Religious Affairs to facilitate and increase the Ministry's activity towards raising awareness about women's rights in Mosque teachings and sermons. As a result, the Ministry issued a letter to all Mosques around the country, asking them to discuss women's rights to education during their Friday sermons. In March 2008, every Mosque in Kabul city delivered a sermon discussing women's right to education from an Islamic perspective.

The AIHRC's Education, Women Rights, Child Rights and Persons with Disabilities units at the regional and provincial offices have been promoting human rights in different districts and provinces around the country. The AIHRC have been informing thousands of people about Human Rights, through workshops, media broadcasts and awareness raising meetings, and distributed thousands copies of Human Rights Magazines and other publications nation-wide. The AIHRC has cooperated with the Ministry of Education to incorporate human rights messages in the texts of the middle school linguistic textbooks of grades 7 through 12, supported by the historical stories of religious documents. These books are published in both Dari and Pashtu.

Child rights are another area in which the AIHRC has made serious gains. The AIHRC with the help of UNICEF has conducted regular child rights field monitoring and

interviewed 3,462 children in the field during the past year. Since 1<sup>st</sup> January 2007 up to 31<sup>st</sup> March 2008 13,000 people (including over 5,400 women) learned about child rights through 150 workshops and 330 awareness raising meetings. These activities were particularly targeted at the police, elders, prosecutors, court officials, teachers and students of the government schools and Teacher Training Colleges all over the country.

In partnership with UNHCR the AIHRC has been working to protect rights of refugees, returnees and IDPs. This partnership helped to develop a country-wide harmonized approach to monitoring and interventions on identified human rights abuses and violations. Since 2005 this work has facilitated lifting barriers to a safe return and the reintegration of refugees. As a result of this partnership, some 32,000 Afghans including returnees and IDPs were interviewed in about 2,000 villages in 33 provinces of Afghanistan. In September 2007, the AIHRC in partnership with UNHCR also established border monitoring teams at the Zaranj and Islam Qala border points with Iran. Border monitoring aims at identifying and addressing human rights violations of Afghan citizens in neighboring countries including advocating for their rights. Border monitoring enables the follow-up and adoption of preventive measures required in situations where significant human rights violations of migrants have been committed. In 2008 the Human Rights Field Monitoring partnership was revised and brought a number of UN agencies operating together in Afghanistan, establishing a systematic and cooperative operational framework to reinforce the responsibility of the government of Afghanistan to respect, protect and fulfill the rights of Afghan people.

Since 2006 the AIHRC has closely monitored the social and economic rights situation in Afghanistan. In the reporting period the AIHRC Field Monitoring Teams in partnership with UNHCR interviewed over 15,000 people in ۳۴ provinces, except Nimruz due to prevailing security conditions. They collected information about social and economic rights and disseminated information about human rights and the AIHRC.

The AIHRC has been working to promote, protect and monitor human rights in Afghanistan. Its activities allowed the AIHRC to produce reports on *Economic and Social Rights in Afghanistan* for 2005 and 2006. This report continues in that tradition, assessing the government's obligations, progress and making recommendations for the government to ensure that economic and social rights under international treaties ratified by the Government of Afghanistan and the Afghan Constitution are fulfilled.

## Commitments of the Government of Afghanistan under the International Covenant on Economic, Social and Cultural Rights

The obligations of the Government, deriving from human rights broadly fall into three categories: the duty to respect, duty to protect and duty to fulfill. The duty to respect requires that the State Parties do not directly or indirectly breach the enjoyment of any human right. The duty to protect requires the State Parties to take measures to prevent non-state actors and the state institutions from abusing the right. Finally, the duty to fulfill requires the State Parties to adopt appropriate legislative, administrative and other measures towards the realization of human rights.

The standards outlined in the Covenant are enforceable in local courts. Each State Party needs to ensure that the standards are recognized and are legally binding. This gives individuals the right to seek enforcement of their rights in national courts and tribunals.<sup>3</sup> The 2004 Constitution of Afghanistan provides for the protection of labor rights (Articles 48 and 49), right to social security (Article 53), protection of the family (Article 54), health (Article 52), and the right to education (Articles 43 and 44). This means that these rights are directly enforceable in national courts.

The ICESCR also provides for a progressive realization of the rights outlined in the Covenant; it recognizes that State Parties may not immediately have the resources or the capacity to achieve the standards outlined in the Covenant. The Covenant, however, does impose on States Parties some obligations that should take immediate effect. The State Parties must take at least some steps towards the realization of the rights in the Covenant. These steps must be deliberate, concrete and targeted towards the full realization of the rights; this prevents the State Parties to use progressive realization and resource availability as an excuse for inaction.<sup>4</sup> According to the Article 2 of the Covenant, economic and social rights are equally applicable to all persons — without discrimination. The Covenant also prohibits taking any regressive measures in relation to any of the rights except under specific, extraordinary circumstances.

By ratifying human rights treaties, the Government of Afghanistan has agreed to submit regular reports to treaty bodies for external monitoring and accountability. This includes submission of reports to the United Nations Committee on Economic, Social and Cultural Rights, which makes an assessment of the implementation of the provisions of the ICESCR in Afghanistan. The government of Afghanistan has submitted two periodic reports on the Covenant, the latest in May 2008.

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<sup>3</sup> CESCR General Comment No. 9. (1998). The domestic application of the covenant.

<sup>4</sup> CESCR General Comment No. 3. (1990). The nature of States parties obligations.

## Methodology and Population Sample

The data used in this report was collected using both quantitative and qualitative methods. The Human Rights Field Monitoring (HRFM) interviews are the primary source of quantitative data used to assess the social and economic rights situation on the ground. This information was complemented both by the Children Rights Field Monitoring (CRFM), particularly in relation to child labor and marriage, and by the Case Management System to supply examples of violations discussed in this report. Quantitative data was also collected from the ministries, relevant UN agencies, and civil society organizations representatives; this supplemented the data collected by the AIHRC and, in some cases, offered a more complete perspective on the issues. This information was framed and interpreted through a range of in-depth, semi-structured interviews with representatives from the government, civil society organizations, and UN agencies. Desk-based research provided the background necessary to understand history of the discussed social and economic rights in this report.

The HRFM is the main tool used by the AIHRC to monitor the situation of social and economic rights in the field. The indicators monitored by HRFM questionnaires cover issues of work and debt, access to health care, access to education, reliance on child labor, prevalence of child marriage, availability of water, land and housing disputes and the relevant resolution mechanisms, security and social concerns, participation, and migration status.

From January 1, 2007 to March 30, 2008, the HRFM was able to reach over 15,000 people; 2,105 of the interviews were conducted by UNHCR and 13,461 by the AIHRC. The respondents were between the ages of 11 and 72. The HRFM covered all the provinces of Afghanistan with the exception of Nimruz. The ethnic representation of the respondents largely reflects Afghanistan's diverse ethnic composition. Afghanistan's two predominant ethnic groups—Pashtuns and Tajiks—each represented about a third of the respondents, followed by Hazaras and Uzbeks. The HRFM reached overall gender balance: 7,033 respondents (45.2%) were women and 8,526 (54.8%) were men. The vast majority of the respondents (14,050 or 90.3%) came from rural areas while the remaining 1,516 respondents (9.7%) reside in urban areas.

Despite the geographical reach, however, the HRFM tool itself has a number of limitations. The HRFM population is by no means a random-sample survey. The respondents were sought out based on their potential vulnerability. First, the field team consulted provincial governors in order to identify the most vulnerable and underserved districts. The district administrations were then consulted about the situation in the district and were asked to identify the most vulnerable communities. At the community level, a concerted effort was made by the team to collect a representative sample, including those who might be traditionally excluded. The surveys were not synchronized. Provinces such as Badghis, Ghor, Nuristan, Paktika and Zabul provinces had their entire data collected in one month. At the same time, data collection in Jawzjan, Ghazni, Faryab, Nangarhar, Kabul, and Kandahar provinces was spread out almost evenly throughout the reporting time period. Due to logistical limitations, in addition to prevailing security conditions, the HRFM team was not able to monitor the situation in Nimruz. For security reasons, the AIHRC team interviewed disproportionately large numbers of urban dwellers in Farah, Helmand, Kandahar, and Zabul. As a result and despite the fact that the HRFM population closely resembles the general Afghan population, the resulting generalization based on this sample possibly focuses only on vulnerable groups.

The HRFM is also a tool designed to capture the behavior of entire family units, not individuals. The questions were often answered on behalf of the family, and very few



questions refer to the status of particular individuals. Because of this, some of the social and economic indicators could not be disaggregated by sex or age. This approach assumes that the family is a homogeneous unit facing identical issues. Parents answered on behalf of their children, even when the questions addressed issues such as access to education or engagement in child labor. This offers only the parents' perspective on their children's relationship with school and work.

The tool is also limited in its ability to capture seasonal changes and perceptions. The way the questionnaire was built assumes that economic and social behavior, as well as access to services and resources, remains the same throughout the year. In Afghanistan, the harsh winter often cuts off communities from basic services and resources and halts economic activity over much of the country. In addition, no independent indicators qualify the questions about employment, forced marriage, forced labor, living conditions, and security. The questions elicited answers of perception rather than indicators widely accepted by the development community. For example, five to six people living in a single room would not generally be considered "overcrowded conditions" in an Afghan context; however, this situation would fall under a classic definition of "overcrowded conditions" from a public health standpoint.

Information from the HRFM was backed up the CRFM, a tool used to record specific children rights situations. The target population for this survey is children that are particularly vulnerable. These were children living in protection institutions, working children, and children from communities reporting the highest levels of child abuse. The CRFM was used specifically to supplement additional information and qualify existing data on child labor and school attendance.

The qualitative data for this report set a backdrop for the interpretation of the quantitative data from the HRFM and CRFM. Most of the qualitative data comes from in-depth, semi-structured interviews with representatives from the government, civil society organizations, and UN agencies. Effort has been made to include all three perspectives on the issue. This was not always possible, however. Most of the government officials were cooperative and open in discussing the challenges they face in the promotion and protection of social and economic rights. Some of the officials, however, repeatedly did not keep their appointments and refused to talk to the research team. In other cases, there was no separation between the UN agencies and the government. For example, the government seconded UNHCR employees to administer the implementation of the Land Allocation Scheme in January 2008 following two years of failed efforts by the government to do this unilaterally.

Finally, the two legal documents and two leading policy guidelines were used to frame and analyze the data. These included the ICESCR as the main frame for this report, backed up by the provisions made in the 2004 Constitution of Afghanistan. The Afghanistan MDGs for 2020 and the ANDS offered specific indicators against which it was agreed upon that government services and programs would be evaluated.

## Crosscutting Themes

A number of barriers prevent the Afghan citizens from accessing social and economic rights.

- Deteriorating security throughout 2007 and the beginning of 2008 prevents such access as well as access to and delivery of services.
- A donor-driven priority for social development, inadequate funding, inefficient bureaucracy, and law enforcement further hinders even minimal access to these rights in Afghanistan. This could be mitigated if traditional authorities, such as mullahs and *shuras*, are more involved in enforcing and negotiating access to rights.
- Security of tenure cuts across all issues in development and the enjoyment of sustainable livelihoods.
- Lastly, being either a person with disabilities or a woman means facing barriers to access services and enjoyment of rights.

The government of Afghanistan needs to address these issues in their entirety in order to remove barriers to access and enjoyment of social and economic rights.

## Labor Rights



Articles 6 and 7 of the ICESCR and articles 48 and 49 of the Constitution of Afghanistan recognize the right to decent work, to adequate protection of workers, and to freedom from forced labor. Child labor is forbidden by both the ICESCR and the Constitution. Laws in Afghanistan set good grounds for the protection of workers: they consider issues of discrimination, fair treatment and pay, pensions and health and safety at the work place. In its Second Periodic Report, the government of Afghanistan outlined its legal provisions for the social support of labor, including: 1) minimum wage; 2) food allowances; 3) transportation; 4) support for finding shelter; 5) medical services for an employee and his/her family; 6) financial aid at retirement; 7) child birth allowance; 8) financial support for a deceased employee's family; and 9) pensions for people who are elderly, ill, disabled or suffering from other conditions prescribed in the regulations. All these allowances and support are to be paid by the employer and pensions are to be paid from a pension fund, except for medical services provided free of charge for all Afghan citizens. However, there have been very few, if any, efforts to implement these laws.

The government blames weak social and economic development for its inability to enforce labor regulations. Under the ICSECR, however, the government is responsible for taking substantive actions towards the realization of the right. For example, while the Labor Law of Afghanistan makes a provision for minimum wage, no guidelines, standards or enforcement mechanisms have been established. There is no protection mechanisms built into the system; neither monitoring tools nor units responsible for law enforcement exist in the government structure. As emphasized by the Committee on Economic, Social and Cultural Rights, the development of effective mechanisms to enforce the law requires systematic data collection in order to understand labor patterns.

Examples of the data required are:

- Employment-to-population ratios, by sex, target group, and education level;
- proportion of women in wage employment in the non-agricultural sector;
- numbers and conditions of workers in precarious employment (e.g. short, fixed-term, casual, seasonal work);
- data disaggregated by hazardous work patterns and by population engaged in hazardous work;

- number of accidents at work and occupational diseases; and,
- Percentage of people in long-term unemployment (one year or longer), by sex, skill levels or regions.

The main issues in labor rights are the rights of workers employed in the informal economy, child labor, and the rights of labor migrants, particularly in relation to forced labor and human trafficking. The rights and protection of women in both formal and informal employment need special attention. Current measures are limited to only maternity leave provisions. There are no active programs to mainstream gender-sensitive practices at the workplace.

## Labor and Unemployment

In Afghanistan, the informal economy is an extremely important source of livelihood and income. The current state of post-war-but-still-simmering conflict provides fertile grounds for the development of a shadow economy. Aside from the poppy economy, it is unclear to what extent the issue is being addressed. This is not only a problem because of lost tax revenues; the rights and well being of those engaged in the informal economy are a serious concern.

Economic development is the foundation for reducing unemployment. The ANDS focuses on the private and business development as a priority area; it does not, however, address the issues of upgrading skills nor people employed in informal economy. There are a number of UNDP and USAID-funded projects aimed at developing small and medium enterprises. Afghanistan, however, does not have adequate infrastructure for a fully developed private sector. Security, efficient administrative system, professional workers, access to credit, consistent support of electricity, and good roads are the necessary precondition to develop markets. As of now, Afghanistan cannot offer even a half of the necessary facilities.

Afghanistan needs to invest in the development of its workforce. Three decades of conflict have left the workforce lacking technical and professional skills. The government announced a skill development program to help develop and employ people through its urban-based centers. From the inception of the program, 15,000 students enrolled in 44 vocational schools.<sup>5</sup> This number, however, is insignificant when compared to the amount of people who require vocational training. No data is available on skills development in rural areas. Additionally, while the Ministry of Labor Social Affairs, Martyrs and Disabled (MoLSAMD) has a skills development department, data on its success is unavailable.

A significant portion of vulnerable population relies on unskilled labor to provide for their families. Daily-wage workers make up a significant portion of people employed in the informal economy. As a study of vulnerable population, the HRFM shows that 34% of working urban males and 58% of rural males rely on unskilled daily wage work to provide for their families. There are no official statistics on the number of casual workers that gather daily at busy intersections in towns hoping to find a source of income. No one monitors their working conditions—pay, work hours, and hazards. There are no mechanisms for them to upgrade their skills and move into more regular employment. These workers are the most vulnerable to becoming victims of trafficking or forced labor, and they are open for a range of abusive practices from employers and the police. Because they are unorganized, they do not have a tool for collective bargaining. It is of paramount importance for the government of Afghanistan to start monitoring this type of labor and to develop appropriate protection mechanisms.

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<sup>5</sup> MoFA. (2008). Afghanistan second periodic report on ICESCR.

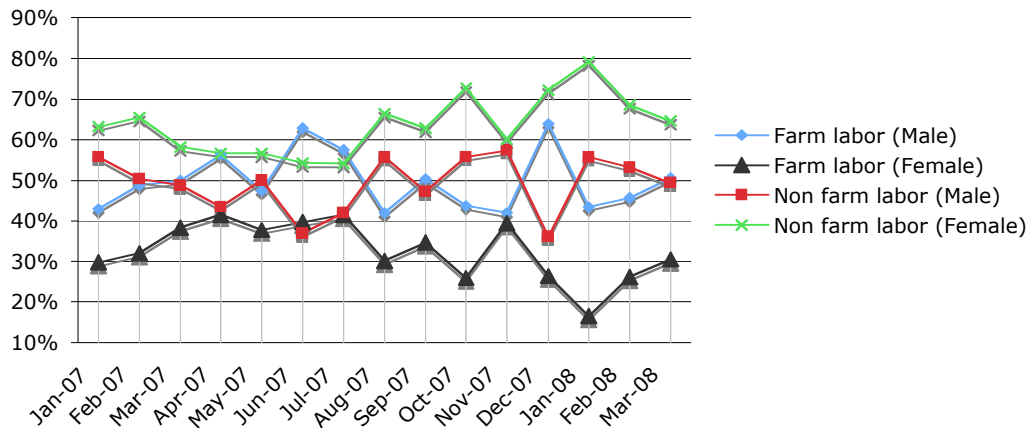
Calculating unemployment statistics in developing countries with a small formal economy is challenging. Official statistics suggest that Afghanistan's unemployment rate is 33% of able population; however, no disaggregated data is available to further examine what this figure means. Aside from two main programs to support work (the vocational training centers and the WFP-implemented Food-for-Work program); no other large-scale employment-generating program exists. HRFM data suggests a much lower unemployment rate—about 22%—among both urban and rural male population. Reported unemployment rate for females is 54% in urban and 62% in rural areas. However, to understand the implications of these numbers, it is important to discuss them in light of employment, location, and gender roles. The employment pattern of HRFM respondents is discussed below.

The work patterns of vulnerable urban residents show the need to strengthen small and medium enterprises in line with priorities identified under the ANDS. Work among urban males shows very few seasonal changes and focuses around three main industries: self-employment, stable employment and daily-wage workers. The first major source of income is "stable self-employment" (44% of working males), which would include various workshops, bakeries, shops and other types of businesses. The second is "daily unskilled labor" (34%), which refers to those working in construction or accepting work from opportunities they await from labor squares in the cities. The third major source of income is "stable employment," which includes government and other types of office work. A very small minority of urban males reported owning a plot of land in rural areas; this group divides their time between urban and rural labor. The pattern of unemployment shows that people in stable industries are more likely to fail at finding jobs. Of those who reported being unemployed, 33% came from self-employed industries. The second largest category of unemployed urban men was classified as "Other" (31%). These are most likely men who recently arrived in the cities and are still looking for a niche in employment. The third largest category of unemployed males is that of males previously holding stable employment.

Unemployment rates of the female population are harder to estimate due to skewed statistics including domestic work as employment. Women's work contributes to the overall resources of households. That is why it is more useful to talk about reported female employment, since this offers insight into sources of income that females contribute to the house in addition to the domestic work they perform. Nearly half of urban females (45%) reported being employed. Their employment patterns closely match those of urban males – 37% are stably self-employed; 23% perform daily unskilled labor, and 22% have stable employment. These numbers show a relative emancipation of women in towns; 25% more urban females reported being engaged in economic activity outside of housework than did rural females.

The pattern of rural labor reflects struggles of the population to cope (Figure 1). Eighty percent of males engaged in rural labor reported a form of employment: 37% of them are daily wage workers, another 30% work on their own land, and 20% rent plots of land. The rural population engages in both farm and non-farm labor as a livelihood strategy, heavily relying on other forms of income: 58% in unskilled daily wage labor in towns; 18% in stable self-employment; and 13% in stable employment. Females tend to be less involved in farming than males, probably due to their engagement in household work. However, their share of agricultural work does increase in periods of high labor demand, for example, during harvest or preparation of seeds. Males split their time almost in half, supplementing their farm work with other types of income according to seasonal demands. This shows that the rural population heavily relies on non-farm labor as a livelihood strategy. This is supported by National Risk and Vulnerability Assessment (NRVA) 2005 findings that the majority of farmers do not produce enough food to feed them throughout the year and has to rely on other types of labor.

Figure 1: Seasonal rural labor of HRFM respondents.



Given the fact that the majority of Afghan population lives in rural areas, agriculture should be the backbone of Afghanistan’s development strategy. It received, however, only about 3% of total development money invested in the country since 2001. This is some half-a-billion dollars compared to some US\$15 billion in total aid distributed to Afghanistan.<sup>6</sup> To improve standard of living of the rural population, the government needs to focus on agriculture as matter of priority. To ensure that the rural population can produce at least the food it consumes throughout the year, there is a need to improve irrigation systems and provide farmers with access to both credit and high-quality foundation seeds. The government needs to rehabilitate irrigation systems, rebuilding canals and *karez* as well as reducing water loss by improving the quality of canals and constructing irrigation dams.

According to the head of the Food and Agriculture Organization (FAO), Afghanistan utilizes only 30% of available water resources. Rehabilitated irrigation will help to increase food production. Crop from irrigated land produces at least twice the crop from rain-fed land. For example, one hectare of irrigated land in Helmand or Herat in 2008 produced about 7-8 tons of wheat, whereas rain-fed land produced about 1.5 tons. Since the FAO program started operating in Afghanistan, roughly 500,000 hectares of irrigated land has been rehabilitated and among this, 100,000 hectares of new land. Afghanistan has another 500,000 hectares of land that has yet to be rehabilitated.

In total, roughly US\$75 million was spent on irrigation reconstruction in Afghanistan and another US\$28 million investment is planned; this, however, represents only a fraction of the resources that is spent on other development efforts. There is also a need to expand other opportunities for farmers. Access to credit is limited; it is easier to find informal credit to produce opium than to grow wheat.<sup>7</sup>

### Forced Labor and Trafficking

Trafficking in persons is a sensitive subject and very little work has been done to explore, understand and prevent its occurrence in Afghanistan. According to the International Organization for Migration (IOM), the majority of victims around the world are trafficked for sexual exploitation; this makes it difficult to identify victims of trafficking. The IOM reports at least 130 cases during the period of January 2006 to March 2008—some 65 cases a year. The vast majority of these cases recorded by the

<sup>6</sup> Matt Waldman. (2008). Falling short: Aid effectiveness in Afghanistan. ACBAR and OXFAM

<sup>7</sup> David Mansfield & Adam Pain. (2007) Developing evidence based policy: Understanding changing levels of opium poppy cultivation in Afghanistan. AREU.

IOM (over 90 cases) involved women trafficked into Afghanistan for sexual exploitation. According to the IOM, there are currently at least four women currently in Pul-e-Charki prison in Kabul who were working as commercial sex workers. However, it is hard to determine if these women were trafficked in or were working voluntarily.

Sexual exploitation is a taboo subject, making a significant part of trafficked people virtually impossible to identify. For example, a legal officer in the Ministry of Women's Affairs said that there is very little sexual abuse and exploitation or trafficking in Afghanistan. This is highly unlikely, however, judging by both the prevalence of sexual violence in the region as well as the use of sexual violence as a weapon of war. Rape has been recognized as an integral weapon of war in a variety of South Asian contexts, most prominently in the Partition of British India in 1947<sup>8</sup> and the formation of Bangladesh in 1971.<sup>9</sup> Despite the fact that these conflicts occurred years ago, only in the last 10-20 years have the stories of horrific sexual violence come to the fore and become an essential part of the narrative of these events. It has been suggested that mass rape occurs particularly in contexts when the state is contested and minimal.<sup>10</sup> These terms describe the government of Afghanistan, both today and during the past 30 years. While sexual violence is not discussed today in Afghanistan, it is likely that it has occurred on a large scale. Steps must be taken to begin to ascertain the extent of the problem and address it with care.

Afghanistan has very fertile grounds for trafficking and forced labor. It has porous borders, widespread poverty, no effective counter-trafficking mechanisms; it tolerates forced and under-aged marriage, domestic violence and child abuse. These elements compounded foster an environment favorable to trafficking in persons.<sup>11</sup> The Trafficking in Persons report, produced by the US State Department, puts Afghanistan on the tier II watch list, characterized by high or significantly increasing number of trafficked persons and no evidence of increasing efforts to combat the issue.<sup>12</sup> The current counter-trafficking measures are two units established inside the Ministry of Internal Affairs: the Committee to Counter Child Trafficking with an established referral mechanism and the Counter Trafficking Unit established in March 2008. Currently a Law on Counter Abduction and Human Trafficking is being enacted which is supported by presidential decree. No other measures have been taken.

## Deportations of Labor Migrants from Iran

Iran has about one million undocumented Afghans, the majority of them being labor migrants smuggled into Iran. It is unclear how many of them are in fact trafficked in or ended up working in degrading and inhuman conditions. In a study conducted by Altai Consulting, 40% of the surveyed deportees from Iran reported having below average and difficult working conditions; 3 % of the respondents also found a job through their smuggler.<sup>13</sup> This is a particularly vulnerable situation for the migrants simply because it locks them into a potentially abusive system. Some 60% of the migrants went to Iran because of unemployment at the places of their origins and debt. Some of them did report abusive practices – lower payment, longer working hours and hazardous working conditions.

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<sup>8</sup> Veena Das. (2007) *Life and words: Violence and the descent into the ordinary*. Berkeley: University of California Press.

<sup>9</sup> Susan Brownmiller, <http://www.drishtipat.org/1971/war-susan.html> Retrieved on August 20, 2008.

<sup>10</sup> Robert Haydon. (2000) Rape and rape avoidance in ethno-national conflicts: Sexual violence in liminalized states, *American Anthropologist* Vol. 102.

<sup>11</sup> IOM. (2008) *Trafficking in persons in Afghanistan: Field survey report (draft)*.

<sup>12</sup> US Department of State. (2004) *Facts About Human Trafficking*.

<sup>13</sup> Altai Consulting. (2008) *Research study on afghan deportees from Iran*. ILO-UNHCR

Labor migrants from Iran have experienced increased difficulties. In 2003, Iran began its program to deport all those without a work permit. It imposed heavy fines and penalties on those who employed individuals without work permits. This attitude became more aggressive in 2007 when the Iranian government resolved to deport all undocumented Afghans. The drive resulted in over 360,000 Afghans deported during the harsh winter of 2007-2008. Since October 2007 to March 2008, AIHRC human rights border monitoring team has interviewed 1137 deportees at Zaranj and Islam Qala in border areas close to Iran. Nearly 80% of deportees experienced "bad or very bad" treatment at the hands of Iranian authorities and nearly all had to bear the cost of deportation themselves. Based on the AIHRC Border Monitoring findings that all the deportees were deported without prior notification. They were picked up at their homes, workplaces or even on the streets. An overwhelming 81% were deported without a court hearing or verdict, violating their fundamental right to due process, and 66% of the respondents were physically abused by Iranian authorities. While this segment of the population does not always have legal status in Iran, it is important that their return be conducted in a manner that is consistent with international humanitarian standards. Another dimension arises when labor migrants have either brought their families with them to Iran or have married locals and had children in Iran. Hasty deportations carried out in contravention to basic humanitarian standards result in the separation of families.

INSERT: On a Sunday in November 2007, Khalil, a 23-year-old male, was arrested from his workplace in Arak district in Iran and sent to the Waramin Detention Center. Receiving the news, his wife, their little child and one of the neighbors set to travel to the detention center. Four days later, they arrived at the detention center. From there, three of them – Khalil, his wife, and the child were deported to Afghanistan. They were not allowed to go to their village to collect their five-year-old daughter, who was left behind in Iran. She is now living with their Iranian neighbor in Iran. The family plans to return to Iran as soon as they can in order to get their daughter back. END INSERT

## Child Labor

Protection against child labor is enshrined in the ICESCR article 10, CRC article 32, and the Constitution of Afghanistan article 49. It includes the protection from economic exploitation and child labor as a fundamental right of all children; it also includes the obligation of the state to protect children and assist the parents of vulnerable children. Article 13 of the Labor Law of Afghanistan, adopted in 2007, says that a person can be employed over 18 years of age. Provisions are made for allowing employment in light types of work starting from 15 years old and as apprentices over 14 years old. It explicitly says that "recruiting people under 18 years of age for business that are injurious/harmful to their health and cause physical damage or disability, is prohibited." Whether or not particular forms of work can be called child labor depends on the child's age, the number of working hours, and type of work performed. No child under the age of 18 should be engaged in "hazardous work," defined as work that is likely to harm the health, safety or morals of children, or work that exceeds 35 hours a week. However, on the ground, the term "child work" or "child labor" refers to paid work performed by children in urban areas. Often work around farm or hazardous domestic work is not considered to be child labor. As a result, these numbers should only be understood as an indicator of work outside the house, rather than an indicator of children working in all of these scenarios.

Child labor is prevalent in Afghanistan. A rapid assessment of child labor in Kabul shows that nearly a quarter of Afghan children between seven and 14 years old work.<sup>14</sup> The duration of work is often above the legal permitted hours per week.<sup>15</sup> Most of them work

<sup>14</sup> Altai Consulting. (2008) A rapid assessment on child labour in Kabul. ILO-IPEC.

<sup>15</sup> Paula Kantor & Anastasiya Hozyainova. (2008) Factors influencing decisions to use child labour: A case



in what falls under the definition of hazardous environment: long working hours, bad environment (such as exposure to potential abuse and physical and health dangers), risk of injury, polluted environments and unsafe equipment. The reasons for working are both economic and viewed as a part of long-term development such as acquiring new skills.<sup>16</sup> In most of the cases, both children and their parents perceive work as a positive development despite involving some risks. Currently there are no law enforcement mechanisms to reduce the prevalence of child labor. The only measures existing to address the issue of child labor are developed by international NGOs. The ANDS makes provisions only for awareness-raising campaigns to reduce the prevalence of child labor.

In Afghanistan, child labor is often excused as a necessary tool of poor families to meet their subsistence needs. It is also commonly argued that the inadequate availability of schools and presence of debt fosters reliance on child labor. However, according to the data available from the HRFM, neither had a significant impact on the tendency to use children as labor. Debt, a near-universal index of poverty in Afghanistan, has no statistically significant correlation to child labor. Families in debt were only slightly more likely to use children as labor than other families. In this data set, the percentage of children working in rural and urban areas was identical; 36% of the households reported that there are children under 15 years old who work. One possible conclusion, supported by a qualitative study on child labor conducted in Kabul city, is that parental attitudes towards child labor are the largest determining factor rather than the variables discussed above.<sup>17</sup>

## Recommendations

To address the gaps in the protection of labor rights, the Government of Afghanistan has to develop functional implementation and monitoring tools; develop targeted skills upgrading for the people employed in informal economy and offer formalization options; develop protection schemes for casual workers; enforce the labor law, particularly with regard to child labor and develop functional anti-trafficking measures, including establishing a monitoring system and appoint protection units responsible for law enforcement.

The Government is urged to follow up on the requests made already last year to the Iranian Government for effective respect of the rights of Afghan Migrants, especially undocumented individuals, with a particular focus on the establishment of a bilateral commission with the Iranian Government to discuss these issues and put in place adequate and commonly agreed solutions.

To attract more women into the formal economy, it is important to develop gender-sensitive policies such as incentives for employment of women, provision of childcare facilities, protection against sexual harassment, and mainstreaming of the gender-sensitive approach into the labor code. The government also needs to develop better awareness mechanisms about sexual harassment, trafficking, and forced labor and consequences of irregular migration.

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Study of Poor Households in Kabul. AREU.

Pamela Hunte & Anastasiya Hozyainova. (2008) Factors influencing decisions to use child labour: A case Study of Poor Households in Badaghshan. AREU.

Altai Consulting. (2008) A rapid assessment on child labour in Kabul. ILO-IPEC.

<sup>16</sup> Paula Kantor & Anastasiya Hozyainova. (2008) Factors influencing decisions to use child labour: A case Study of Poor Households in Kabul. AREU.

Pamela Hunte & Anastasiya Hozyainova. (2008) Factors influencing decisions to use child labour: A case Study of Poor Households in Badaghshan. AREU.

Altai Consulting. (2008) A rapid assessment on child labour in Kabul. ILO-IPEC.

<sup>17</sup> Paula Kantor & Anastasiya Hozyainova. (2008) Factors influencing decisions to use child labour: A case Study of Poor Households in Kabul. AREU.

The Commission welcomes the establishment of a Government's plan to raise awareness on the consequences of irregular migration and encourages the Afghan Government to progressively support it, both institutionally and financially.

In line with the ANDS stated priorities for rural development, the Government of Afghanistan is urged to ensure that the rural development benchmarks stated in the ANDS are met. There needs to be a particular focus on the needs of the rural population working in the agricultural sector. The international community is also urged to support the Government of Afghanistan in the progressive realization of the ANDS benchmarks related to agriculture and rural development.

The Commission recognizes the efforts being already put in place by the International Community, nevertheless the Commission recommends that co-ordination mechanisms action in accordance and in line with the ANDS. Building on the good mechanisms put forward by the ANDS, make sure that there is effective co-ordination, particularly at the local level, in skills training and rural development.

## Social Security and Protection from Vulnerability



The right of Afghan citizens to social security and protection from vulnerability is protected by Article 07 of the Constitution of Afghanistan which observe the UDHR, which emphasis that everyone has the right to a standard of living for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Article 9 of the ICESCR recognizes the right of everyone to social security and social insurance. This is crucial in guaranteeing human dignity to the people who face circumstances and conditions depriving them of the rights outlined in the

Covenant.<sup>18</sup> This right is traditionally translated into an obligation to offer a form of social insurance and protection against social vulnerabilities. The services offered under this right must be adequate, accessible to all, and provided on the basis of need without discrimination.<sup>19</sup> Article 53 of the Constitution of Afghanistan guarantees the right to financial support of families left without providers, persons with disabilities, former government employees, vulnerable elderly, women without caretakers, and vulnerable orphans. The ANDS also recognizes that social protection is paramount to reducing poverty and offering opportunities to the vulnerable.

Social security and social insurance are the systems aimed at helping vulnerable populations to cope. Vulnerability is defined as a condition that leaves one open to external threats such as rapid changes in a social and economic situation on any level. Social security, in the form of tax breaks, social pensions, food, clothing, housing subsidies, and one-time payments for specific needs, creates a safety net to help vulnerable individuals or families fend off different crisis. It also includes a range of insurance schemes and social services such as social workers, outreach workers, and social protection officers that monitor and enforce the work of the government in relation to identifying and servicing vulnerable populations.

In Afghanistan, the social security system is focused on issues of disability, families of martyrs, and children. The protection of persons with disabilities and families of the martyred is largely limited to the provision of social pensions. Social services for children are focused on establishing shelters. As of January 2008, there were three children's shelters in Kabul and four in other cities.<sup>20</sup> Each shelter can accommodate 20 children. There are one hundred sixty four public kindergartens in Kabul and two hundred two elsewhere in the country. Besides the abovementioned, there are no other services implemented by the government for these groups. In addition, despite constitutional provisions for support to the elderly, ill or women without caretakers, no protection mechanisms were developed and the implementation of the law remains sporadic.

Besides these groups that are classified in the law as "vulnerable," there are several populations that require additional services. People living in poverty, women, minorities, IDPs and returnees are protected under clauses of non-discrimination in articles 2 and 3 of the ICESCR. Particular attention should be given to the households that are headed by females, children, elderly, persons with disabilities, IDPs, returnees and those who have more than eight children since they have less social tools to cope. At the time of writing this report, however, civil society organizations and international community were the sole providers of social services to these groups. MoLSAMD has only a limited role in coordination with NGOs and donors.<sup>21</sup> The delivered services relied entirely on international donors.

The HRFM offers insights into the specific characteristics of vulnerable populations. Over a third of those surveyed indicated an attribute that seriously hindered their full participation in society. The majority of them exhibited at least two kinds of vulnerability. Families with more than eight children made up the largest proportion of multiple vulnerabilities, followed by returnees, female-headed households, and elderly-headed households. Social services must address and understand these multiple vulnerabilities to effectively address their unique needs. The households headed by returnees comprised 32% of the respondents, an expected number given the protracted history of conflict and migration in Afghanistan. Households with more than eight children made up 20% of respondents, followed closely by households headed by the

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<sup>18</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008. E/C.12/GC/19. Retrieved from <http://www.unhcr.org/refworld/docid/47b17b5b39c.html> on August 20, 2008.

<sup>19</sup> Ibid

<sup>20</sup> MoFA. (2008). Afghanistan second periodic report on ICESCR.

<sup>21</sup> ANDS. (2008) Afghanistan National Development Strategy

elderly (19%). This comes as no surprise given the traditional structure of the Afghan family that favors a large number of children and is headed by an elder. However, this has significant policy implications since the government has to think about the type of services required by both the elderly and youth over the next ten years. Two other particularly vulnerable groups, female-headed households (12%) and child-headed households (1%) both require additional attention from the government. Minimal job opportunities for women, a disproportionate burden on children to feed their families, and limited social networks leave these two groups particularly open to social and economic crisis.

## Participation in Development

Shaping one's own life through participation in development is among the most fundamental components of a dignified life. Participation ensures access to basic resources, education, health services, food, housing, employment and the fair distribution of income.<sup>22</sup> Under Article 3 of 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 Covenant, therefore any programmes aimed at improving access to economic and social rights should be based on equality of participation. Furthermore, the government of Afghanistan is a signatory of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)<sup>23</sup>, and thus 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)).

The ICESCR also focuses on the needs and rights of vulnerable and marginalized individuals, highlighting the additional responsibility to ensure inclusion of all segments of population into development. This means both participation in planning, implementation and enjoyment of development opportunities, as well as participation in the monitoring and evaluation of development programmes and projects. More times than not, however, Afghanistan's most vulnerable populations are not fairly represented in the formulation and implementation of funding policies.

Humanitarian development in Afghanistan is both donor-driven and lacks a coordinated approach.<sup>24</sup> The development budget is earmarked for the most insecure provinces, undermining priorities identified by the communities throughout the country.<sup>25</sup> Thus, large amounts of money are spent to implement infrastructure in areas that are highly insecure with little consideration of the needs and priorities of the local residents. Conversely, the more secure areas lack the earmarked funds to implement basic infrastructure. Due to this policy, both areas lose out, and large parts of Afghanistan remain without services.

Policy makers fail to hear the needs of communities and strengthen participatory institutions. The government institutions on the local levels are either ineffective or non-existent while Kabul dominates the management and planning.<sup>26</sup> The National Area Based Development Program (NABDP) and the National Solidarity Program (NSP) were designed to create administrative structures to promote development and alleviate poverty. The NABDP and NSP developed councils to identify local development priorities. The NSP channeled resources to the councils, allowing over 70% of Afghan communities to implement a development project. District Councils under the NABDP were designed as a link between the provincial and local government; the connection never worked in

<sup>22</sup> UN Declaration on the Right to Development (1986). General Assembly Resolution 41/128, Article 8.

<sup>23</sup> Afghanistan acceded to the CEDAW on 05/03/2003.

<sup>24</sup> Matt Waldman. (2008). Falling short: Aid effectiveness in Afghanistan. ACBAR and OXFAM

<sup>25</sup> Personal communication. Interview with a UN official. August 7, 2008.

<sup>26</sup> Oxfam. (2008) Afghanistan: Development and humanitarian priorities.

practice, however.<sup>27</sup> A particularly interesting example of this is the ANDS. Extensive consultations were held with the local councils, but the final result of the strategy favors primarily urban and business development—only briefly addressing the needs of rural development. Another concern is that NSP funding is irregular and its future uncertain.<sup>28</sup>

Poverty is one of the main reasons for exclusion on the community level.<sup>29</sup> The NRVA 2007 estimates that 42% of total population is living below poverty line.<sup>30</sup> The respondents who were excluded from one development project were also more likely to be excluded from other projects, too. This creates pockets of a chronically underserved population, prompting a potentially severe impact, since the vast majority of the population lives in smaller communities where social structures affect all levels of a person's life. A significant proportion of HRFM respondents (40%) also indicated that poverty was the main reason preventing people from accessing services and participation in public life. Another reason for exclusion was their status as outsiders, such as being internally displaced or having a different ethnicity or tribal affiliation; characteristics such as age, sex, willingness to pay bribes, disability, returnee status and language were not significant factors for perceived exclusion, however. This might reflect the relative homogeneity of individual communities and a low level of tolerance towards perceived outsiders.

HRFM respondents reported that the highest levels of exclusion occurred in the most insecure provinces. More than 60% of the respondents in Uruzgan felt excluded from development; 45% in Helmand; 40% in Kandahar and in Ghor; and 30% in Zabul. Despite non-representative sampling, this finding is still particularly interesting when juxtaposed with the funding priorities of the major donors. Helmand, Zabul, Kandahar and Uruzgan provinces were scheduled to receive the major part of donor assistance (some US\$200 per person in 2007-2008) while the provinces reporting the lowest levels of exclusion were scheduled to receive three times less support for the same period.<sup>31</sup> The exclusion reported is indicative of the missed opportunities for both the government of Afghanistan and citizens. However, the numbers are not surprising if one considers that, due to security concerns, the majority of the development projects in the South are implemented by Provincial Reconstruction Teams (PRT)<sup>32</sup> that rarely, if ever, consult local communities about their needs. While these concerns may be legitimate, it has been repeatedly observed in the developing world that development projects that exclude beneficiary communities are destined for failure.

Exclusion from the decision-making is even more perplexing because the majority of the priorities identified by the people are in line with the obligations of the ICESCR and the MDG targets that Afghanistan has committed itself to achieving. An Asia Foundation survey of the Afghan population identified insecurity, unemployment, poor economy, and corruption as the four main priorities for social development in Afghanistan.<sup>33</sup> At the local level, priorities were electricity, unemployment, water, and education. The priorities identified under the Pilot Participatory Poverty Assessment were livelihood opportunities, social inclusions, mitigation of adverse results of rapid population growth, and participatory development. The major priorities for social development identified by the HRFM respondents correspond to the ones already mentioned (Figure 2). The respondents want to have better job opportunities, access to safe drinking water, health

<sup>27</sup> Personal communication. Interview with a UN official. August 7, 2008.

<sup>28</sup> Personal communication. Interview with an NSP Facilitating Partner. July 30, 2008

<sup>29</sup> Naysan Adlparvar. (2008) Pilot Participatory Poverty Assessment. ACBAR.

<sup>30</sup> MoFA. (2008). Afghanistan second periodic report on ICESCR.

<sup>31</sup> Matt Waldman. (2008). Falling short: Aid effectiveness in Afghanistan. ACBAR and OXFAM

<sup>32</sup> According to a paper prepared by Save the Children on "Provincial Reconstruction Teams (PRTs) and the Military-Humanitarian relations in Afghanistan", page 1, "PRTs are joint teams of international civilian and military personnel, operating at the provincial level throughout Afghanistan, that undertake activities in the areas of security, reconstruction, support to central governance and limited relief operations."

<sup>33</sup> The Asia Foundation. (2008). Afghanistan in 2007: A Survey of the Afghan People; Key Findings.

facilities, and adequate housing. They want to have education opportunities for their children. Finally, they want to live in a safe environment. The issue now is for the government to follow through on their commitments to benefit the most vulnerable groups. Thus, the main objective of participatory development is to identify the most viable solutions for implementation since the overall needs and desires of the Afghan population are in line with the government's obligations under the ICESCR and MDGs.

## Persons with Disabilities

Persons with disabilities are among the most disenfranchised population in any society. Their physical or mental disability and lack of appropriate welfare measures by the Government makes them difficult to continue work or access social services and education. They are often treated as a burden by their families and societies and are subjected to widespread discrimination and are stigmatized.<sup>34</sup> Afghanistan has a disproportionately large population of persons with disabilities, primarily due to its history of conflict. In 2007, there were 68,043 households registered with the MoLSAMD to receive a monthly benefit for those with a head of the household who was killed during the years of conflict or who has a disability.<sup>35</sup> Article 53 of the 2004 Constitution reflects the affirmative action measures to address structural discrimination of people with disabilities as well as their need for targeted government assistance; related implementation of this provision has lagged far behind, however. This is due to inefficient identification procedures and a lack of political will on the part of the government to initiate significant reforms. The most critical failure of the government is the continuous politicization of assistance to the persons with disabilities.

The only reliable in-depth study of the persons with disabilities in Afghanistan is the National Disability Identification Study. It estimates that 11% of the population suffers from very severe or severe disability, while nearly 37% of the population had very severe, severe, or moderate disability.<sup>36</sup> The study also estimated that there are 30% more men than women with disabilities. Both of these statistics are consistent with the proposition that disability in Afghanistan largely stems from 30 years of sustained conflict.<sup>37</sup> More importantly, the government should incorporate this finding into its policies, making issues of disabilities a cross-cutting concern

Effective and equitable social protection and aid to persons with disabilities are inhibited by a number of factors. Since the regime of Dr. Najibullah (1986-1992), government aid to Afghanistan's disabled population has been extremely politicized. Under Dr. Najibullah, the Ministry of Martyrs and Disabled (MoMD) was established to provide assistance to persons with disabilities. The MoMD provided housing plots and financial assistance to the persons with disabilities and gave them government-produced commodities to sell as a livelihood option. However, this assistance was only provided to soldiers and civil servants loyal to the regime. When the *mujaheddin* came into power, the process was reversed. Unfortunately, this politicization continues today; Parliament is debating a bill proposed in 2007 that would create a tiered system of assistance to persons with disabilities with regard to political affiliation. It is the AIHRC's position that assistance to the persons with disabilities should be given on the basis of disability and need—not by previous or current political affiliation.

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<sup>34</sup> AIHRC. (2008) Persons with Disabilities.

<sup>35</sup> MoFA. (2008). Afghanistan second periodic report on ICESCR.

<sup>36</sup> Handicap International. (2005). Islamic Republic of Afghanistan; National Disability Identification Survey: Understanding the Challenge Ahead.

<sup>37</sup> Calculated using the official Central Statistics Office population estimates at 24 million people.

Given the dramatic difference in severity and type of disability in Afghanistan, the government's program for social protection of the persons with disabilities is inefficient. Currently, disability pensions are the only measure of social protection provided to persons with disabilities. A person without a family receives 400 AFS (US\$8) per month, while a person with a family receives 500 AFS (US\$10) per month.<sup>38</sup> This does not allow persons with disabilities to live above the absolute minimum standard (US\$1 a day) and is profoundly insufficient in its ability to ensure an adequate standard of living. Financial assistance is only one form of social protection and needs to be given in conjunction with genuine, far-reaching efforts to empower the persons with disabilities through education and livelihood training. This requires coordination between the MoLSAMD, Ministry of Education, Ministry of Public Health, Ministry of Women's Affairs, NGOs and relevant UN agencies. A Comprehensive National Disability Policy was formulated in 2003, highlighting the need for targeted programs in all fields, particularly in education and livelihood options. In support of this, a Disability Taskforce was formed in 2004; however, the policy has not been implemented widely. There are currently a few scattered vocational training programs for the persons with disabilities, and one school for the visually impaired and one for the hearing impaired in Kabul. Given the high proportion of children with disabilities in Afghanistan, this is deeply insufficient. Only 1,000 disabled adults have been given literacy training in 2008.<sup>39</sup>

Further, the conception of disability in Afghanistan is often limited only to physical disability. Similarly, mental disability creates equal barriers to inclusion in society and important in a nation that has suffered 30 years of war, is largely ignored by the relevant authorities. The Constitution of Afghanistan rightly makes no distinction between mental and physical disability when identifying people what rights are to be enjoyed; however, this is not carried out in practice.

## Debt

Presence of debt and its repayment is of particular concern for the rights of women. There is anecdotal evidence that debts might be settled by marrying daughters into a creditor's family.<sup>40</sup> Most of traditional borrowing is based on personal networks and the terms are flexible.<sup>41</sup> A repayment schedule depends on the financial capacity of the debtor; there are no specific reasons to believe that most of the time it indeed works this way, however. There are times when the creditor is not particularly generous and in these cases, daughters may be transferred to the creditor to "pay off" the debts. No research documenting this practice was available at the time of writing.

Current research shows that traditional borrowing is sometimes used to repay credit. This has particular implications for micro credit schemes and for the policy makers since they need to incorporate a tracking mechanism to ensure that women are not adversely affected. Microfinance institutions came to Afghanistan in 2003 and currently serve some half a million people, two-thirds of them in urban centers.<sup>42</sup> Micro credit institutions

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<sup>38</sup> MoFA. (2008). Afghanistan second periodic report on ICESCR.

<sup>39</sup> MoLSAMD. (2007) Annual report.

<sup>40</sup> A selection of news articles describing the selling of daughters and wives to settle debt or provide for consumption: "A 16 year old girl was given into marriage with lender's son for a debt of US\$165" ([http://www.usatoday.com/news/world/2007-07-09-afghan-girls\\_N.htm](http://www.usatoday.com/news/world/2007-07-09-afghan-girls_N.htm)); "Three separate incidents of girls being sold to feed the family - effectively to avoid consumption debt" (<http://www.alertnet.org/thenews/newsdesk/IRIN/9bf290e7f0eda9bd925c026783703d45.htm>); "A ten year old girl was sold to pay for food and now her mother is forced to prostitution. Some of the child brides are forced to marry to settle family debt" (<http://www.nytimes.com/2006/07/09/magazine/09BRI.html>); Daughters are also sold to afford credit to buy seeds and fertilizer. In case of poppy cultivation the daughters also pay when the Poppy Eradication Program destroys the poppy fields leaving the farmers unable to return their credit" (<http://www.newsweek.com/id/129577>). All articles accessed on August 2, 2008.

<sup>41</sup> Floortje Klijn & Adam Pain. (2007) Finding the money: Informal credit practices in rural Afghanistan. AREU.

<sup>42</sup> MISFA. (2008) MF sector update, March. Retrieved from

target women; reportedly 70% of clients are women and as a policy usually prefer group loans than individual loans. Qualitative studies have found that micro credit clients may easily bypass the rules of these institutions.<sup>43</sup> A number of AREU publications show that often because the amount of credit is not sufficient one person may use the loan of an entire group.<sup>44</sup> Often micro credit was taken to smooth consumption.<sup>45</sup> Given the poverty levels in rural areas in particular, people look to borrow from any available source, including micro credit.

Although it is nearly three percent down from last year's reported numbers, HRFM respondents still reported an overwhelmingly high number of indebted households – 62%. More vulnerable groups such as women, children, returnees, IDP, households headed by persons with disabilities, and households with more than eight children had higher debts levels than the general population (70%). The highest percentage of indebted population is reported in child-headed families, followed by the families headed by a person with disabilities as well as IDP and returnee families. The levels of debt reported by HRFM respondents are significant for the Afghanistan environment. About two-thirds of the respondents owed less than 60,000 AFS (US\$1,200). The level of debt is enormous especially when compared to the average national income of US\$300.<sup>46</sup> About a fifth of the population reported having debt up to 20,000 AFS; if translated into average national income, it equals to almost a year-and-a-half of earnings. Another fifth of the population owes almost two-and-a-half years' worth of earnings. A third of population reports debt levels higher than six years' worth of average annual income. The burden of debt has the potential to be extremely stifling for the livelihoods of the households and might preclude access to basic services. This case is even more striking when one considers that HRFM respondents are already disproportionately vulnerable.

## National IDs and Birth Certificates

Article 47 of Afghan Civil Code stated that, a person's civil status shall be marked down in identity card and shall be given to him/ her upon his demand. The identity card shall contain the name, family name, the birth date and birth place, occupation, nationality, place of domicile, name of the spouse and name of the children together with their dates and places of birth.

In the context of Afghanistan, the absence of an effective system to provide individuals with ID cards and birth certificates, which stem from a civil rights perspective, enormously undermines the individual's prospects for exercising and benefiting economic and social rights.

Utilizing the polio vaccination campaign, the birth registration drive funded by UNICEF started in 2003<sup>47</sup>. Birth certificates are under the remit of the Ministry of Interior. The

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[http://www.misfa.org.af/uploads/files/MF%20Sector%20update%20March%2008\\_1.pdf](http://www.misfa.org.af/uploads/files/MF%20Sector%20update%20March%2008_1.pdf) on July 30, 2008.

<sup>43</sup> Paula Kantor and Erna Andersen. (2007) Microcredit, informal credit and rural livelihoods: A village case study in Kabul province. AREU

Paula Kantor and Erna Andersen. (2008) Microcredit, informal credit and rural livelihoods: A village case study in Bamiyan province. AREU

<sup>44</sup> Floortje Klijn & Adam Pain. (2007) Finding the money: Informal credit practices in rural Afghanistan. AREU.

Paula Kantor and Erna Andersen. (2007) Microcredit, informal credit and rural livelihoods: A village case study in Kabul province. AREU.

Paula Kantor and Erna Andersen. (2008) Microcredit, informal credit and rural livelihoods: A village case study in Bamiyan province. AREU.

<sup>45</sup> Paula Kantor and Erna Andersen. (2007) Microcredit, informal credit and rural livelihoods: A village case study in Kabul province. AREU.

Paula Kantor and Erna Andersen. (2008) Microcredit, informal credit and rural livelihoods: A village case study in Bamiyan province. AREU.

<sup>46</sup> IMF. (2008) World Economic Outlook Database. Retrieved from

<http://www.imf.org/external/pubs/ft/weo/2008/01/weodata/weorept.aspx> on August 10, 2008.

<sup>47</sup> UNICEF Press Center [http://www.unicef.org/media/media\\_pr\\_birthregistration.html](http://www.unicef.org/media/media_pr_birthregistration.html) retrieved on July 28,



major challenge for successful implementation of the drive is the inaccessibility of registration facilities. Currently, most maternity hospitals in Kabul offer birth certificates, but it is hard to reach mothers who deliver at home. Registration facilities are available only in provincial centers. Using vaccination drives as a means to promote birth registration is a good idea; however, medical workers struggle to access insecure and remote areas.<sup>48</sup> A more comprehensive strategy is needed to achieve the target of having all newborns register by the end of 2009.

Official statistics state that less than 1% of the population has birth certificates.<sup>49</sup> The data collected by the AIHRC shows that only about 4% of vulnerable families have birth certificates for all of their children, and about one-fifth of the families have national IDs for all of their children. Tests on statistically significant differences between a range of social and economic factors (such as location, employment status, indebtedness, age, ethnicity of the parents) did not provide satisfactory results; this could suggest that Afghanistan does not have a culture of registering births, obtaining passports or IDs. Thus, there is a need for a large-scale campaign to raise awareness about the need to register, especially in light of plans to more strictly enforce access to social services and employment.

## Recommendations

The government of Afghanistan needs to expand and enforce the social security system by developing functional protection units that are responsible for outreach, mobilization and coordination of services to vulnerable populations.

It has to develop a comprehensive registration mechanisms and better services for persons with disabilities. The government must depoliticize social security with regards to assistance and services provided to persons with disabilities.

The government of Afghanistan needs to develop mechanisms using local authorities and community councils to provide birth registration facilities in every village.

The AIHRC emphasizes the importance of the ratification of the UN Convention on the Rights of Persons with Disabilities. The commission also urges the government towards 3 to 5% quota of recruitment of persons with disabilities in government services, particularly in the Ministry of Postal and Communications, should be given due importance.

The Government needs to develop a mechanism for *Zakat* collection to help the vulnerable and affected populations (especially persons affected by natural disasters) in association with other resources.

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2008.

<sup>48</sup> Soraya Sarhaddi Nelson. (2008) Afghanistan strives to register all newborns. <http://www.npr.org/templates/story/story.php?storyId=91936836> retrieved on July 28, 2008.

<sup>49</sup> Devin Felter. (2008) Afghanistan eyes newborns with birth certificate drive. Retrieved on July 28, 2008 from <http://www.findingdulcinea.com/news/Middle-East/July-August/Afghanistan-Eyes-Newborns-with-Birth-Certificate-Drive.html>

## Family Life

Article 10 of the ICESCR protects the right to family life and recognizes that “marriage must be entered into with the free consent of the intending spouses.” The right to family protection is usually interpreted as a right to marry consensually without coercion, freedom from underage marriage, and the right to equality between men and women during marriage and its dissolution.<sup>50</sup> However, given the context of Afghanistan, it is impossible to discuss only the abovementioned rights under the ICESCR provision for protection of family life.

Women have very limited space in public life in Afghanistan; the majority of them do not work outside of their houses. Thus, the majority of violations against women falls under the remit of family life. In Afghanistan, the right to family protection primarily focuses on the freedom to marry, equality between men and women during marriage and its dissolution, and domestic violence. Article 54 of the Constitution of Afghanistan also has provisions to protect the family. Violence against women in Afghanistan, however, takes many forms, including forced marriage, child marriage, trafficking, forced prostitution, honor killings, abuse, neglect, and a range of psychological violence.<sup>51</sup>

## Family law

Current marriage and family life regulations are vague and contradict the Constitution and adopted international legal norms. There are provisions for the process of entering marriage and its dissolution and for family protection principles in the current civil law of Afghanistan. These issues are only touched upon and there is a need for extended regulations to protect family life. The new law currently being drafted brings protection of the family in accordance with the 2004 Constitution of Afghanistan and international law. Current regulations have different legal ages of marriage for males (18 years old) and females (16 years old). These provisions are in direct contradiction with not only international treaties such as Article 3 of the ICESCR, Article 16 of the CEDAW but also Article 22 of the Afghan Constitution. These articles say that men and women are equal in their protection before the law and must have equal rights to enjoy these rights. Furthermore, the Committee on Women’s Rights explains that the difference in ages of marriage for men and women are in direct contradiction to CEDAW.<sup>52</sup>

Islamic Sharia and Constitution of the country have provided suitable rights for women and men, but practically and in some rules and practices of equality between men and women these rights are not ensured. Current legislation leaves women largely unprotected. A man can divorce his wife without due process. In the absence of officially enforced marriage and divorce registration women remain particularly open to abusive practices. A woman can remarry three months after divorce period (Edat). However, if challenged, she will have to provide witnesses to prove her divorce in court. The woman can initiate the divorce process if she has enough reasons to do so; accepted reasons among others include: her husband must be sick and it endangers her; her husband must fail to provide for the family; her husband must be absent for more than four years in the house or be sentenced for imprisonment of 10 years or more. In this case, the court will assign her *mahr* – divorce maintenance – and custody of girls until they reach their ninth birthday and boys until their seventh birthday.

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<sup>50</sup> AIHRC & UNHCR. (2006) National and international legal standards. Kabul

<sup>51</sup> UNIFEM. (2008) Violence against women: Primary database.

<sup>52</sup> Committee on Women’s Rights. (1994) General recommendation 21: Equality in marriage and family relations

INSERT: Simagul's husband divorced her without any legal proceedings in 2001. In February 2007, he decided that he wanted her to come back to his house. He approached the local courts to rule for Simagul to return to his family. She had no means of proving that the divorce took place in 2001. Her father refused to appear in the court for fear of being humiliated. Even after a year since Simagul's husband approached her, the case remains unresolved. Simagul has to tolerate frequent harassment from her former husband forcing her to return to his house. END INSERT.

The marriage certificate includes registration procedures, marriage contract, and the responsibilities of the parties. The 1976 Civil Law of Afghanistan in article 61 says that all marriages must be registered. To date, however, there has been no enforcement mechanism to make marriage and divorce registration a routine process. There are arguments that the more traditional areas resist the registration procedure to avoid exposing women's identities. However, there is no substantial evidence available to support this. Drawing on the experience of the Presidential elections where a significant number of women were registered to vote the main barrier to compliance is in inaccessibility of the registrars rather than in active resistance.

There is a need to raise awareness among the population about benefits of marriage certificates, but before that a system to register marriages has to be put in place urgently. The Ministry of Women's Affairs plans to establish only one marriage registration office per province. It is highly unlikely that the populations living in rural and remote areas will travel long distances to register their marriages and they should be expected to. The lack of adequate registration facilities nullifies the benefits of a formal policy that requires the registration of marriage.

## Forced Marriage

Article 10 of the ICESCR recognizes the family as the "natural and fundamental unit of society," and stipulates that marriage should only be conducted "with the free consent of the intending spouses." This provision is often disregarded in Afghanistan. The high prevalence of this form of violence is also suggested in the cases documented by UNIFEM.<sup>53</sup> There are no studies done to estimate the prevalence and degree of forced marriage in Afghanistan. Presently, the only source of systematic data is UNIFEM's Violence against Women Primary Database, a compilation of over 1,000 cases registered with women's organizations (published in 2008). The major challenge in collecting data rests in the perception of forced marriage. When directly questioned, respondents replied, "There were no forced marriages in our family." Deep into the conversation, however, it was common to hear a comment similar to "I didn't want to marry my husband, but my father said it would be good for me, so what can I say against that?" What is important is that forced marriage is not only the problem for young girls. Widows are also forced to get married either by their in-laws or birth family.

INSERT: Shiringul is a 25-year-old woman widowed six years ago. She and her husband never had children. As tradition holds, she continued to live with her in-laws but recently one of her brothers-in-law started to make arrangements to marry Shiringul. She does not, however, want to remarry into this family. After successful advocacy by the AIHRC, Shiringul obtained a court decision to allow her to leave the family and remarry according to her will. END INSERT.

Most of the violations against the right to free marriage stems from the treatment of women as commodities. There are three types of marriage that fall under this category: sale, *bad dadan*, and *badal*. Sale marriage occurs when a woman is sold for a fixed quantity of goods, cash, and/or to settle a debt. *Bad dadan* is a practice sanctioned by

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<sup>53</sup> UNIFEM. (2008) Violence against women: Primary database.

the tribal code as a traditional tool for dispute resolution. This is a non-codified customary law by which blood debts are settled by the marriage of a female of the offending group to a male of the offended group. For example, if a man from one tribe or family kills a man from another, a sister or daughter of his household must be given to the other family to settle the blood debt. A woman married under *bad dadan* is generally treated as a servant by her husband's family and is subject to various forms of abuse for her entire life. *Badal* occurs when two families exchange their daughters in an attempt to minimize marriage costs; usually, it is a forced marriage. There is no need to prepare a dowry for the women and no need to pay the bride price—both of which could be prohibitively expensive. It also guarantees a relationship between the two families. If one marriage sours or one of the women is abused, then retribution is taken on the other woman. This makes each woman completely dependent on circumstances completely out of her control, tying her fundamental rights to the whims of her brother-in-law. All forms of forced marriage are illegal under Afghanistan civil law and offenders could be punished by up to two years in jail.

INSERT: In April 2007, two men in Panjshir province got into a fight. One of them, 35-year-old Ahmadullah, was badly injured. He complained to the local *jirga*. The elders of the village decided that 5-year-old Mahbuba should be given to him for marriage as restitution for his injuries. Despite intervention from the provincial governor and the AIHRC, the girl was still forced into marriage to Ahmadullah. END INSERT.

## Child Marriage

Another practice of concern is child marriage, which is believed to be common in Afghanistan. Afghan law sets the legal age of marriage at 16 for females and 18 for males. This is often disregarded, however. A survey of educated married women in Herat revealed that nearly 29% percent of them had been married before the age of 16.<sup>54</sup> The statistics cited in the ANDS shows that almost 60% of girls in Afghanistan are married before they reach 16 years old.

Child marriage is extremely damaging to women for a number of reasons. It often prevents women from completing their education and rips them away from their families at an early age. Additionally, it compels them into a sexual relationship before they are emotionally or physically ready and forces them to bear children before their bodies are able to withstand the physical stress of childbirth. Further, a Medica Mondiale study has shown that child brides often display extreme emotional dislocation from their offspring, impacting the psychological well being of both mother and child.<sup>55</sup> Very young brides are often given to very old men in Afghanistan. This form of marriage often ends in the woman becoming a de-facto servant in her household since her husband is too old to sire children.

The civil law of Afghanistan prohibits forced and child marriage. There are no known cases when the parents were prosecuted for child marriage, however.

INSERT: In Faryab province in 2001, Nassima was married at the age of nine to a 70-year-old man. She has been a servant to him since. He is impotent and never touched her. When she turned 16, she demanded a separation. The court rejected her claim saying that her marriage at nine years old was legal. The AIHRC team filed an appeal early in 2007, but the civil court has still not made a decision on her separation. END INSERT.

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<sup>54</sup> medica mondiale. (2004) Study on child marriage in Afghanistan.

<sup>55</sup> Ibid.

Underage marriage disproportionately affects girls. Among the families surveyed, 1662 children were reported to marry underage. Of these, 1494 (90%) are girls and 168 (10%) are boys. Ten percent of the HRFM respondents said they had their children married before they reached their 16th birthday. Debt was a contributing factor, but by no means the decisive one, in the decision to have children married early, about 8% of those households that were free of debt and 12% of those who were indebted had their underage children married. Fifty-five percent of the underage marriages were performed to solve economic problems; another 33% were *badal* –also linking into economic issues – where no dowry was required.

## Elopement

Elopement is not predicted as a crime or infringement in any laws of the country. However, the issue has been addressed differently by the courts. Many courts have dealt with it as a crime. This understanding comes from the belief that a woman should not be leaving her house without a *mahram* (chaperone who is a male relative) who is believed to not be having *zina* (pre- or extra-marital sex) with the woman. Couples who run away from home to get married are often imprisoned; the man is charged with kidnapping and the woman with *zina*. This is in contradiction to Article 425 of the 1976 Penal Code of Afghanistan.

INSERT: Criminal charges against women who run away from their homes to avoid forced marriage are of particular concern for the protection of the family. The majority of these cases are ruled using traditional practices that are at times in contradiction with civil law. For example, Farina, a 19-year-old woman from Samangan ran away from home in late 2006 to get married with the man she liked. The police found and arrested them. The judge ruled that because she ran away she must have had pre-marital sex and sentenced both to 18 months in jail. The couple was not allowed to get married. The case came to the attention of the AIHRC early in 2007; despite the intervention, the higher court refused to overturn the initial decision. Some cases do get resolved as a result of AIHRC intervention, however. Otifa, a 19-year-old woman in Sari-Pul ran away in early 2007 to get married to a man that her family did not approve of. Despite the marriage certificate, the police imprisoned both on the grounds that Otifa was engaged to another man by her parents. As a result of AIHRC advocacy and intervention from the governor, the problem was solved. END INSERT

Lately, there has been an increased effort to open up family centers to attempt to resolve runaway cases without incarceration and resolve disputes within the family peacefully. Forced marriage is a reason why women and girls run away from home. Institutions like these are a step in the right direction—allowing domestic violence to be addressed and preventing forced marriages. These centers need to be staffed by an interdisciplinary team, including a gender specialist. There are several of these centers operating in Afghanistan; only those that have gender-sensitive policies, include gender specialists, and carry out their activities in the frame of civil law indeed work to protect the rights of women. Other units that work as family centers only in name continue to enforce discriminatory practices.

## Domestic Violence

Afghanistan suffers from widespread violence against women. As the participation of women in Afghan public life is still relatively low, the great majority of violence against women takes place within the family. According to UNIFEM, 80% of violence against women occurs within the family, a statistic confirmed by the violations reported to the AIHRC. Domestic violence is a serious problem accounting for a third of the total violations against women reported to eh AIHRC.

Often the violence is so debilitating that the woman may choose to run away and be put in jail than to tolerate abuse. Unfortunately, the majority of the women never get a chance to run away; some of them commit suicide and others are killed in violent incidents. Often these cases remain uninvestigated. Another form of documented violence against women is psychological violence and neglect. A husband may threaten divorce, to separate her from their children, or to stop providing for the family. Given that women are often secluded and have very little educational opportunities, this type of violence has a very negative impact on women because they are entirely dependent on the generosity of their in-laws.

INSERT: In Khost, Nikbakht got married when she was 12 years old to a man significantly older than her. She didn't perform well in household chores, simply because she was not ready to take on a heavy duty of being a wife in Afghanistan. She was constantly beaten, often with objects, for any reason that might displease her husband. In 2007 when she was 16, in the heat of a fight, her husband killed her with an ax. The girl's birth family filed a complaint to the authorities, but no actions were taken. The security department confirmed the case, but no follow-up or investigation was conducted. Several months after the AIHRC started advocating for the family; Nikbakht's father asked if he could drop the case. He and his family were receiving threats to coerce them into withdrawing the charges. END INSERT

## Recommendations

The government of Afghanistan needs to implement its commitments to non-discrimination as outlined under international law and the Constitution of Afghanistan. This means it should:

- make the age of marriage, 18 years old, equal for both males and females;
- enforce and provide facilities for marriage registration throughout the country and not only in provincial centers; and
- To develop and enforce a due process for divorce, in line with the values outlined in the Constitution.
- Enact and implement rules and regulations in which, the rights and obligations of parties as to marriage, during marriage and at its dissolution of marriage and all over the life of spouses be ensured, in accordance with the Constitution of the country and international commitments.

To protect the rights of women, it is essential for the government of Afghanistan to develop and enforce domestic violence regulations. The police should pay close attention to cases of domestic violence that result in murder. Hospitals and health workers should not become main instruments in protecting and supporting battered women.

The AIHRC urges the government to provide specialized assistance such as treatment, counseling, health, social services, facilities and support structures for the women who are subjected into forced marriages. There should be guidelines set forth for the training of law enforcement officials, the judiciary, legal practitioners and for the concerned government authorities, who are responsible for ensuring effective protection against forced marriage.

## Adequate Standard of Living



The right to an adequate standard of living is outlined in Article 11 of the ICESCR; it comprises: the right to an adequate standard of housing, security of tenure, freedom from forced evictions, right to clothing, and access to water and sanitation, as well as the right to food and freedom from hunger and starvation.

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."<sup>56</sup>

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, based on 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 that the Government has a long way to go in order to reduce this proportion to 15% by the year 2020.

Article 14 of the Constitution of Afghanistan recognizes the need for proactive actions to provide housing and improve life of all of its population and calls for settlement of Kuchis. Security of tenure, housing, water, and food are the four main issues that hinder reaching an adequate standard of living for a significant part of Afghanistan. These issues disproportionately affect returnees, IDPs, and Kuchis; they also act as an impediment to the return of refugees.

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<sup>56</sup> CESCR General Comment no.12 (1999): The right to adequate food, Para.14.

## The Right to Adequate Standard of Housing

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 a secure and peaceful environment and with dignity.

Addressing an adequate standard of housing includes such issues as availability and quality of housing, the number of people living together, security of tenure, and freedom from forced evictions and sanitation. Achieving an adequate standard of living for the entire Afghanistan population is limited by several factors including the lack of funding for rehabilitation and infrastructure projects, unclear mandates of government institutions, and a lack of political will. Though the government has announced several housing programs, there is a disjuncture between these announcements and the programs being actually implemented. In Afghanistan's Second Periodic Report on ICESCR, the government cites security and complex property registration situations as reasons for the slow implementation of housing projects. These are not sufficient grounds to further delay resolution of these issues.

Most of the housing projects are concentrated in Kabul. With the financial support of the World Bank, the government has been constructing 20,000 residential houses in the Deh Sabz area and improving housing conditions in 19 districts of Kabul city. Progress in these areas, however, has been slow and largely concentrated on satellite towns such as *26 Dalw* intended for 150,00 people, a project initiated by the Ministry of Urban Development (MoUD) on the outskirts of Kabul. After completion, 65% of the housing will be reserved for public servants while the remainder will be distributed to the general public. The project began early in 2007; the site has been excavated and some of the foundations have been laid. Each of these houses will be priced at US\$20,000-US\$30,000. Beneficiaries, selected by a committee, must be native to the province and cannot have any immediate family members that already own a house in Kabul. This policy specifically excludes many returnees who currently settled in Kabul and cannot return to their places of origin, and thus are most vulnerable. The MoUD plans to initiate similar projects on a smaller scale outside Herat and Kandahar provinces as well as in a number of provincial towns; the timeframe for these projects are undefined.

While *26 Dalw* attempts to fix a housing shortage among the middle class, it ignores the needs of Afghanistan's most vulnerable populations. In the absence of other projects specifically targeting the urban poor, the implementation of *26 Dalw* reflects the government's larger disregard for Afghanistan's urban poor. While conversations with ministry officials revealed that they were aware and concerned about specific problems of the urban poor, the lack of action from the ministry reveals the lack of political will to implement programs to achieve concrete gains for the urban poor. The MoUD is more interested in providing the basic infrastructure necessary for private sector growth. This is important, but it is equally important to first ensure that this infrastructure is available to the majority of Afghanistan's city dwellers. If an adequate standard of living is to be met for Afghanistan's urban population, there is a need to take immediate steps to formalize or relocate Afghanistan's urban slums.

Availability and affordability of housing are acute problems in urban areas. The simultaneous influx of migrants and soaring property costs has precipitated a housing crunch in Afghanistan's urban areas. Among HRFM respondents who can to some degree represent the vulnerable population in urban areas, 40% inherit their homes, 20% purchase their homes, and another 20% rent. This has important housing management and policy implications: 10% of vulnerable urban households surveyed cannot afford to pay for housing; 16% of responding households face an uncertain housing situation; and



another 10% live in a house belonging to a relative of a friend. Eviction is a problem for 2% of urban households, most of whom either squatting or living with family or friends. These numbers reflect the fact that there is no low-income accommodation available in urban centers. In Kabul, the situation is exacerbated by the demolition of a significant number of houses in informal settlements in order to accommodate road expansion or for re-planning purposes. There are no programs underway specifically addressing issues of the urban poor. The ministry claims to be formulating a plan to either relocate or upgrade existing urban slums and expects implementation to begin in 2009. The AIHRC was unable to obtain a draft copy of this plan, however.

The MoUD is responsible for the design and implementation of housing and infrastructure in Afghanistan's urban areas. Its mandate, however, clashes with the mandate of Municipal Authorities who own the urban land and report directly to the President. This makes it difficult for MoUD to implement projects or provide solid relocations plans for the urban poor displaced by development activities of either the municipal authority or MoUD. The only real progress so far has been achieved in addressing the legislative gap concerning housing finance. MoUD and the Ministry of Finance (MoF) jointly drafted a mortgage law that is presently being debated in Parliament. If passed, this law will make capital available to Afghan citizens through access to loans.

The situation of rural housing is no less complicated, but few efforts have been made to address it. The HRFM offers insight into the housing of the vulnerable rural population: 75% of the households inherited their house; 10% live in a house belonging to a friend or a relative; fewer than 10% have purchased their own house. About 2% of the rural households cannot afford to pay for accommodation; and of this, 40% live in rented houses while 25% live in accommodation belonging to a friend or relative. However, 4% of rural households (compared to 2% in the urban areas) face the threat of eviction. This is significant when translated into actual numbers: potentially some one million households. An overwhelming majority of these households—70%—live in accommodation belonging to a friend or relative, and 10% squat. This reflects the issue of scarce land resources and a need for a policy to provide and manage rural accommodation. The AIHRC is not aware of any programs working to develop rural housing aside from humanitarian assistance offered in disaster-affected areas or to IDPs and returnees.

### Security of Tenure

Security of tenure is particularly important in ensuring an adequate standard of housing for Afghan citizens. The security of tenure is complicated by its enormous differences in climate, poverty of the people, forced evictions, harassment and so on. The right to housing should be seen as the right to live some where in peace, security and dignity. However, 30 successive years of unstable regimes resulted in competing legal claims to land. This has led many to call for the centralization of the land registry, forming an authoritative source to determine land ownership. This, however, still faces serious challenges in a country where nearly three million of its citizens live as refugees in neighboring countries. Determining an authoritative source based on the currently residing population is likely to disenfranchise potential returnees.

Existing mechanisms to ensure security of tenure are either ineffective or do not have mandate to act effectively. From 2002, the Special Land Property Court was established to resolve a large number of property dispute cases; as of January 2007, this court was dissolved and land disputes are now heard in civil courts. Customary forms of adjudication like *jirgas* and *shuras*, however, settle most land disputes in Afghanistan. In such cases, customary practice sometimes prevails over state law. This is a problem because customary law often contradicts the principles of equality enshrined in civil law,

particularly when it comes to inheritance. On the other hand, *shuras* often have more accurate records of land ownership than the government, the registries of which are both incomplete and contradictory. Several NGOs interviewed have successfully used *shuras* to determine ownership of land and settle disputes.

HFRM respondents reported a number of cases of illegal occupation. Twenty households had their house occupied by government officials; 208 households were forced out of their homes by unknown individuals; 51 by a “commander”; 146 by a member of their own community; and, 66 faced problems because they did not have documents to prove the ownership. These problems reflect only a fraction of disputes that require special attention. They are an indication of larger problems: the lack of a land management system, no effective system to resolve disputes, and no facilities for law enforcement.

Over 70% of Kabul’s residents live in informal settlements without security of tenure. Kabul’s informal residents possess the ability to invest in their own standard of living; more than US\$1.3 billion has been invested by the residents themselves in informal housing.<sup>57</sup> It is important for the government to recognize the significance and magnitude of these investments and efforts related to formalizing settlements, allowing more money to be securely invested in these properties.

## Water



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<sup>57</sup> Sayed Zabiullah Majidi. (2006) Next stop Kabul. Dissertation Architecture Association Graduate School.

Article 11, paragraph 1, of the ICESCR specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living 'including adequate food, clothing and housing'. The use of the word 'including' indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. Moreover, the Committee on Economic, Social and Cultural Rights has previously recognized that water is a human right contained in Article 11 of the ICESCR.<sup>58</sup>

According to the Committee on Economic, Social and Cultural Rights, the right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements. When the right to water is fully realized, people have access to a sufficient quantity and quality of water to meet their basic needs that is supplied under the best possible conditions in a non-discriminatory manner.

A significant number of households live without consistent access to clean water and basic sanitation facilities. According to the Central Authority for Water Supply and Sewerage (CAWSS), roughly 70% of urban dwellers lack access to safe drinking water. The HRFM data shows that 40% of vulnerable urban and 70% of vulnerable rural households have problems with water for household needs and sanitation. This does not even take into account the quality and safety of water. There are several factors behind why this situation continues, including the lack of financial resources, hydrological studies, and technical capacity. These obstacles are not easy to overcome and will continue to affect the quality of life for a significant part of the population. According to a senior official in CAWSS, the World Bank has estimated that the Afghan Water Authority needs US\$2.1 billion to cover 34 major provincial towns and 40 small-scale towns. However, at present, the authority only has a budget of US\$45 million allocated for Kabul and 14 provincial towns.

There are also serious discrepancies between the official statistics provided in the Second Periodic Report and the statistics available on request from the government. For example, the report claims that 31% of households have access to safe drinking water; Kuchi households have lowest access to safe drinking water (16%) compared to rural households (26%) and urban households (64%). By province, having access to safe drinking water in urban households is highest in Kandahar (99%), followed by Kabul (71%) and Balkh (67%); in contrast, Baghlan (35%), Herat (35%) and Kunduz (15%) are among the provinces having the least access and in which even the urban population has little access to safe drinking water. These statistics, however, are not corroborated by the interviews with government officials. For example, the president of CAWSS estimates that only 30% of Kabul's population has access to safe drinking water and this will reach 50% only by 2013. He deems Herat city, with an estimate of more than 90% of its population having access to safe drinking water, to be the best city in Afghanistan in this regard.

Significant development of groundwater resources and establishment of water treatment plants and pipelines are major measures required to improve access to potable water. This development requires greater funding and technical capacity, and completion is not expected until 2013. However, even with the full development of Kabul's groundwater capacity, only 50% of Kabulis will have access to safe water. Water treatment plants are of particular importance. In Kabul, the majority of shallow wells are potentially unsafe because the city has open sewage and no water treatment plants. Without bringing

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<sup>58</sup> Committee on Economic Social and Cultural Rights, General Comment 6, The economic, social and cultural rights of older persons, 1995, Paras. 5 and 32.

water from sources far away from Kabul and establishing quality treatment plants and pipelines, it will be impossible to provide safe drinking water to Kabul's ever-growing population. According to a senior official at CAWSS, at least US\$750 million is needed to achieve this, an amount that far exceeds the total budget of the water authority.

The numbers reported by vulnerable households dim an already bleak picture. Over 90% of vulnerable urban households said that they have access only to unclean water. Ten percent of the respondents had to wait for more than an hour before it was their turn to access the water point. Of these, 40% had to walk for more than 15 minutes one way to reach the water point and another 32% for more than one hour—making the task of fetching water almost a full-time job. Half of rural households use a covered water source while 50% use an uncovered water source. While 40% claimed that their water is clean, 30% said they had to share the water point with animals. One-quarter of the households had to wait for more than one hour for their turn at the water point. Of these, 32% of the households have to walk for more than 15 minutes one way and another 10% more than one hour to the water point. This is of a particular concern because walking long distances in rural Afghanistan can be extremely dangerous. Children and women are traditionally responsible for fetching the water; having to walk long distances makes them more vulnerable to insecurity, mines and UXO, harassment and sexual assault.

The water authority has identified problem areas and developed strategies to combat them. The president of CAWSS, Najibullah Patan, clearly stated that a long-term strategy is absolutely necessary to solve Afghanistan's critical water problems. He advocated the implementation of the Kabul River Basin Master Plan, which will attempt to draw water from several of Afghanistan's rivers in order to utilize water resources for irrigation, drinking, and hydropower. He also advocated that Afghanistan must develop its surface water resources if it is to provide water to its people and particularly if it is to mitigate drought conditions that have plagued the country for more than 15 years. CAWSS presents a clear drought mitigation strategy that is currently in its initial phases of implementation. The first stage, currently underway, involves the conveyance of water by tankers and delivery of food assistance. The second stage focuses on digging deep wells and initiating large-scale hydrological studies of the area. The final stage is linked with broader plans for Afghanistan, including the development of the Kabul River Basin, the protection and development of groundwater and rainwater resources. The water authority lacks the funding to implement these plans, however.

## The Right to Food

The human right to food is recognized and protected in a wide range of both declaratory and legally binding international instruments. Article 11 of the Covenant on Economic Social and Cultural Rights recognizes the Right of everyone to an adequate standard of living for himself and his family, including adequate food. Article 11.2 also recognizes that more immediate and urgent steps may be needed to ensure the fundamental right to freedom from hunger and malnutrition.

The Committee on Economic, Social and Cultural Rights in its General Comment 12 on the right to adequate food has stated that "The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement."<sup>59</sup> The right to food does not mean handing out free food to everyone. Rather, the right to food means that Governments must respect, protect and fulfill the right to food.

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<sup>59</sup> See *Supra* note 101.

The right to food obligates the government to help its citizens meet their dietary needs by creating a supportive economic, political and social environment. Inadequate economic activity is not the only source of hunger and malnutrition; in Afghanistan, it is also connected to the ability of farmers to produce enough food or people's access to livelihoods opportunities. This right is also connected to Goal 1 of the Afghanistan MDGs, which deals with the eradication of poverty and hunger.

Food security is a good indicator for poverty in Afghanistan. Income as an indicator of poverty is not a reliable one for this context. The HRFM data shows that 37% of vulnerable populations make less than 50AFS per day while only 22% reported more than 50AFS in daily income. The remaining 41% did not respond to the question; potential reasons could be reluctance to report illicit income or the absence of income. Other indicators for poverty are difficult to establish in the light of the minimal systematic data available.<sup>60</sup> Official government statistics show that 44% of Afghan households are food-insecure. Around 35% of households do not meet their daily energy (calorie) requirements<sup>61</sup> and 61% of households have poor food consumption as indicated by diet diversity.<sup>62</sup> A nutritional survey found that over 6% of children under five years of age suffer from acute malnutrition (low weight-to-height ratio) while 45-60% of the same age group are chronically malnourished (low height-to-age ratio).<sup>63</sup>

The World Food Programme (WFP) and Food and Agriculture Organization (FAO) confirm the dire situation of food security in Afghanistan. WFP estimates that about 20-25% of Afghanistan's population is chronically food-insecure.<sup>64</sup> Chronically food-insecure refers to the state of living in hunger or on the verge of starvation.<sup>65</sup> This number is relatively low when compared to the estimated 45% of the population who do not meet their daily calories intake.<sup>66</sup> Actual numbers of chronically food-insecure populations differ depending on the sources cited. According to 2006 estimates from the Afghanistan Central Statistics Office, the total population of Afghanistan is roughly 22 million people whereas The World Fact book 2008 estimates the population to be 33 million.<sup>67</sup> Thus, 4.5 million people are chronically food-insecure in the best-case scenario and 8.3 million people in the worst-case scenario. In addition, there are also so-called transient food-insecure people: those who were affected by drought, floods, or crop failures and can no longer produce or afford to buy enough food. According to estimates provided by the WFP and FAO, the number of transient food-insecure people has been steadily increasing since the end of 2006, potentially reaching as high as 7 million people at the end of 2008. Thus, Afghanistan might see a best-case scenario of 9 million or a worst-case scenario of 15 million of people living in or on the verge of hunger in the winter of 2008-09.

Although the current food crisis is unprecedented in its reach, food insecurity in Afghanistan is not a new phenomenon. Currently, Afghanistan is not growing all the food necessary to feed its population. While 2007 was a good crop year, it still left a gap of at least a half million tons of food. In the reporting period, the number of transient insecure-people has steadily risen. The two groups of people most susceptible to shocks are farmers who rely on rain-fed land and the urban poor. In 2006, the drought affected 2.1 million more people than it had before, the vast majority of which were farmers with

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<sup>60</sup> ANDS. (2005) Afghanistan's Second MDG Report: Vision 2020.

<sup>61</sup> MRRD. (2008) Afghanistan Food Security Monitoring Bulletin (Warning), May. MRRD, CSO, WFP

<sup>62</sup> MRRD & CSO. (2007) National Vulnerability and Risk Assessment (NRVA) 2005.

<sup>63</sup> Wendy Johncheck & Diane Holland. (2005) Nutritional risk in Afghanistan: Evidence from the NSS pilot study (2003-2004) and NRVA 2003. The Alan Shawn Feinstein International Famine Center.

<sup>64</sup> Personal communication. Interview with Mohammad Shafiq Yari, Program Officer Emergency Response and Ahmad Shah Shahi, Program Officer Vulnerability Analysis Mapping, WFP. June 22, 2008

<sup>65</sup> Definition of food insecure. <http://www.medterms.com/script/main/art.asp?articlekey=32947> Retrieved on June 23, 2008

<sup>66</sup> MRRD. (2008) Afghanistan Food Security Monitoring Bulletin (Warning), May. MRRD, CSO, WFP

<sup>67</sup> CIA - World Fact Book - Afghanistan. <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html> Retrieved on June 23, 2008

rain-fed land. The two-fold rise in food prices in 2007 affected the farmers who were unable to produce enough food to cover consumption needs and the poor in urban areas. In 2007 the government, supported by the WFP, distributed 216,037 metric tons of food aid to vulnerable households. The government of Afghanistan also has removed tariffs on imported wheat and other food from Pakistan, to ensure a lower sale price for consumers; it also announced a plan to lend up to US\$100 million to traders in order to assist them in purchasing wheat from abroad. Afghanistan has the potential to produce all the food it needs if it can: rehabilitate its irrigation system, provide farmers access to credit, improve access to high-yielding foundation seeds, and facilitate supplementary income activities for farmers. This issue is discussed in greater detail in the chapter on Labor Rights and Economic Development.

## Returnees, Refugees and IDPs

According to presidential decree No. 297, "The Afghan interim administration is responsible to safeguard the rights and freedoms of all returnees (and) guarantee their safe and dignified return (...) and expects that, in conformity with the principle of voluntary repatriation, Afghans will be given the opportunity to decide freely to return to their country (....)".

The UN Guiding Principle 10.1 on Internal Displacement focuses on the voluntarily return of refugees and displaced persons to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.

This principle also mention that the states shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations.

Issues of adequate standard of living particularly affect Afghan refugees, returnees and internally displaced people (IDPs). According to UNHCR, there were roughly seven million registered refugees living in Pakistan and Iran during the height of the 2001 conflict. After the situation stabilized in 2002, many Afghans began to return. Since 2001, UNHCR has assisted the return of nearly 4.5 million refugees from Pakistan and Iran. Currently, approximately two million refugees remain in Pakistan and one million in Iran. While the deteriorating security situation in Afghanistan discourages more refugees from returning, the governments of Pakistan and Iran have simultaneously displayed an increased unwillingness to allow more refugees to remain on their territory. The economy and infrastructure of Afghanistan is not able to absorb existing returnees, left alone those arriving in future waves. Without an adequate standard of living and livelihood opportunities, some returnees are seamlessly transformed into IDPs upon return to Afghanistan. Currently there are 235,000 IDPs. Despite nuances, the problems facing returnees and IDPs are similar; these problems are also the main reasons that prevent refugees from returning.

A deteriorating security situation, landlessness, and limited livelihood opportunities are the factors preventing the reintegration of IDPs and returnees as well as the return of refugees. The lack of security in large swathes of Afghanistan makes a return to the place of origin often impossible. Several regime changes during the period of conflict created a network of conflicting land claims. Many of the "commanders" and "warlords" grabbed tracts of land to be distributed among their tribes and soldiers. During their period of forced migration, families have nearly tripled in size, which may prevent them

from going back to their place of origin as they have left behind a small plot of land and a small house. Additionally, many of those who fled Afghanistan had no land to begin with and find it difficult to make a daily wage upon return to their place of origin. The pervasive lack of economic opportunities makes return to the place of origin either impossible or undesirable. Most individuals who are unable to return to their place of origin due to a lack of livelihood options or landlessness migrate to the cities to join the ranks of the urban poor.

## Afghan Refugees

The fate of Afghan refugees is dependent on negotiations between the governments of Afghanistan, Pakistan and Iran and UNHCR. According to the Ministry of Returnees and Reintegration (MoRR), Afghanistan cannot accept any further returnees from Iran or Pakistan due to the lack of economic opportunities and the government's inability to provide them with basic services and infrastructure.<sup>68</sup> But both host governments are becoming increasingly uneasy with the presence of Afghan refugees.

The government of Pakistan wishes to repatriate as many Afghan refugees as possible, and wishes to close all its refugee camps for Afghans. In 2006, Pakistan announced its intention to repatriate 900,000 refugees to Afghanistan per year, a decision opposed by UNHCR and the government of Afghanistan.<sup>69</sup> The same year, it planned to close two camps in the North-West Frontier Province (NWFP) and two camps in Balochistan. As of March 2008, only the NWFP camps (Jalazai and Kachagari) had been shut down. The actions and policies of the Pakistani government vary greatly due to its own instability. A massive deportation drive of Afghans from Pakistan would likely result in a massive humanitarian crisis. Presently, the only way forward is to work towards improving conditions in Afghanistan that would eventually provide the impetus for the refugees living in Pakistan to return.

The status of Afghan refugees in Iran is no less precarious. Previously, refugees were repatriated at a slower rate. From 2001 to 2006, it is estimated that 833,000 Afghans living in Iran were able to return, leaving a population of 920,000 registered refugees in the country.<sup>70</sup> However, several areas within Iran were declared off-limits to foreigners, including Afghans registered as refugees. Since there has been a near-continuous migration to Iran for the past 30 years, many Afghans have settled in these no-go areas. The real problem arises because the Iranian government is currently in process of re-registering its refugees and no registration centers are set up in areas considered off-limits to foreigners. If Afghans in these areas are not re-registered, their refugee status will be revoked and they will be subject to deportation. Iran's policy both on labor migrants and refugees has become considerably more restrictive in the past several years. In 2001, Iran began its program to deport all those without a work permit. Though the vast majority of Iranian deportees are not refugees, genuine refugees often get caught up in the process.

INSERT: Qudrat, a registered Afghan refugee, was arrested by the police in Tehran. When he showed his Amayesh II card, confirming his status as a refugee, they told him that it did not matter and tore it up. He was placed in a detention center, sentenced to 99 lashes, and deported from Iran. He claims to have left over US\$5000 and all his personal belongings that he was not allowed to collect before his deportation. END INSERT

## Afghan Returnees

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<sup>68</sup> Personal communication. Interview with MoRR Deputy Minister, July 27, 2008.

<sup>69</sup> Personal communication. Interview with a UNHCR employee, August 4, 2008.

<sup>70</sup> Altai Consulting. (2008) Research study on afghan deportees from Iran. ILO-UNHCR.

Many of the returnees who have been able to successfully reintegrate came back in the first few years after the fall of the Taliban regime. They had either retained or earned enough capital abroad to begin successful lives in Afghanistan. However, more recent returnees face greater difficulties since they tend to be economically worse off.<sup>71</sup> A continued influx of refugees puts additional strain on already overstretched services. Afghanistan cannot ensure adequate livelihood opportunities for its current population. In an interview with officials from the MoRR, it was explicitly stated that Afghanistan does not have capacity to provide assistance to any more returnees.<sup>72</sup> Basic services and infrastructure are available only in the population centers and barely reach the villages. A particular concern is the landless returnees who join the ranks of urban poor. To address this issue, the government of Afghanistan developed a Land Allocation Scheme.

#### Land Allocation Scheme

In 2005 the Afghan Government developed a Land Allocation Scheme (LAS) to assist with the internal resettlement of Afghan returnees. These LAS sites are conceived as small towns with adequate infrastructure and services able to support small-scale commercial activity and ensure livelihood options. Initially, the government announced plans for 100 such sites, later inaugurating only 50. Presently, only 15 sites operating with the assistance of UNHCR have been developed; the remaining lots lie vacant.

The beneficiaries are identified on the basis of need from a pool of applicants. According to a protection officer at the Norwegian Refugee Council, the selection process for determining beneficiaries of the LAS is extremely opaque, making it difficult to determine whether beneficiaries are in fact those who are most in need. Allegations of corruption have marred the allocation process, and there are fears that LAS sites closer to the urban centers are seen as investment opportunities, pushing out the intended beneficiaries. It is important that a number of policy safeguards be developed and immediately implemented to keep the land in the hands of the beneficiaries that it was intended for.

Due to the lack of basic infrastructure and connections to livelihood opportunities, the occupancy rate of LAS sites is extremely low. Not a single LAS site houses every family that has bought a plot; many families have not moved into the sites due to the lack of infrastructure and livelihood options. The average occupancy rate (percentage of people who live on the LAS site out of the total who have received a plot) is roughly 17%. This is particularly unacceptable because, except in the case of the Kas Aziz Khan site in Laghman province, the remaining 83% have already paid for their plot but are unable to move in for the reasons outlined below. The price of the plot is fixed — 1500 AFS (US\$30) per 100 m<sup>2</sup>, which means plots range from 4500 AFS (US\$90) to 9000 AFS (US\$180). While this is considerably less than the price of real estate in Afghanistan's urban centers, it is still an extremely significant amount of money for the destitute.

The sites are inappropriately developed. A single design was applied to all sites without topographical consideration of the plot (see insert for details). The majority of the sites lack basic infrastructure. Those that have water do not have roads; those with schools lack access to basic medical facilities. The LAS program has great potential to settle the vulnerable population of returnees, giving them security of tenure and providing basic services. Unfortunately, this potential has not been realized. The basic infrastructure of the LAS is non-existent. Not a single LAS site is connected to the electricity grid. This becomes particularly critical in sites with deep-well pumps, which require electricity for their operation. In order to obtain water from the well, the residents of the land allocation sites have had to pay out of their own pockets for increasingly expensive fuel. There are no health facilities of any kind in nearly two-thirds of the sites. No educational

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<sup>71</sup> Personal communication. Interview with a UNHCR employee, August 4, 2008.

<sup>72</sup> Personal communication. Interview with Deputy Minister, MoRR, July 27, 2008



facilities exist at all in a third of the sites, and most of the sites do not have middle schools. Sanitation is perhaps the only consistently implemented basic service provided by the government, but there are no sanitation facilities on two of the sites.

There is no public transportation connecting the LAS with the markets (with the exception of Sheikh Mesri, in Nangahar province). The average distance from an LAS site to the nearest population center is 12km, which can be extremely difficult in Afghanistan's blazing hot summer and harsh winter. Because these are artificial settlements, none enjoy the livelihood activities that exist in even a small village. Commercial activity, however paltry, exists in only a third of the land allocation sites; none of it is capable of sustaining livelihoods of the community. This severely limits the livelihood options available to the residents.

INSERT: Baricab Land Allocation Site was inaugurated in 2006. It is a plot of 5,000 *jerib* (1 hectare). It is located 35 km away from Kabul, 10 km from Bagram Air Base, and 15 km from Charikar. No topographical assessment was conducted before the land was allocated. The site itself was not level and movement around the site poses a challenge to able bodies and is virtually unviable for some 20 people in wheelchairs. The land distribution was sporadic. Some families decided not to build on the land because the site does not offer any livelihood opportunities. As a result, houses—usually 10 to 20 in a group—are scattered around the land, which is a sizable area. None of the factors above are conducive to the establishment of a viable community.

Some 160 families had a plot allocated in a flood-prone area. Some 60 houses are constructed on the seasonal water way. A widow brings the AIHRC team to the riverbed and shows what remains of the former foundation of her perimeter wall. The house next to hers had half of its plot washed away and the neighbors left. Several houses downstream from hers also sustained damage. She has no other place to live, however. She looks at her plot with sad anger. She was born in Kabul and lived there for 40 years. She had to flee to Pakistan because people around her were "killed like *halal* sheep". After seven years she came back to Kabul. Her husband passed away and she could not claim her house back. It now belongs to other people. She had to squat with her children in public buildings for four years. The land allocation scheme was her hope. She borrowed money to buy the land. She borrowed more money to build the house. Several months after her house was built, a flashflood washed away a third of her plot. A part of the wall still has exposed bricks; she had to borrow yet again to rebuild the wall but there was no money to fix the torn edge of one of the walls. She hopes for a house that she can be safe in but she fears that another flashflood will destroy it again.

There are no viable livelihood options at the site. The plot is a barren land with no wheat growing there. On the field visit, the team observed parts of the hills plowed, but the crop failed. There is no public transportation to any of the nearest centers. Villagers have had to hire a private bus. It costs about 200 AFS per person, which is one day's worth of labor. Those who cannot work rely on humanitarian assistance to survive. The residents cannot assess the markets and thus live on crafts or other small production. Most of the able men stay in Kabul for weeks to be able to bring some food and other provisions to the site.

At the site, a 14-year-old girl says that she used to go to school when they were living in Kabul. She studied till the fifth grade. Now she is saying there is no reason for her to go to school. The teacher asks her to teach other kids, and the girl is not learning anything. She is considering dropping out. Effectively, she already has since her attendance is very irregular. Some of the women talk to the team about school. One of them points to the ongoing construction of a big, two-storey school. "What should we do with it? We have no food in our stomach. How can we live tomorrow?"

There is a mobile clinic helping with minor medical issues. There is no help available in emergencies. There is not even a traditional birth attendant and certainly not a trained nurse. Several months ago, a baby died in labor complications. The mother was sick for several weeks and only recently started to recover. The night before the AIHRC visit, one of the settlers had a heart attack; the family had to borrow from house to house to meet the 1000AFS to bring the person to Kabul. They still do not know how much the medical bills will amount to.

There is a line of yellow and orange canisters in front of the school. Children, no older than ten, are waiting for the deep-well generator to work. They wait at least an hour before it is their turn. The site has seven functioning hand pumps scattered around and three deep-wells. The well hosting the queue of children is designed to supply water for the school. It works every other day for two hours. It is too costly to run the generator.

The news of these sites attracts the return of refugees from as far as Peshawar and Islamabad. Several of the returnees at Danaher's Encashment Center said they were coming back to Afghanistan because they heard the government would give them land. Khan Muhammad, who left Kabul in 1979, was returning with the hope that he would finally be able to own land and build his own house. For nearly 30 years, he has been washing and ironing clothes as a *dhobi* in Islamabad, making a daily wage. He has not come back with any savings and hopes to earn more money than he did in Pakistan. His plan is to build a house on the government allocated plot (LAS) and work as a *dhobi* at a Kabul Mosque. Based on AIHRC visits to Kabul's LAS, Khan Muhammad will have no means of working in Kabul if he is even allocated land. When asked about his hopes after returning to Afghanistan, he responded, "We will get some land, find work, be able to build a house, and finally be happy." Based on the observations of the AIHRC research team, it would very difficult to make his dreams come true. END INSERT

### **Internally Displaced Persons (IDPs)**

Afghanistan's roughly 235,000 IDPs could be classified into five categories. The first are those displaced before 2001 that were fleeing both conflict and drought. They account for about 70% of registered IDPs.<sup>73</sup> The second category consists of IDPs displaced after 2001. The deteriorating security situation in the provinces, persecution of Pashtuns in the North for their perceived support of the Taliban, drought, and a pervasive lack of economic opportunities are forcing Afghans to leave their places of origin and seek opportunities elsewhere. The third category is made up of returnees transitioned into IDPs. These are returnees who have no land to go back to in Afghanistan, either because it has been seized or because they were landless to begin with. They also are the result of the hasty closure of the Jalozai and Kachagari camps in Pakistan's NWFP in September 2007. When these camps were closed, many of the refugees could not or were ill-equipped to return. As a result, they have built spontaneous settlements on the Afghan side of the border.

Return to their place of origin is not a viable option for the great majority of IDPs. Often they end up in urban slums or in settlements that lack basic infrastructure and services. Very few of the IDP settlements have primary schools, access to safe water, or access to health facilities. A few of the IDP settlements have primary schools, this is usually the highest level of education available within the settlement. Zhar-e-Dasht, Afghanistan's largest IDP settlement, housing just over 27,000 people outside Kandahar, is one of the few settlements where the residents do have access to primary education. Blanket food assistance to IDP settlements officially ceased in 2006 and most of those living in IDP settlements subsist by working as day laborers often in southern Afghanistan's vast

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<sup>73</sup> This figure does not include those individuals who flee from conflict and return home when the fighting ends (conflict-induced displacement) and many who are being displaced by drought, who moves to the cities or abroad for work.

<sup>74</sup> UNHCR. (2008) National profile of IDPs in Afghanistan, (unpublished report).

poppy fields.<sup>75</sup> The spike in food prices during the past year has made life much more difficult for IDPs and other vulnerable populations because their daily wage cannot cover their basic needs. This has been mitigated to some extent by the distribution of food to Kuchis in the North. Free food distribution has not, however, occurred country-wide and is, at best, a temporary solution.<sup>76</sup>

## **Kuchis**

One consequence of the drought that has plagued Afghanistan for nearly 15 years is that the Kuchis' traditional way of life is no longer viable. Their pasturelands have dried up and their animals have weakened or died from a lack of food and water. The largest concentrations of displaced Kuchis, numbering roughly 60,000 people, are those who cannot return to the Registan desert.<sup>77</sup> Drought conditions in the north, as well as the reluctance of local communities to allow the Kuchis to return with their flocks, has displaced a further 10,000 individuals. With their traditional way of life destroyed, the Kuchi have been forcing to live in camps and to subsist on food assistance, with daily wage labor as their only livelihood option as few of the Kuchi are educated or have specialized skills. The return of this population to their traditional way of life in the Registan desert is impossible because such return is unsustainable, given the loss of their livestock and the fact that the amelioration of drought conditions, if it happens, will take several years. Replacing flocks is an expensive proposition and will not be supported by donors or government when the likelihood is that the flocks will die for lack of pasture and water. The ability of the Kuchi to adapt to their changed circumstances is limited as most are unfamiliar with settled livelihoods and do not own property. Their landlessness makes their situation particularly difficult.

### Current Strategies to Address the Situation

There is a disjuncture between government policy regarding IDPs and returnees and the realities that they face. The official government strategy is to return both populations to their place of origin, but steps have not been taken in that direction because such courses of action are not viable options. Very few of the issues preventing IDPs from returning have been addressed, much less resolved. According to UNHCR, mines prevent the resettlement of former conflict zones in Afghanistan. Furthermore, rising food costs, drought, landlessness, and the deterioration of the security situation in the provinces have made return to place of origin often impossible. Efforts to mitigate drought conditions are still in the planning stages, and will take years before they will have any visible impact.<sup>78</sup>

In interviews, officials from the MoRR have admitted that the current policy, with its emphasis on return, is no longer feasible. The UNHCR shares this point of view, that one must now look at local integration as a serious option both for IDPs and for Kuchis. However, there are serious challenges, both political and economic, that need to be addressed if government and the relevant UN agencies are serious about advocating for local integration. When asked what programs they were running for reintegration in the larger economy of Afghanistan, the deputy minister responded, "We have a total budget of US\$10 million. This isn't even enough for one camp."

## Recommendations

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<sup>75</sup> Personal communication. Interview with a UNHCR employee, August 4, 2008.

<sup>76</sup> Ibid.

<sup>77</sup> Consultants Asia International. (2006) Durable solutions for Kuchi IDPs in the South of Afghanistan: Options and opportunities.

<sup>78</sup> Personal communication. Interview with the president of CAWSS. August 5, 2008

The Government of Afghanistan must develop and implement practical steps to resolve the land disputes that make it difficult for IDPs and returnees to go back to their places of origin, and to assure security of tenure for both Afghanistan's rural and urban households who do not own the land on which they are living. One dimension of this enormous challenge is to institute measures that will make it possible for the informal settlements in Kabul's urban areas to be formalized and upgraded, providing appropriate infrastructure and services to the residents. Where this is not feasible, those living in these informal settlements must receive support to relocate to areas where they can have security of tenure and to re-establishing their livelihoods. Low-income housing must be built and offered to the most vulnerable populations both in urban and rural areas. The mandates of differing government ministries with responsibilities for IDPs and other vulnerable populations must be clarified and harmonized. Community Development Council and local *shuras* must be involved in addressing and settling land disputes in harmony with the principles of civil law. Security of tenure is an extremely important issue affecting returnees and IDPs, particularly those living on the outskirts of population centers. Efforts must be made to guarantee security of tenure for returnees and IDPs, giving them access to land, which will in turn promote economic sustainability.

The Government of Afghanistan must invest in developing water resources. All steps must have long-term solutions to Afghanistan's crises. This is particularly true of the Kabul River Basin Master Plan, which has the potential to ensure safe drinking water for many in Afghanistan, increase irrigation resources, and mitigate drought.

The Government of Afghanistan has to develop a long-term coping strategy to address food insecurity. This includes: a program to rehabilitate and strengthen rural infrastructure; decentralization of preventative programs; and greater investment in rural development. When it is safe and viable, food assistance should be continued at the place of origin in order to encourage IDPs and returnees to return. Food assistance should be given to the extremely vulnerable in their location of displacement when their place of origin is either insecure or drought-affected.

The policy of return should be combined with a policy of relocation, allowing both IDPs and returnees to settle elsewhere outside of their places of origin when necessary. However, this entails a number of challenges, including legal issues related to land acquisition for public use, tensions (sometimes ethnic-based) between IDPs and local populations, the viability of livelihoods in the area of relocation, and the ability of the government to provide basic infrastructure and service. The current situation is untenable since the vast majority of IDPs live far below any reasonable standard of human existence. Moreover, local integration could be a more preferred and viable durable solution for IDPs.

Afghanistan's situation must become more economically strengthened in order to integrate returnees and IDPs and to allow more refugees to return. Afghanistan currently ranks 104 out of 183 on the World Bank 2007 ranking of GDP (purchasing power parity).<sup>79</sup> Massive economic growth is necessary if the country is to ensure an adequate standard of living for its people. However, this growth will be impossible without a sizable improvement in the security situation and wide-scale implementation of basic infrastructure programs.

The Land Allocation Scheme presents an important opportunity to settle and reintegrate returnee populations. Based on its current weaknesses, the following steps to improve the system should be taken: the selection process must be transparent; this process should also include IDPs; the sites should be rapidly developed and outfitted with basic infrastructure; and the sites should be connected to the population centers.

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<sup>79</sup> World Bank. (2008). Gross domestic product 2007, PPP. Retrieved from [http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP\\_PPP.pdf](http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP_PPP.pdf) on August 10, 2008.

The government of Afghanistan needs to develop a mechanism on implementation of Presidential Order dated 28 June 2008 and article 14 of Constitution to improve the Kuchi's living standards.

## Right to health



Article 12 of the ICESCR enshrines the right to the highest attainable standard of health. Health is understood as a right of a person to control one's wellbeing and access to the appropriate services and facilities.<sup>80</sup> These services must be available to and affordable for everyone without discrimination. Article 12 has a requirement to improve the health of concerned citizens, such as reducing infant mortality, enhancing child health, preventing and controlling epidemic diseases, and facilitating access to health care.

World Health Organisation (WHO) described Health as a "State of complete physical, mental and social well being and, not merely the absence of disease or infirmity." This definition is subsuming individual and community aspects of health and including the promotion, prevention, curative and rehabilitation dimensions. A vibrant health policy that ensures prevention of diseases, easy accessibility of services, availability of doctors and qualitative treatment is on the anvil.

The government of Afghanistan has committed to provide free health care services to all citizens under article 52 of the 2004 Constitution. This is reinforced by the Government's ratification of the Convention on the Rights of the Child under which the Government has committed itself to take appropriate measures to diminish infant and child mortality and to ensure appropriate pre-natal and post-natal health care for mothers (Article 24 (2)). This commitment was further asserted by the Afghanistan Compact following the London

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<sup>80</sup> Committee on Economic, Social and Cultural Rights. (2000) The right to the highest attainable standard of health : . 11/08/2000. /C.12/2000/4. (General Comments)

conference in 2006 and has been extended into the ANDS, signed by the President in April 2008.

The government of Afghanistan faces three major challenges in the implementation of health services for all its citizens: the targets are ambitious; services are significantly under funded; and the deteriorating security situation has forced the shutdown of a significant number of health facilities.

The health care goals outlined by the Afghanistan Millennium Development Goals, Afghanistan Compact and integrated in the ANDS are ambitious:

- by 2010, the Basic Package of Health Services should be extended to cover at least 90% of the population;
- maternal mortality should be reduced by 15%;
- all infants under five years old should undergo full immunization for vaccine-preventable diseases and their mortality rates are to be reduced by 20% from their 2004 levels<sup>81</sup>.

The MDGs set even more precise targets for Afghanistan by 2020 to reduce under-five-year-old mortality rates from 260 to 90 children per 1000, infant mortality from 165 to 55 per 1000, maternal mortality rates from 16 to 4 per 1000 births, the rate of contracting malaria in those at high risk from 16% to 8%, and tuberculosis cases from 321 to 48 cases per 100,000, as well as to eliminate cases of polio.<sup>82</sup>

The major challenge to reaching these objectives is the inadequate coverage of health services. According to the ANDS, 85% of the population has access to basic health care services, allowing for the under-five mortality rate to be reduced by 26% from their 2004 levels. But the health system is patchy. Health care facilities are divided into: 1) primary health care facilities at the community level; 2) district hospitals; 3) a provincial hospital; 4) a regional hospital; and 5) specialized hospitals. Kabul has by far the most hospitals (124), while Bamyan and Panjshir have the lowest numbers of hospitals per capita (available facility) in the country, at approximately 1 hospital per 8,000 residents.

There are hospitals that can provide mental health services in 14 out of 34 provinces. This is vastly insufficient since psychological health is extremely important in post-conflict situations.

The establishment of medical clinics that could serve at least 3,000 people as well more mobile health clinics are two other important measures that would improve health care. Recently, more than 120 sub-centers were established in 11 provinces where the World Bank provides financial resources. NGO and private health providers complement and, at times, substitute government coverage.

The HRFM survey shows that 15% of vulnerable people in urban settings and 30% of those in rural areas do not have access to any government, NGO or privately run health facilities, while only 22% of people in urban areas and 2% in rural areas have access to all. Distance was cited as the major reason why households do not use the government-run clinics; this was the response of 28% of urban and 61% of rural households. Of those surveyed, 30% of urban and 20% of rural households said they do not use clinics because of a lack of medicine in the clinic. Poor quality of staff was also another reason that some did not use the facilities (cited by 25% of urban and 8% of rural households). There also exists an inability to access to private health facilities; 95% of urban and 40% of rural households cited a prohibitively expensive cost as their major reason. In

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<sup>81</sup> Building on Success: The London Conference on Afghanistan: The Afghanistan Compact. 2006.

<sup>82</sup> Retrieved from [www.moph.gov.af](http://www.moph.gov.af) on May 26, 2008.

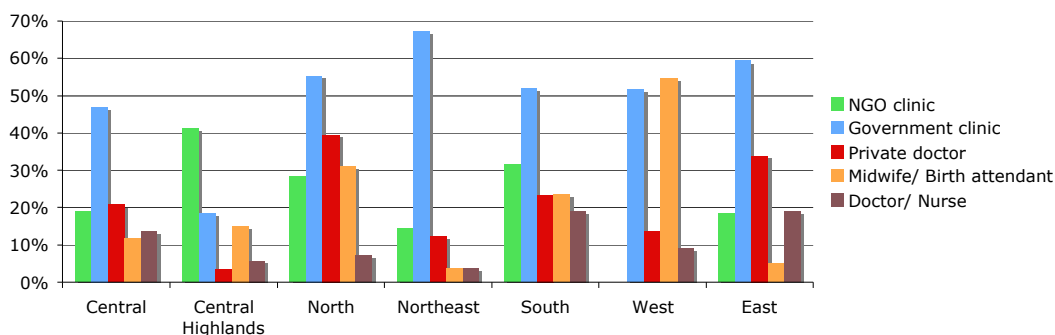
addition, 37% of rural households could not access private health facilities because of distance.

The Ministry of Public Health struggles to hire medical specialists, to reach rural areas, and to acquire enough appropriate building material, equipment and hospital beds. Basic medical services are offered in district health clinics that are made up of a single room and have staff that often lack training. While anesthetics are available in some areas, opium is used as painkillers in many areas; these resources are not sufficient to deal with emergency cases related to mines, unexploded ordnances, suicide attacks, and armed conflict in remote areas. In addition, such a patient would require transportation to the nearest center for proper medical care, which is usually carried out by hiring a private car, on a horse or a donkey. There are a limited number of ambulances.

Maternal care is still largely unavailable. Average female life expectancy for females is 45 years. While women’s life expectancy is usually longer than that of men, Afghanistan is an exception. In the Second Periodic Report on the ICESCR, the government of Afghanistan attributes this to inadequate access to maternal health services and the higher prevalence of violence against women. The extent of the lack of coverage for maternal care is reflected in the HRFM survey of vulnerable groups (Figure 3). Relatives and friends remain one of the main sources of assistance during labor in 40% of urban and 50% of rural households. Overall, trained staff assisted only 30% of births and about 8% of births took place unassisted. Households in urban locations were more likely to use trained help: 22% with a doctor or nurse and 25% a midwife or trained birth attendant. Only 10% of rural households had the assistance of a doctor or nurse and another 17% were assisted by a midwife or trained birth attendant. In light of the lack of medical care available in rural areas, these numbers leave mothers particularly vulnerable; in case of complications at birth, 30% of the rural population would not be able to reach medical facilities in time.

Even among the vulnerable population, the type of care received during their last birth experience does not correspond to the availability of medical facilities. An overwhelming majority of births were delivered by relatives or friends; in the East, it reaches almost 70%, followed by 60% in the Central region. The two regions are also the ones with the highest number of households using midwives or trained birth attendants. In the Northern region, 35% were assisted by a relative or a friend and 30% by qualified help. Respondents in the Western region reported 20% and 55%, respectively. Only the households in western provinces had proportionately equal distribution of available medical resources and use of trained help during labor. This calls for a need to focus the attention of the government on maternal health and pre- and post-natal health care.

Figure 2: Medical facilities available and help used during labor.



Based on the recommendations by the World Health Organization to Afghanistan, the government has adopted the budget policy to spend 60 percent of the budget on

primary health care and 40 percent of the budget on hospital services. However, according to the budget published by the Ministry of Public Health in 2007, out of US\$105 million required to fund planned services, only US\$10 million were allocated.<sup>83</sup> This severely undermines the ability of the health services to reach the public.

Security is another factor undermining the already sporadic coverage by the health facilities. Since March 2007, health workers are a target for insurgents in southern and eastern provinces. In only the first three months of 2008, the government has shut down at least 36 facilities due to security threats, leaving over 360,000 people without health services.<sup>84</sup> The trend shows that co-education facilities are the ones that are mostly under threat. In the reporting period, doctors and clinics offering mixed-gender care came increasingly under threat. This is compounded by the fact that there are few women trained as doctors, further diminishing women's access to health care services. In areas where there are no female doctors or nurses, women would have to be treated by male staff.

## Recommendations

There is an urgent need to increase the number of medical staff in Afghanistan. This should be focused in three areas: training of more community health workers; refocus medical care on the needs of women, including a greater capacity to provide pre- and post-natal care for both mother and child; and, providing incentives for more women to be trained as doctors and offering skills upgrading for women to be trained in medical field (health workers). Medical services should be funded to the fullest extent possible. Clinics should have all necessary equipment and medication.

*The government should take measures to provide "education concerning health problems and the methods for preventing and controlling them; promotion of food supply and proper nutrition; an adequate supply of safe water and basic sanitation; maternal and child health care, including family planning; immunization against major infectious diseases; prevention and control of locally endemic diseases; appropriate treatment of common diseases and injuries; and provision of essential drugs." The ANDS should be given consideration in all aspects of the health sector.*

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<sup>83</sup> Retrieved from <http://www.moph.gov.af> on May 26, 2008.

<sup>84</sup> Retrieved from <http://www.irinnews.org/report.aspx?ReportId=78185> on May 25, 2008.



## Education



The right to education is one of the most crucial among social and economic rights, both as the means to child development and as a proxy for realizing other human rights.<sup>85</sup> It is also a prerequisite for the broader development of Afghanistan.<sup>86</sup> Education is crucial in facilitating access to a better quality of life, elimination of poverty, mitigating the effects of child labor, and promoting gender equality. It helps children to grow into adults who are able to fully participate in the social and political life of the country. It further helps to address a number of cross-cutting issues including public health, economic growth, and social mobility. The right to basic education is guaranteed by both the ICESCR and the Afghanistan Constitution. Article 13 of the Covenant stipulates that the government has a responsibility to provide free, universal and compulsory primary education. Article 43 of the Afghanistan Constitution guarantees the right to free education up to the bachelor's degree level and the right to education in the mother tongue, as well as demanding that the government implements universal programs to achieve these goals. The Constitution in article 44) further stipulates the necessity of positive discrimination to facilitate equal access to education for women and Kuchis.

Under CEDAW, the Government has made a commitment on taking all appropriate measures to eliminate discrimination against women in order to ensure to them 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.<sup>87</sup>

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<sup>85</sup> Ministry of Finance, Government of India (2000) Economic survey 1999-2000. Retrieved from <http://indiabudget.nic.in/es99-2000/chap1005.pdf> on August 17, 2008. And AIHRC & UNHCR. (2006) National and international legal standards. Kabul

<sup>86</sup> Tammy Worth. (2008). Development 101: Education plays a crucial role in economic curriculum <http://kansascity.bizjournals.com/kansascity/stories/2008/07/14/focus1.html> Retrieved on August 17, 2008.

<sup>87</sup> 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.

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

- The Millennium Development Goal Target 3 for Afghanistan is to ensure that, by 2020, children everywhere, 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 reach grade 5.
- The Millennium Development Goal Target 4 for Afghanistan is to eliminate gender disparity in all levels of education, no later than 2020 – the current baseline value for the ratio of boys to girls in primary school is 0.6.

Despite tremendous achievements in the area of education since 2001, Afghanistan faces several problems in ensuring access to education for all of its population. The major concerns are the adequacy of and access to school facilities as well as inclusion of gender and minorities. The deteriorating security situation has had a detrimental effect on education. In the reporting period, Afghanistan saw disruption of classes during conflict, attacks on schools, and the intimidation of teachers and female students by militant groups.

## Adequacy and Access to Schools

On the surface, access to schools appears as to be good. Afghanistan has approximately 9,000 schools—that is, one school for every 1,500 students. There are roughly 5,000 primary schools, 2,500 middle schools, and 1,500 high schools in the country.<sup>88</sup> Ninety five percent of HRFM respondents said that they had access to primary school, but no data shows how far apart these schools are located. In urban locations, the major education providers for both boys and girls are government and non-governmental schools (90% of HRFM interviews). In rural locations, the government is responsible for 92% of the primary schools for boys and 83% of those for girls. However, the education system is largely under funded. Nearly 60% of Afghan schools exist without any permanent structure.<sup>89</sup>

INSERT: A village of over 350 households in Badakhshan does not have a school building. The boys study under open sky, some under tents. The girls study on the mosque floor. There are no chair and desks, no books, no resources. The girls complained, “We have to study our lessons in the village mosque. But what can we learn? We do not have a teacher, no books, nothing to write with. More than 100 girls here can’t read or write because the closest school for girls is two and a half hours away, so our parents do not allow us to go.” END INSERT

Coverage of schools is very sporadic and concentrated in the urban areas. Very often, students have to walk to the nearest population center to reach their school. This is particularly common in Afghanistan’s rural areas even at the primary school level. This walk can be unsafe or impossible for a variety of reasons, including inhospitable weather, impassable roads, insecurity, mines, and the presence of unexploded ordnances. Middle schools are much less widely available and high schools are rarely available outside of provincial centers. In the absence of public transportation, this means that only wealthy families or those who can arrange accommodation in the towns can afford to send their children to high school. Others either have to endure a journey of often several hours or stop going to school altogether.

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<sup>88</sup> Ministry of Education. (2007) School Survey 1386 (2007) Summary Reports, Survey Period: May 2007 to August 2007. Department of Planning, EMIS Department.

<sup>89</sup> Ibid.

INSERT: The AIHRC has documented cases of sizable communities that do not have access to education. All of these stories describe a long and dangerous walk to school. An elder of a village in Badakhshan says, "We have about 100 families. The nearest school is two hours away walking one way. The spring is known for flashfloods. The road is unsafe and even in spring could remain closed for weeks. Sometimes flashfloods come down in the day leaving the children cut off from the other side of the river path. In the summer, the children have to walk under the sun. We are afraid that something will happen to our children and there will be no one to help them." Not much has been done about the issue. When it was raised with the district governor and those responsible in the Department of Education, they promised to include the issue in the district development plan. However, no teacher thus far has been allocated for the village and no community-based education was established. In one case, when the authorities were put under particular pressure, their response was to plan to start building the school by November 30, 2008. One might question whether this construction will indeed start at the dawn of harsh winters. END INSERT

To address the issue of access to schools, community-based education is being mainstreamed into government schools. A coalition of NGOs and the Ministry of Education formed a partnership and, in April 2006, the Community Based Education program became a part of the government education system in recognition that it is the primary tool to expand access to education in remote areas.<sup>90</sup> The PACE-A project supports synchronization of the curriculum and allows children to continue their education outside of their communities. It works in the 17 provinces that host the smallest number of formal schooling facilities. The project is in its second year and continues to integrate and further develop classroom access for remote communities and middle schools for girls.<sup>91</sup>

## Drop out and Attendance

Drop-out rates are extremely high. Only 11% of boys and 5% of girls enrolled in primary school continue on to grade 12 while almost 82% of boys and 63% of girls reach grade six.<sup>92</sup> As low as they are, these numbers are in fact inflated. A study by the Swedish Committee for Afghanistan found that children's names are often kept in school registers even after they had stopped attending more than three years prior.<sup>93</sup> This implies that the actual numbers of children enrolled in primary school and continuing on to higher grades are, in fact, much lower than reported.

The type of settlement, gender, and region has the most decisive effect on the attendance statistics. Surprisingly, debt levels and earnings of a family have very little, if any, impact on children's attendance.

HRFM findings show that children in urban locations are more likely to attend school regularly. Boys in urban areas were only slightly more likely than those in rural areas to attend school regularly: 66.40% compared to 65.60% in rural areas. Contrary to expectations, the number of boys not attending in school was higher in towns than it was in rural locations (18% and 15%, respectively). Living in an urban settlement had the biggest positive impact on girls' attendance: a 5% gap that saw 57.60% attendance

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<sup>90</sup> USAID/Afghanistan: Partnership for Advancing Community Education in Afghanistan (PACE-A) <http://afghanistan.usaid.gov/en/Activity.47.aspx> Retrieved on August 15, 2008.

<sup>91</sup> Education – PACE-A Secondary schools for girls. <http://www.care.org/careswork/projects/AFG023.asp> Retrieved on August 15, 2008.

<sup>92</sup> Ministry of Education. (2007) School Survey 1386 (2007) Summary Reports, Survey Period: May 2007 to August 2007. Department of Planning, EMIS Department.

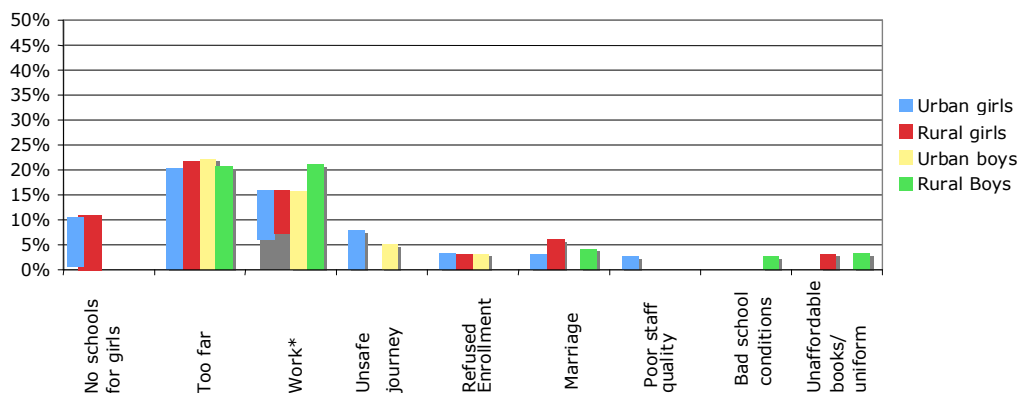
<sup>93</sup> Swedish Committee for Afghanistan. (2007). Drop out study in basic education level of schools in Afghanistan.

in urban locations compared to 52.30% in rural areas. However, the number of girls not attending school is almost the same in both locations: 26.60% in urban and 27.30% in rural areas. In rural areas, girls were less likely to attend school regularly than boys. The difference in attendance widens from 8% in urban to 13% in rural areas. This is of particular importance since the majority of the population lives in rural areas; thus, the education of girls in rural areas is disproportionately affected.

Region also was a definitive factor in school attendance. The best reported attendance among all children that should be in grades 1 to 6 were in the Central and Central Highlands provinces; the worst attendance rates were in the South and West. The Western provinces and Central Highlands reported the least difference in terms of a gender gap in attendance: 4% and 5% more boys attended school than girls, respectively. The biggest difference was in the Eastern (21%), Central (17%) and Northern (17%) provinces. Despite the significant gap in attendance based on gender, HRFM reports a relatively high rate of school enrollment for girls in Afghanistan. It is most likely a reflection of the inability of HRFM monitors to collect data in insecure regions and insurgent-controlled areas of Afghanistan where the percentage of girls attending school is relatively miniscule. The Ministry of Education reports that in Uruzgan girls attending grade 1 make up only 10% of students, 15%, in Zabul, 16% in Helmand, and 22% in Kandahar.<sup>94</sup>

The reasons for irregular school attendance included: quality of education, adequacy of school facilities, and economic factors. This broad category might also include such reasons as cultural preferences, taboos, and a fear of sexual abuse or harassment in school. Distance to school was the second biggest reason. This holds true for all but rural boys; work as the factor preventing school attendance had a much greater impact on boys than girls. Marriage affected child attendance in 3% of urban girls, 6% of rural girls, and 4% of rural boys. It is necessary to be wary of this finding; the question in the survey asks why all siblings of the same gender do not have regular school attendance.

Figure 3: Reasons for irregular school attendance among the HRFM population



\* The shaded grey area in the work section represents the difference in the workforce for girls doing carpet weaving work, only to show the significance of this workforce segment.

### Inclusion: Gender and Minorities in Education

The gender disparity and discrimination of minorities in school is a challenge in securing the right to education for all Afghanistan citizens. Today 1.8 million girls are enrolled in

<sup>94</sup> Ministry of Education. (2007) School Survey 1386 (2007) Summary Reports, Survey Period: May 2007 to August 2007. Department of Planning, EMIS Department.

school. However, girls represent only 35% of Afghanistan's total school-going population. At the grade 1, girls constitute 40% of students. This percentage becomes progressively smaller at middle school (34%). By grade 12, females account for only a quarter of the students.<sup>95</sup> There are no official government statistics disaggregated by ethnicity or religion.

Education opportunities for girls are limited. HRFM respondents said that there were no schools for girls available in 2% of urban households and 6% of rural households. This is compared to only one household out of more than 15,000 that reported no education opportunities for boys. This translates into some 40,000 urban girls and roughly a million rural girls who have no access to education. One of the major concerns is the distance between home and school. According to the HRFM data, this was the second most common reason given for not sending girls to school. It is unlikely that parents would allow their girls, often very young, to walk unaccompanied for two hours to reach the school. Other contributing factors to limiting access of girls to school include the lack of female teachers and of separate girls' school after the primary level.

INSERT: The AIHRC documented several cases when children were prevented from going to school by the heads of family. One of such cases came to the AIHRC's attention in Bamiyan because the girl had been brought to the hospital after an attempted suicide. Habiba, 17, describes, "My father died several years ago and my older brother became our only provider. He was against my education from the very beginning but I insisted on going and did manage to graduate from the ninth grade. When I wanted to go to high school, my brother locked me in the house. I was so desperate that I decided to kill myself." During the investigation, her brother explained, "Habiba was going to school in our community, and I did worry about her. She is a girl and I don't want shame to be on her name. But I did allow her to go because it was near. Now she wants to walk an hour to the high school. I can't allow her to do that. The security is bad and who knows what will happen to a lonely girl on the deserted road. So I had to stop her." After the AIHRC intervention, it was agreed that Habiba would be allowed to walk to the school only in company of several other girls. This provision is not very secure and depends on the willingness of other parents to allow their girls to walk the distance. END INSERT.

The cultural requirement to have female teachers creates a vicious cycle. Girls are not educated due to a lack of female teachers, which in turn prevents the development of female teachers to educate girls. This attitude is deeply entrenched in Afghan society and is unlikely to undergo radical change in the near future. It is of vital importance to initiate programs to train adult Afghan women to teach in primary and middle schools. Further efforts must be made to establish separate girls' schools. Presently, only approximately 15% of middle or high schools are reserved for women. This number is deeply inadequate and not even in line with the already low representation of females in middle and high school.

Gender is not the only limiting factor, however. Children may face humiliation and discrimination in school. The AIHRC documented two cases of discrimination based on religious and ethnic grounds. This number appears to be very low given the anecdotal evidence of children dropping out due to discrimination, particularly in urban locations where diversity in population is concentrated. More attention should be given to monitor presence or absence of discrimination on ethnic or religious grounds.

INSERT: During a monitoring visit to a school, two Hindu girls in Kandahar complained to the AIHRC. "When we are in school everyone is treating us badly. There is no special school for us and we have to go to the ordinary school. We have another culture, another religion and no one pays attention to our problems. Everyone makes fun of us." During the investigation, the director of the education department in Kandahar town

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<sup>95</sup> Ibid.

acknowledged that this is a problem for all religious minorities and that nothing could be done about it. END INSERT.

## Insecurity: Schools under Attacks

Attacks by insurgents on educational facilities have jumped dramatically in the last couple of years. In 2007, there were 55 security threats and over 180 attacks carried out on schools, killing 108 people and injuring 154.<sup>96</sup> The first three months of 2008 saw five threats and 24 attacks killing two people. The situation is particularly critical in the South, where the insurgency is strongest. Attacks on actual schools are usually the last step in a long process of intimidation that keeps Afghan children, particularly girls, out of school. Other types of attacks and intimidation techniques include: threatening letters, threats of kidnapping, attacks on teachers, intimidation of local officials, and attacks by throwing acid on girls going to school.<sup>97</sup> Such actions have forced the closing of more than 200 schools in 2007.<sup>98</sup> The primary targets of the attacks were schools where boys and girls attend classes together or where they share a building. Security was the number one reason cited when the AIHRC investigated allegations of girls being prevented from going to school by their relatives.

INSERT: In November 2007, an English and computer skills teacher was assassinated in a school in Paktia. On the morning of that day, five men armed with Kalashnikovs came to the school, found the teacher, and dragged him out to the school yard. At that point, students were writing exams in the yard. The armed men shot the teacher eight times without any explanation, killing the teacher instantly in front of all the students. Two of the armed individuals were killed later in the ensuing fight with the police. The Taliban took responsibility for the attack, stating that they "killed one of the spies for the Government." The father of the teacher said, "We do not have enmity with anyone; the only fault was that my son was teaching English and computers. We did not receive night letters or warnings before or after this incident. My son was 22 years old. He was engaged." END INSERT

## Recommendations

The government should extend the reach of the educational system by further developing community-based education, with the particular attention paid to the education of girls. The government should take proactive measures and train women to teach middle and high school classes for girls.

The government should provide better security for the schools all over the country. There is a need to provide a chaperone service to walk children to and from the nearest school, if other options are not possible.

AIHRC calls upon all conflict parties on the ground to respect applicable International Humanitarian Law rules and norms, particularly, on securing educational institutions and a peaceful learning environment for school students and teachers.

Both the government and the international community members that are currently funding the educational system need to focus their attention on reaching out and ensuring adequate funding of services to meet the primary needs of under serviced children.

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<sup>96</sup> Personal communication. Briefing with a UNICEF security officer, August 21, 2008

<sup>97</sup> HRW. (2007). The Human cost: The consequences of insurgent attacks in Afghanistan.

<sup>98</sup> Ministry of Education. (2007) School Survey 1386 (2007) Summary Reports, Survey Period: May 2007 to August 2007. Department of Planning, EMIS Department.

There should be a nationwide drive to eradicate illiteracy. Reading is fundamental for all other subject matters. A country cannot begin to promote education, when its people cannot read. The Ministry of Education should partner with a specific NGO that addresses literacy needs.

A right to higher Education is guaranteed under the Afghan Constitution. This should be a building block for future reports and serve as a goal for Afghanistan's people. The right to a free higher education is a unique component of Afghanistan and should not be overlooked or taken lightly, as most western industrialized nations do not have such a device. This would be a wonderful way to encourage women to get higher education to fill areas of demand, such as in the health and education fields.

Vocational education should be given due notice, along with skilled development. These are areas that will improve work in the agriculture sector and other skilled labor forces.

To have a truancy officer to make sure the children are attending school and to follow-up on why they are not and to work with the school and local transportation to assist in ways the children may get to school. Coordinate with a NGO to secure resources for funds for transportation. Again, there should be a nation wide drive for teachers, another area for women.

More funding for schools, books, equipment, training, security should be secured at the local, national and international levels. The pillars of education are the foundations for all civilizations and this should be a top priority for reconstruction and stability in Afghanistan.

## Recommendations

To uphold its obligations under the ICESCR, the Government of Afghanistan has to take a series of measures, such as: enforcing the existing law; reforming the law that conflicts with the principles of ratified international legal norms and the Afghanistan Constitution; implementing basic social services; developing protection mechanisms and enforcing security to allow for access and the exercise of rights outlined under the ICESCR.

### Co-ordination

The government of Afghanistan should focus on participatory development. PRTs should improve consultation mechanisms with the communities and ensure that all the implemented development projects are in line with the ANDS, local priorities and the needs of target communities.

Recommend the establishment of a committee involving the AIHRC, the Government and the UN in order to work on the follow up/action from this report. There is a need for the establishment of a Committee comprising of AIHRC, UN agencies and the Council of Ministers' secretariat to monitor the implementation of Economic and Social rights by the concerned ministries.

### Enforce the Existing Law

The Constitution of Afghanistan offers an excellent basis for an equitable and just society. However, law enforcement needs to be strengthened. The government needs to implement the labor code, particularly with regard to daily-wage workers, work health and safety regulations, and child labor. Family law is another area of concern; the government must enforce the ban on forced and underage marriage and the mandatory registration of all marriages and divorces. Enforcement of the non-discrimination policy is paramount in securing access to services such as education and health care by women and minorities.

### Reform Conflicting Laws

The government of Afghanistan needs to reform laws that stand in violation of adopted international legal standards and the Constitution of Afghanistan.

The major concern remains the difference in age of majority and marriage between males and females. It is necessary to develop and implement family law to ensure sound affairs relating to marriage, divorce, rights, freedoms and responsibilities of family members, prohibit forced and child marriage and domestic violence and protect rights of the women. Labor legislation should also include gender-sensitive practices and allow for protection against sexual harassment at the workplace.

Law on Education and higher Education should be enacted without any delay. These laws promote private schools and institutions, for the better education of the country. Disabilities law should be passed in the Parliament. The laws on health to protect importing and exporting of necessary drugs and medicines should be strengthened.

International standards and guidelines should be given importance when combating violence against women. The international laws should be a model for framing the local laws. The UNAMA and the international community could encourage the parliamentarians to approve the reforms stated in the present report.



## Implement Basic Social Services

One of the key issues in assuring access to the social and economic rights is the proper funding of basic services in order to meet existing needs. All development efforts must be aligned with the principle of participatory development. To this end, the government of Afghanistan has to better utilize established *shuras* and local councils.

Targeted skills updating for people employed in the informal economy and a formalization option are necessary steps in protecting rights of workers.

Social security services must be extended by developing protection units that are responsible for outreach, mobilization and coordination of the services to the vulnerable populations. The Government must depoliticize social security in regards to assistance and services provided to persons with disabilities.

Marriage, divorce and birth registration facilities as well as offices issuing national identification documents must be available throughout the country, reaching every remote community.

The government of Afghanistan must develop basic infrastructure services. This includes development of water resources, providing effective mechanisms to resolve land disputes, and creating favorable environments for diverse livelihood opportunities.

Security of tenure must be attainable for both rural and urban households. As a part of these measures, the government needs to develop low-income housing services as well as formalize and upgrade informal settlements in Kabul's urban areas. Where it is not feasible, current residents must receive support for relocating and re-establishing their livelihoods.

The policy of return should be combined with a policy that allows both IDPs and returnees to settle in areas other than their places of origin. The Land Allocation Scheme (LAS) present an important opportunity to settle and reintegrate returnee populations. The following, however, must be taken into account: the selection process must be transparent and must also include IDPs; and the sites must be rapidly developed, outfitted with basic infrastructure and connected to population centers. Resettlement in already existing settlements should become an integral part of government policy.

Health services and clinics must have all the necessary equipment and medication, including ambulances capable of delivering emergency care. The government must: train more community health workers; refocus medical care on the needs of women, including increase capacity to provide pre and post-natal care for both mother and child; and provide incentives for more women to train as doctors and nurses. Rehabilitation and physiotherapy services and prosthetic limbs clinics must be available in each population center.

Education services should reach underserved children by focusing on the development of community-based education, with particular attention to the education of girls. The government should take proactive measures and train women to teach middle and high school classes for girls.

## Develop Protection Mechanisms

To protect labor migrants, the Government of Afghanistan should strengthen its cross-border relationship and efforts with Iran.

Gender equality is an important area to concentrate on to ensure that women have access to services. The government also needs to develop better awareness mechanisms about sexual harassment, trafficking, and forced labor.

The police should pay close attention to cases of domestic violence that result in murder. Hospitals and health workers need to become main instruments in protecting battered women.

The government of Afghanistan has to develop a long-term coping strategy to address food insecurity. This includes: programs to rehabilitate and strengthen rural infrastructure; decentralization of preventative programs; increased investment in rural development; and, food assistance to vulnerable populations.

## Provide Security

The government of Afghanistan in close coordination with national and international forces needs to take an effective and inclusive action to provide a better security for the educational and medical institutes.

## References

- AIHRC & UNHCR. (2006) National and international legal standards. Kabul
- AIHRC. (2008) Persons with Disabilities: Report.
- Alisa Tang. (2007). Afghan girls traded for debts, blood feuds. USA Today. Retrieved from [http://www.usatoday.com/news/world/2007-07-09-afghan-girls\\_N.htm](http://www.usatoday.com/news/world/2007-07-09-afghan-girls_N.htm) on August 2, 2008.
- Altai Consulting. (2008) A rapid assessment on child labour in Kabul. ILO-IPEC.
- Altai Consulting. (2008) Research study on afghan deportees from Iran. ILO-UNHCR
- ANDS. (2005) Afghanistan's Second MDG Report: Vision 2020.
- ANDS. (2008) Afghanistan National Development Strategy
- Barry Bearak. (2006). The bride price. New York Times. Retrieved from <http://www.nytimes.com/2006/07/09/magazine/09BRI.html> on August 2, 2008.
- Building on Success: The London Conference on Afghanistan: The Afghanistan Compact. 2006.
- CESCR General Comment No. 3. (1990). The nature of States parties obligations.
- CESCR General Comment No. 9. (1998). The domestic application of the covenant.
- CIA – World Fact Book – Afghanistan. <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html> Retrieved on June 23, 2008
- Committee on Economic, Social and Cultural Rights. (2000) The right to the highest attainable standard of health : . 11/08/2000. /C.12/2000/4. (General Comments)
- Committee on Women's Rights. (1994) General recommendation 21: Equality in marriage and family relations
- Consultants Asia International. (2006) Durable solutions for Kuchi IDPs in the South of Afghanistan: Options and opportunities.
- David Mansfield & Adam Pain. (2007) Developing evidence based policy: Understanding changing levels of opium poppy cultivation in Afghanistan. AREU.
- Definition of food insecure. <http://www.medterms.com/script/main/art.asp?articlekey=32947> Retrieved on June 23, 2008
- Devin Felter. (2008) Afghanistan eyes newborns with birth certificate drive. Retrieved on July 28, 2008 from <http://www.findingdulcinea.com/news/Middle-East/July-August/Afghanistan-Eyes-Newborns-with-Birth-Certificate-Drive.html>
- Education – PACE-A Secondary schools for girls. <http://www.care.org/careswork/projects/AFG023.asp> Retrieved on August 15, 2008.

- Floortje Klijn & Adam Pain. (2007) Finding the money: Informal credit practices in rural Afghanistan. AREU.
- Handicap International. (2005). Islamic Republic of Afghanistan; National Disability Identification Survey: Understanding the Challenge Ahead.
- HRW. (2007). The Human cost: The consequences of insurgent attacks in Afghanistan.
- IMF. (2008) World Economic Outlook Database. Retrieved from <http://www.imf.org/external/pubs/ft/weo/2008/01/weodata/weorept.aspx> on August 10, 2008.
- IOM. (2008) Trafficking in persons in Afghanistan: Field survey report (draft).
- IRIN. (2008) Afghanistan: Over 360,000 affected by reduced health services. Retrieved from <http://www.irinnews.org/report.aspx?ReportId=78185> on May 25, 2008.
- IRIN. (2008). Afghanistan: Stop sale of children, rights watchdog says. Reuters. Retrieved from <http://www.alertnet.org/thenews/newsdesk/IRIN/9bf290e7f0eda9bd925c026783703d45.htm> on August 2, 2008.
- Matt Waldman. (2008). Falling short: Aid effectiveness in Afghanistan. ACBAR and OXFAM
- medica mondiale. (2004) Study on child marriage in Afghanistan.
- Ministry of Education. (2007) School Survey 1386 (2007) Summary Reports, Survey Period: May 2007 to August 2007. Department of Planning, EMIS Department.
- Ministry of Finance, Government of India (2000) Economic survey 1999-2000. Retrieved from <http://indiabudget.nic.in/es99-2000/chap1005.pdf> on August 17, 2008. And Human Rights in Afghanistan,
- MISFA. (2008) MF sector update, March. Retrieved from [http://www.misfa.org.af/uploads/files/MF%20Sector%20update%20March%2008\\_1.pdf](http://www.misfa.org.af/uploads/files/MF%20Sector%20update%20March%2008_1.pdf) on July 30, 2008.
- MoFA. (2008). Afghanistan second periodic report on ICESCR.
- MoLSAMD. (2007) Annual report.
- MRRD & CSO. (2007) National Vulnerability and Risk Assessment (NRVA) 2005.
- MRRD. (2008) Afghanistan Food Security Monitoring Bulletin (Warning), May. MRRD, CSO, WFP
- Naysan Adlparvar. (2008) Pilot Participatory Poverty Assessment. ACBAR.
- Oxfam. (2008) Afghanistan: Development and humanitarian priorities.
- Pamela Hunte & Anastasiya Hozyainova. (2008) Factors influencing decisions to use child labour: A case Study of Poor Households in Badaghshan. AREU.
- Paula Kantor & Anastasiya Hozyainova. (2008) Factors influencing decisions to use child labour: A case Study of Poor Households in Kabul. AREU.

- Paula Kantor and Erna Andersen. (2007) Microcredit, informal credit and rural livelihoods: A village case study in Kabul province. AREU
- Paula Kantor and Erna Andersen. (2008) Microcredit, informal credit and rural livelihoods: A village case study in Bamiyan province. AREU
- Robert Haydon. (2000) Rape and rape avoidance in ethno-national conflicts: Sexual violence in liminalized states, *American Anthropologist* Vol. 102.
- Sami Yousafzai & Ron Moreau. (2008). Opium brides of Afghanistan. *News Week International*. Retrieved from <http://www.newsweek.com/id/129577> on August 2, 2008.
- Sayed Zabiullah Majidi. (2006) Next stop Kabul. Dissertation Architecture Association Graduate School.
- Soraya Sarhaddi Nelson. (2008) Afghanistan strives to register all newborns. <http://www.npr.org/templates/story/story.php?storyId=91936836> retrieved on July 28, 2008.
- Susan Brownmiller, <http://www.drishtipat.org/1971/war-susan.html> Retrieved on August 20, 2008.
- Swedish Committee for Afghanistan. (2007). Drop out study in basic education level of schools in Afghanistan.
- Tammy Worth. (2008). Development 101: Education plays a crucial role in economic curriculum  
<http://kansascity.bizjournals.com/kansascity/stories/2008/07/14/focus1.html>  
Retrieved on August 17, 2008.
- The Asia Foundation. (2008). Afghanistan in 2007: A Survey of the Afghan People; Key Findings.
- UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008. E/C.12/GC/19. Retrieved from <http://www.unhcr.org/refworld/docid/47b17b5b39c.html> on August 20, 2008.
- UN Declaration on the Right to Development (1986). General Assembly Resolution 41/128, Article 8.
- UNHCR. (2008) National profile of IDPs in Afghanistan, (unpublished report).
- UNICEF Press Center [http://www.unicef.org/media/media\\_pr\\_birthregistration.html](http://www.unicef.org/media/media_pr_birthregistration.html) retrieved on July 28, 2008.
- UNIFEM. (2008) Violence against women: Primary database.
- UNODC. (2007) Female prisoners and their social integration.
- US Department of State. (2004) Facts About Human Trafficking.
- USAID/Afghanistan: Partnership for Advancing Community Education in Afghanistan (PACE-A) <http://afghanistan.usaid.gov/en/Activity.47.aspx> Retrieved on August 15, 2008.
- Veena Das. (2007) *Life and words: Violence and the descent into the ordinary*. Berkeley: University of California Press.

Wendy Johnecheck & Diane Holland. (2005) Nutritional risk in Afghanistan: Evidence from the NSS pilot study (2003-2004) and NRVA 2003. The Alan Shawn Feinstein International Famine Center.

World Bank. (2008). Gross domestic product 2007, PPP. Retrieved from [http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP\\_PPP.pdf](http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP_PPP.pdf) on August 10, 2008.