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**Afghan Independent Human Rights Commission  
(AIHRC)**



**Report on the Situation of Economic and Social Rights in Afghanistan - IV**

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## **MESSAGE FROM DR. SIMA SAMAR**

As Chair of the Afghanistan Independent Human Rights Commission, I am pleased to present our fourth Report on the Situation of Economic and Social Rights in Afghanistan

Since its creation in 2002, AIHRC staff members have worked tirelessly to protect, promote and monitor the human rights of Afghans across the country. Over the last four years, the AIHRC has studied the situation of economic and social rights and interviewed more than 40,000 people in 182 districts in 34 provinces.

This report aims to assess the status of economic and social rights in Afghanistan in the year 1387 (2008/09). In this report we measure the national and international obligations of the Government with respect to economic and social rights against the level of enjoyment of these rights by Afghan people. While this report attempts to provide a complete picture of economic and social rights in Afghanistan, it places particular focus on the economic and social rights of vulnerable persons, such as returnees, internally displaced persons, refugees, children, women and persons with disabilities.

The report highlights the fact that while the Government has made some progress in supporting the realization of social and economic rights, including its efforts to strengthen legislation and to establish new policies and programs, there have been also been major setbacks and failures. One of the most significant challenges has been the deteriorating security situation which has severely hampered the enjoyment of social and economic rights. Despite existing commitments, strategies and policies developed to improve the socio-economic situation of Afghans, many men, women and children continue to suffer from extreme poverty, high unemployment, systemic discrimination and a lack of access to healthcare, schools and adequate housing. Implementation and enforcement of legislation to protect social and economic rights also remains limited due to weak judicial institutions.

In order to address these weakness and gaps, the AIHRC is presenting recommendations to the Government outlining measures and actions needed to ensure the full realization of social and economic rights. We look forward to continued dialogue and cooperation in the follow-up to this report and remain committed to working in partnership with the Government, civil society and the international community in order to advance the socio-economic situation of all Afghan people.

Dr. Sima Samar  
Chair  
Afghanistan Independent Human Rights Commission  
December 9, 2009

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## **Acknowledgement**

This report is the result of the monitoring conducted by the Human Rights Field Monitoring (HRFM) team of the Afghanistan Independent Human Rights Commission (AIHRC) on the state of economic and social rights in Afghanistan. AIHRC regional and provincial field staff members have accepted many risks, including physical security, to visit different parts of the country and monitor the socioeconomic situation of people. The AIHRC appreciates and acknowledges the efforts of its staff. The Commission thanks the United Nations High Commissioner for Refugees (UNHCR) for funding and directly conducting a part of the monitoring exercise. Special thanks extended to the United Nations Assistance Mission in Afghanistan (UNAMA), particularly Kirsten Young, for offering technical support in the production of this report. Commission also thanks Jo-Anne Bishop, AIHRC's Technical Advisor, for technical advice in the preparation of this report.

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It should be noted that fictitious names have been used throughout the report in order to protect the identity of victims.

## Executive Summary

This report assesses the situation of economic and social rights in Afghanistan and investigates the progress made by the Afghan government in ensuring these rights from early 1387 (March 2008) to late 1387 (March 2009). The Afghan Independent Human Rights Commission (AIHRC) has already published three reports on economic and social rights in the years 2006, 2007, and 2008. This report is also available online at AIHRC website at [www.aihrc.org.af](http://www.aihrc.org.af).

The Afghan Constitution and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)<sup>1</sup>, form the two fundamental sources of the Afghan government's legal framework for the realisation of economic and social rights. These legal sources are complemented by Afghanistan's Millennium Development Goals (MDGs) and the Afghanistan National Development Strategy (ANDS).<sup>2</sup> Accordingly, the government of Afghanistan has a duty to protect these rights for its citizens, pave the way for social security, create conditions for enjoyment by the people of their right to an adequate standard of living, socially reintegrate returnees and internally displaced persons (IDPs), safeguard family life, and provide Afghan citizens with educational and health services.

It is not an easy task to ensure economic and social rights and bring about an adequate standard of living. Serious, continued, and time-consuming efforts are required to implement commitments made by the Afghan government. Afghanistan's regional geographical position and its natural setting can lay a solid basis for socioeconomic development, but political will, comprehensive strategy-making, and proper programmes are needed to make the most of these opportunities.

## Labour

Access to labour and income is a prerequisite for an adequate standard of living. In Afghanistan, around 42% of people are unemployed and over 36% make a daily income of less than 50 Afghanis (equivalent to approximately US\$1).<sup>3</sup> The Afghan government

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<sup>1</sup> "The ANDS serves as the country's Poverty Reduction Strategy Paper (PRSP). As such, it establishes the joint Government/international community's commitment to reducing poverty; describes the extent and patterns of poverty as it now exists; presents the main elements of the strategy to reduce poverty; summarizes the projects and programs that will assist the poor; and provides a three-year macroeconomic framework and a three-year policy matrix for these efforts" (ANDS, Chapter 1, Overview).

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<sup>3</sup> HRFM data based on AIHRC/UNHCR interviews on economic and social rights with 12,074 people from 182 districts in 30 provinces (March 2008 - March 2009).

has had limited success in creating stable employment for its citizens due to the lack of a comprehensive policy on employment and job creation.

Unskilled workers constitute the bulk of Afghanistan's work force. The government has a duty to build the capacity of these workers through regular and inclusive training programmes so as to prepare them for work both inside and outside the country. What has been done so far is meagre and inadequate. Unskilled workers are mainly involved in the informal economy. There is no mechanism to regulate working conditions in the informal economy and to prevent workers' rights from being abused and violated. Unskilled workers also constitute the majority of Afghan migrants in neighbouring countries. The Afghan government has not been successful in protecting the rights of these migrant workers and in some instances their rights are being denied and violated by employers and host government officials.

According to HRFM data, 38% of families stated that their children who are under-fifteen work and 24% of these children constitute the primary income source of the family. These children work under conditions that are harmful to their physical and mental health and, as a result, they are deprived of their right to attend school.

## **Social Security**

Vulnerable groups of people, such as the unemployed, older persons, persons with disabilities, pensioners, families headed by women and children, children at risk, IDPs, returnees, and families with more than eight children require special attention in order to lead a life in dignity. While there are no accurate statistics on the different categories of vulnerable people, ANDS estimates that about half of Afghanistan's population is in need of social security and that approximately one-sixth of the population has benefited, in one way or another, from protection programmes. It is important to note however, that ANDS actions are more focused on urban business development, rather than on the needs of rural areas where most of the vulnerable people live.

There is no effective social security mechanism, despite eight years of international aid and assistance. Preference of donor priorities to Afghan people's real priorities, militarisation and securitisation of international aid, inefficient government bureaucracy, and low-level beneficiary participation undermine aid effectiveness in making a palpable change in the lives of the vulnerable.

The social security system must not be limited only to offering scant assistance to persons with disabilities, families of the martyred, and orphans. The Afghan government's action has been inadequate in this regard, given its obligations under the ICESCR and the Afghan Constitution on the establishment of a comprehensive social security system. Further, there are no mechanisms in place to protect severely vulnerable people.



## **Marriage and Family Life**

The right to marry and found a family is undermined in Afghanistan by unacceptable customs, disrespect to universal human rights values and principles, lack of rule of law, and women's deplorable conditions.

Current legislation undermines the right to marry and found a family in Afghanistan and Afghan Family Law which stipulates an age difference of two years for the marriage of boys and girls (18 and 16 respectively), is *per se* indicative of gender-based discrimination in the Afghan legal system.

Harmful traditional practices have extensively challenged the enjoyment by all people of their right to marry and found a family. Elopement, *bad* and *badal*<sup>4</sup> marriages, domestic violence, and many other social problems often arise out of dominant customs that negatively affect women in particular. Forced marriage and underage marriage, which are entered into without the consent of the intending spouses, inflict an unwanted union on an Afghan girl and boy with numerous hazardous ramifications.

## **Adequate Standard of Living**

Adequate standard of living encompasses housing, property, water, environmental sanitation, and food. Security of tenure and the right to housing, water, and food are the central components of an adequate standard of living, set out in the ICESCR. Existing mechanisms to ensure security of tenure are either ineffective or do not have mandate to act effectively. HRFM findings indicate that only 32.5% of interviewees rely on formal justice mechanisms to resolve disputes over their houses and lands. Illegal land expropriations and property-related violations have been on the rise in recent years. Around 6.8% HRFM respondents stated that their lands or houses had been illegally expropriated and about 13.6% responded that their properties had been destroyed or burnt. Achieving an adequate standard of living for the entire Afghan population is limited by several factors, including the lack of funding for housing projects, unclear mandates of government institutions, and a lack of political will. It has been made impossible for the poor and even middle-class people to be provided with housing as a result of soaring land and house prices. Although the government has announced several housing plans, most of them still remain to be implemented. Refugee land allocation sites are a major housing program initiated by the Afghan government but such sites lack infrastructure and livelihood options. They are located far away from urban centres and inhabitants face many hardships due to a lack electricity, safe water, health centres or schools.

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<sup>4</sup> Due to technical problem in the database, the issue of Bad and Badal are not recognized separately, though; legally these two terms are different from each other.

1387 (2008/09) with its drought was a difficult agricultural year and a significant number of people faced starvation. 2.30 million mt of wheat was needed in the previous year and food prices shot up. Around 44% of families are food-insecure, around 35% of families do not meet their day-to-day caloric needs, and 6% of under-five children suffer from acute malnutrition. There has been no significant increase in people's income levels.<sup>5</sup> About 36.4% of HRFM respondents stated that they made less than 50 Afghanis (equivalent to approximately US\$1) on a daily basis. A mere 30% of people indicated that they have access to healthy potable water at the national level and 70% lack such access and use unsafely covered water wells. Distance to a water source is another major problem. According to HRFM findings, 25.7% of interviewees walk over 15 minutes one way to reach a water source and around 8% take over an hour to walk one way to a water source. Additionally, 20.4% of interviewees stated they shared their water sources with animals. Vulnerable people, such as Kuchis, IDPs, and returnees face more difficulties in accessing clean water.

### **Highest Attainable Standard of Health**

The right to highest attainable standard of health is a key right put forth in the ICESCR and States parties are committed to providing it. In aggregate terms, 62.4% of respondents have access to health services (state-, NGO-, or private-run) and around 37.6% have no access to any health services (state-, NGO-, or private-run). About 7.4% of interviewees reported no access to state- or NGO-run health services and about 30.2% reported no access to private-run health services were. Long distance of health centres (physical inaccessibility), poor-quality medicine and equipment, and low-capacity health personnel are the most prominent obstacles to the right to health. A considerable percentage of interviewees cited the absence of female physicians and health personnel as the reason why they did not use health services. The number of trained physicians, nurses, and midwives is particularly limited in rural areas.

Around 50% of HRFM interviewees said they were assisted by their relatives and friends during the birth of their last child, only 15.4% said they were assisted by physicians or nurses, and around 14% said they were supported by trained midwives. Inadequacy of health personnel, female ones in particular, and growing insecurity are the other challenges to the right to health. Rising insecurity has led to the closure of a significant number of health centres in unsafe areas and a large number of people have been deprived of health services and facilities as a consequence.

### **Education**

Education is the foundation of a society. States parties to the ICESCR have an obligation to eradicate illiteracy and ensure the right to education for all. Official government statistics reveal an increase in the total number of general education students from 5.7 to

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<sup>5</sup> HRFM database

6.2 million students in the year 1387 (2008/09), while around 46% of children (5.3 million) do not go to school, comprising 7% of world's school age children who do not attend school.<sup>6</sup>

In the previous year, girls constituted 35.5% of students. Of all interviewees, 94.2% said education was available for their families under the sixth grade. A number of schools were closed down or burnt in insecure areas in 1387 (2008/09) with a total 481 still being closed, depriving approximately 300,000 children of education. Although there are 11,000 schools, 44% of these schools still lack usable premises.

Of all school children, 60.2% (66% boys and 54.3% girls) complete their sixth grade. The need to work and long distances to school are the main reasons why children drop out. 23% of boys and 10.1% of girls do not regularly attend school because they have to work and 15.7% of boys and 18.4% of girls drop out of school because it is too far from their home. The number of girls plummets in public education from sixth grade upwards so much so that girls constitute a mere 26% of 79,000 twelfth-grade graduates. HRFM data shows that around 70.9% of girls drop out at sixth grade or above. Child marriage and the lack of girls' schools, and female teachers are the main reasons why girls drop out. The number of female teacher is astonishingly small. Women constituted only 28% of all 158,000 teachers in the year 1387 (2008/09).

Gender is not the sole factor restricting the right to education; children with disabilities also lack access to education and have been exposed to humiliation and discrimination. Vulnerable and minority groups also lack education opportunities. Only 70 schools have been built for Afghanistan's Kuchi population. Afghan Hindus and Sikhs face many limitations in exercising their right to education. Hindu and Sikh children are often subjected to harassment and discrimination. A limited number of schools have been constructed for them in Ghazni, Helmand, and Jalalabad cities. Inadequate budget and funding for the education sector, growing insecurity, and poor-quality education are the main problems of Afghanistan's educational system. Inadequate budget and low teacher salaries have also negatively affected the quality of education.

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<sup>6</sup> Government's Accountability Report to the Nation, Ministry of Education Section, p. 170.

## Introduction

Economic and social rights are enshrined in the ICESCR which was adopted by the United Nations General Assembly on December 16, 1966. The Afghan government acceded to the Covenant in 1983. The ICESCR and the International Covenant on Civil and Political Rights (ICCPR) emanate from the Universal Declaration of Human Rights (UDHR) and are, hence, closely intertwined. The two Covenants encompass almost all fundamental rights of human beings in international human rights law (IHRL).

Although many of the obligations of States parties to the ICESCR are of a progressive nature and subject to State resources, the inadequacy of existing resources must not be exploited as a pretext for a State's negligence and inaction.

The Afghan Constitution has guaranteed all the rights set forth in the ICESCR and required the government to fulfil economic and social rights. Articles 6, 13, 14, 18, 35, 43, 44, 45, 46, 47, 48, 49, 52, and 53 of the Constitution relate to the right to work, form or join trade unions, social security, protection of family, adequate standard of living, health, and education.

This report aims to assess the status of economic and social rights in Afghanistan in the year 1387 (2008/09). In this report we evaluate the obligations of the Afghan government with respect to economic and social rights in order to examine the rights implemented in this reporting period, the process of implementation, and the level of enjoyment of these rights by Afghan people. While this report attempts to provide a complete picture of economic and social rights in Afghanistan, it places particular focus on the economic and social rights of vulnerable groups of people, such as returnees, IDPs, refugees, children, women and persons with disabilities.

After thirty years of war and armed conflict in Afghanistan and the coming to power of a democratically elected government, the country witnessed important opportunities to ensure economic and social rights such as the international community's involvement in the reconstruction process. Unfortunately, many opportunities were lost as a result of a weak and inefficient government and Afghanistan had continued to face many problems and challenges such as poverty, unemployment, underdevelopment, and consecutive droughts. This report is an attempt to identify basic needs and highlight instances where the government of Afghanistan has failed to fulfil its responsibilities and commitments or has shown negligence or failure in living up to its obligations.

The assistance of the international community to Afghanistan has been far less than the assistance provided to other post-conflict countries. While the international community emphasises compliance with aid effectiveness principles, many international community members are not complying with those principles themselves. Research conducted by the Agency Coordinating Body for Afghan Relief (ACBAR) shows that at least 40% of assistance returns to donor countries through companies and enormous salaries of advisers. Lack of transparency in contracts, imposed donor priorities, poor coordination,

and unbalanced aid distribution are attributed to ineffectiveness of international community's assistance to Afghanistan.

Although the Afghan government views growing insecurity as cause of people's deprivation of their economic and social rights, the poor economic and social situation in Afghanistan also represents a major source of insecurity across the country. The AIHRC believes that armed insurgency cannot be defeated solely through a military means. Improving the security situation requires commitment of both the government and international community to socioeconomic development and an improved standard of living for Afghan people.

Similar to many other countries, Afghanistan has also been affected by the past year's financial crisis which has reduced people's power to purchase foodstuffs. The world economic crisis also influenced the quantity of international aid for Afghanistan and reduced the interest of the donor countries. In addition, many Afghan government institutions were unable to fully spend their development budgets in the previous year. The Government of Afghanistan's Report to the People reveals that Afghan ministries managed to spend only 49% of their development budgets in 1387 (2008/09) compared with 56% in 1386 (2007/08). Budget spending by these institutions is linked with their capacity and is an indication of the Government's limited actions to improve socioeconomic conditions.

Afghanistan's unfavourable socioeconomic status has caused public distrust in the government and its international partners and people, particularly related to processes of reconstruction and economic development. People have a right to information about the way in which the national budget is spent and the manner in which reconstruction and economic development proceeds. They also have a right to participate in the development of their country. It is for this reason that the AIHRC annually monitors the situation of economic and social rights, evaluates the realisation of these rights and identifies weaknesses and challenges. The Commission also aims to support the improvement of the enjoyment of economic and social rights by presenting this report and providing recommendations to the government and other responsible actors.

## **About the AIHRC**

The AIHRC is a national human rights institution as contained in Article 58 of the Afghan Constitution. The Commission's mission involves three areas: protection, monitoring, and promotion of human rights.

Since its establishment on June 6, 2002, the AIHRC has received about 13,581 complaints as part of its human rights protection, out of which it has addressed 12,752 complaints. Additionally, the AIHRC has received over 130 human rights-related complaints against North Atlantic Treaty Organisation (NATO)-led International Security Assistance Force (ISAF), which have been addressed.

Private prisons run by local commanders and power holders in different parts of the country is a distressing outcome of years of war and lack of rule of law, where individuals are detained in inhumane circumstances and are physically and psychologically tortured. A large number of people, usually local rivals and political and military dissidents, have lost their lives in these detention facilities, which fall completely outside any legal framework. It is been a high priority of the AIHRC to identify and close down these places of torture. As a result, over 50 private prisons were shut and around 3,796 persons, who were subjected to detention and torture for no legal justifications, were released.

The AIHRC launched a national survey to collect people's opinions on how to deal with the past, taking into account the severity and extent of crimes perpetrated during the past three decades in Afghanistan. The survey findings were presented to the government, as a result of which the Islamic Republic of Afghanistan's Action Plan on Peace, Reconciliation, and Justice was officially inaugurated by the president and cabinet. As part of its responsibility under the Action Plan, the AIHRC is carrying out an extensive Conflict Mapping programme that aims to document war crimes and crimes against humanity and identify command structures of perpetrators. At least 89 mass graves have been identified in various provinces and preliminary probes into these sites have commenced.

In the area of human rights promotion, the Commission has held over 6,927 workshops and awareness-raising meetings on human rights in which over 218,434 people have learnt about diverse dimensions of the human rights concept. Besides, 15,111 children have received human rights education through child-to-child education campaign and 203,775 people have received human rights education rendered by human rights volunteers. The Commission also has used radio and television broadcasting as a more progressive means for human rights education and awareness-raising. In aggregate terms, 457 hours of radio programmes, 195 hours of television programmes, 2 documentary films, 14 art films, 14 television spots, and a twenty-episode soap opera have been produced and broadcasted at both local and national levels.

In the area of publications, during this reporting period, around 790,000 copies of *Human Rights Monthly Magazine* and at least 1,500,500 handouts, including posters and brochures, have been printed on miscellaneous topics and distributed all over the country.

Effective advocacy requires scientific and credible research. To this end, it is a priority for the Commission to conduct research on different human rights-related issues, ranging from causes of women's opiate addiction to factors of juvenile delinquency and torture in law enforcement agencies. 27 scientific studies have so far been carried out and their findings used in advocacy and large-scale policy-making and planning. These have been published in Dari, Pashto, and English.

The Commission's main performance in the area of human rights promotion in Afghanistan includes training of judges; prosecutors; police; authorities of prisons, detention centres, and child correction centres; local clerics and influential figures; journalists; and civil society and human rights activists; incorporation of human rights into the army and police curricula; elimination of violent contents and inclusion of human rights values and messages in the school curriculum; proposing new legislations and assisting the amendment of existing laws; and construction of human rights memorials.

In the area of human rights monitoring, the Commission too has had tangible and remarkable achievements. For example, the AIHRC pays regular visits to all places of detention, including prisons, detention centres, custody centres, and child correction centres in an attempt to study the situation of detention and imprisonment and make sure that prisoners have access to justice and the circumstances that have been legally stipulated. Statistics reveals that the Commission has made over 7,598 monitoring visits to prisons alone. As a result of its monitoring missions, the Commission learnt that a large number of individuals are under detention or imprisonment, without legal basis. It cooperated with the Ministry of Justice (MOJ) to prepare a list of 2,392 people who were still in prison even after passing their imprisonment terms or had been illicitly detained or their cases were still pending. The list was later on submitted to the President who appointed a commission to scrutinise the issue. Recently this commission presented its report on the situation of these individuals, as a result of which 819 people who had been illegally detained or imprisoned in Kabul were released and the cases of approximately 1,573 people were disposed of.

To monitor civil and political rights, the Commission has taken an active part in monitoring Presidential, Parliamentary, and Provincial Council elections and has presented the findings of its monitoring in various reports to the government and other relevant institutions so as to bolster Afghanistan's democratisation process.

Systematic human rights field monitoring, which is centred on economic and social rights, commenced in 1383 (2004/05) in collaboration with the United Nations High Commissioner for Refugees (UNHCR). A standardised questionnaire was used across the country for the purpose of this monitoring. Based on the information collected, the AIHRC releases an annual report on the situation of economic and social rights which provides recommendation to the government of the Islamic Republic of Afghanistan,

international donors, and civil society to strengthen the country's socio-economic standing. This report is the AIHRC's fourth annual report.

## **The Commitments of the Afghan Government under the ICESCR**

The Afghan Government acceded to the ICESCR in 1983. It has pledged, in Article 7 of the Afghan Constitution, to respect and observe the UDHR, international treaties, and international human rights instruments to which Afghanistan is a party. The Afghan Constitution also contains a bill of rights, including of an economic and social nature, and the Afghan government has an obligation to implement those constitutionally protected rights. The bill of rights comprises, *inter alia*, the rights to work and employment, education, health, adequate standard of living (food, shelter, water and sanitation), social security, equality and non-discrimination ('balanced development'), protection of family, and other rights.

Economic, social, and cultural rights and civil and political rights require states to implement three kinds of duties. The duty to respect, protect, and fulfil are the most important duties states have towards human rights in its entirety. The duty to respect commits States parties not to directly or indirectly violate human rights themselves. The duty to protect demands States parties to take measures to prevent human rights violations from being committed by a third person or institution. The duty to fulfil includes the obligations to 'provide', 'facilitate', and 'promote' human rights. To provide means that a state has a duty to ensure that persons or groups of persons who cannot materialise their rights for reasons beyond their control are able to access to these rights. To facilitate means that states take affirmative action to help persons or communities realise their rights. States also have the duty to promote human rights and to raise awareness about these rights. In other words, the duty to fulfil requires States parties to adopt legislative, administrative, budgetary, judicial, and other measures for the full realisation of all human rights.

Some States' commitments under the ICESCR are progressive in nature, meaning that States parties must use their maximum available resources to implement economic and social rights, including those resources provided through development assistance. Under paragraph 1, Article 2 of the ICESCR, each State party has committed "to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". Whereas the full realisation of these rights takes time and necessitates extensive facilities and resources, it may be construed that not all of the commitments of a State are immediate under the Covenant and that the implementation of these rights are subject to the availability of the necessary resources. However, progressive realisation does not justify negligence on the part of States parties and they should not violate these rights under the pretext of poor resources. Under the ICESCR, States parties undertake to adopt immediate measures (including legislation and concrete strategies and plans) and use



their maximum available resources for the implementation of the Covenant and must not fail in taking this urgent action.

It should be added that some State undertakings under the ICESCR are not subject to resources and States parties to the Covenant should immediately act to implement them. For example, the government should guarantee that no discrimination of any kind whatsoever is allowed in the implementation of the rights elucidated in the Covenant. The Government also should take some measures, no matter how initial they may be, to implement the provisions of the Covenant. Hence, if the government takes no action, the Covenant has undoubtedly been contravened. From the perspective of the UN Committee on Economic, Social, and Cultural Rights (CESCR), the State party in whose territory a considerable number of people are deprived of necessary food supply, basic healthcare, shelter, basic housing, and fundamental education is *per se* a violator of the Covenant. These minimum obligations are applicable, irrespective of available resources in a State party and other factors and problems<sup>7</sup>. To meet their commitments of immediate effect, States parties have a duty to prioritise the rights of their poorest and most vulnerable groups of people.

Three key principles govern the implementation of economic and social rights and governments must undertake to respect these principles. The ICESCR has emphasised these three principles and required States parties to adhere to them. ‘Non-discrimination’, one of these three principles, requires a State party not to allow distinction of any manifestation in ensuring economic and social rights for people. The Afghan government also has stressed this principle<sup>8</sup> and guaranteed balanced development<sup>9</sup>. Therefore the Government should not discriminate between people in ensuring economic and social rights. The other is the principle of ‘progressive realisation’, meaning that States parties will improve economic and social rights continuously and that the enjoyment by the people of these rights must not decline. The government undertakes to progressively scale up its action to ensure economic and social rights. The third principle is ‘action’ to provide economic and social rights and that this action should be ‘deliberate, realistic, and targeted’. This principle prevents defective or deficient measures from being adopted.

As is evident from the foregoing, the Afghan government is committed to realising economic and social rights under the Afghan Constitution and the ICESCR and should take steps in this direction and that these steps should not be discriminatory, but deliberate, realistic, and targeted. In addition, the Government should act to realise their rights and that these rights should improve continuously and progressively.

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<sup>7</sup> CESCR, General Comment 3

<sup>8</sup> Afghan Constitution, Article 22: “Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden.”

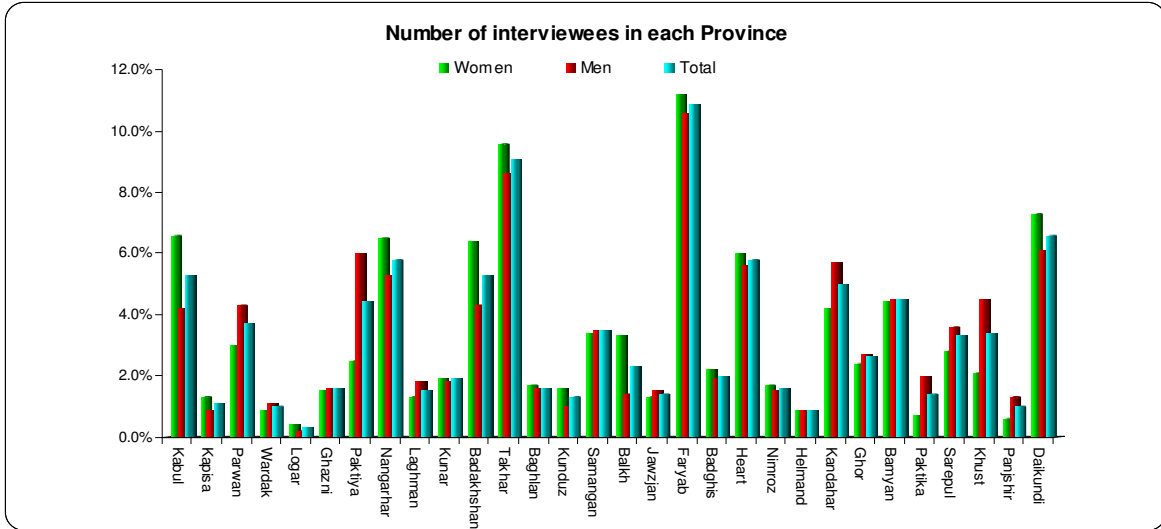
<sup>9</sup> Afghan Constitution, Article 6

## **Research Methodology and Population**

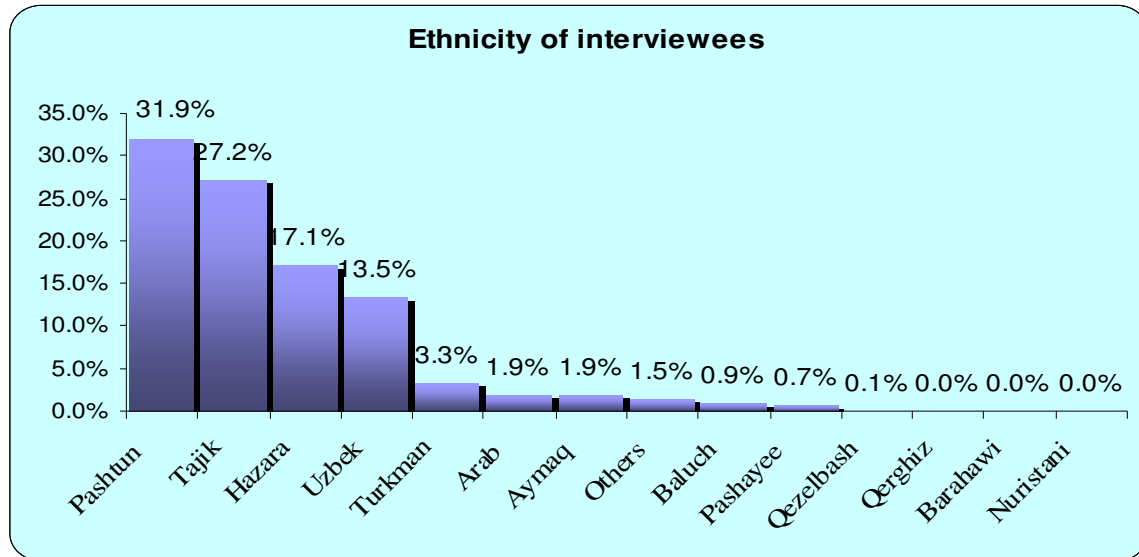
Two sources of information were used to produce this report. The first is the data collected through HRFM that is carried out by the AIHRC to evaluate the situation of economic and social rights in Afghanistan. The second includes quantitative and qualitative data compiled from other AIHRC sources, researches, and reports; interviews with pertinent government institutions, NGOs, UN agencies, and civil society; and academic and online studies. Data gathered through interviews with government institutions and national and international NGOs complements AIHRC data and the Commission also uses data produced by relevant governmental and nongovernmental institutions and library-style and online studies to corroborate, enrich, and complement its own quantitative and qualitative data.

As indicated above, the HRFM forms the primary tool for the AIHRC to assess the status of economic and social rights in Afghanistan. To this end, HRFM teams conducted interviews with diverse segments of Afghanistan's population. The interviews were based on a questionnaire developed to facilitate the assessment of the enjoyment of human rights situation through a series of indicators relating to selected economic and social rights, such as labour and debt, health, education, child labour, child marriage, water, disputes over land and water and ways to resolve these, security and social concerns, participation, and conditions of returnees, refugees, and IDPs.

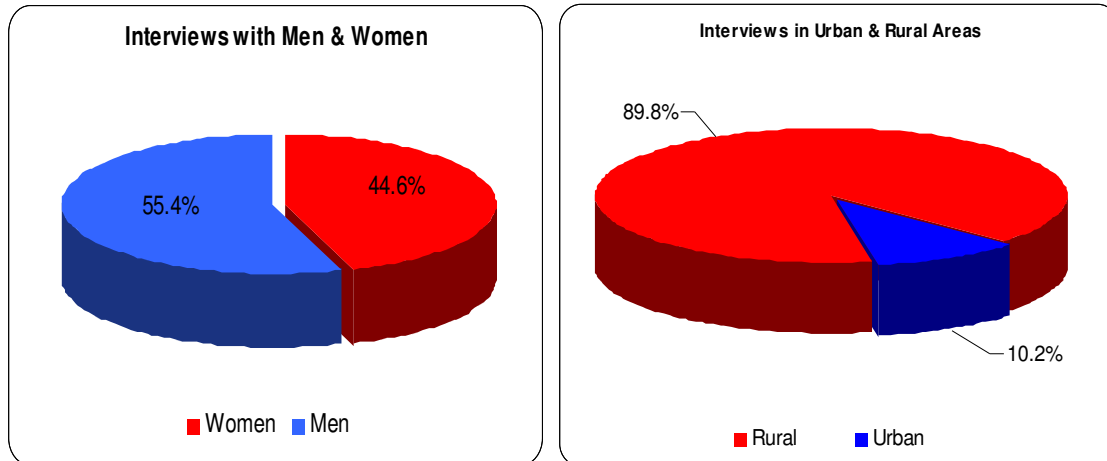
The HRFM interviewed 12,074 people on their economic and social rights from the beginning (March 2008) to the end of 1387 (March 2009). The United Nations High Commissioner for Refugees (UNHCR) interviewed around 1,384 people (11%) and the AIHRC interviewed 10,690 people (89%). Both institutions used a single, consistent questionnaire and approach in their assessment of the enjoyment of economic and social rights. The interviewees were aged 13 to 100. The HRFM covered 182 districts in 30 provinces; Uruzgan, Zabul, Farah, and Nuristan provinces were not monitored for security considerations as HRFM monitors could not access these four provinces.



The interviewees belonged to almost all Afghan ethnic groups, including Pashtun, Tajik, Hazara, Uzbek, Turkman, Baloch, Pashae, Arab, Hindu, Sikh, Nuristani, Brahawi, Aimaq, and Kyrgyz.



In addition, interviewees represented Sunni and Shi'a denominations of Islam and minority religions in Afghanistan. The HRFM was sensitive towards gender issues and as a result, women constituted 44.6% of interviewees and men 55.4%. The majority of interviewees (89.9%) were from rural areas compared with the remaining 10.2% who were from urban settings.

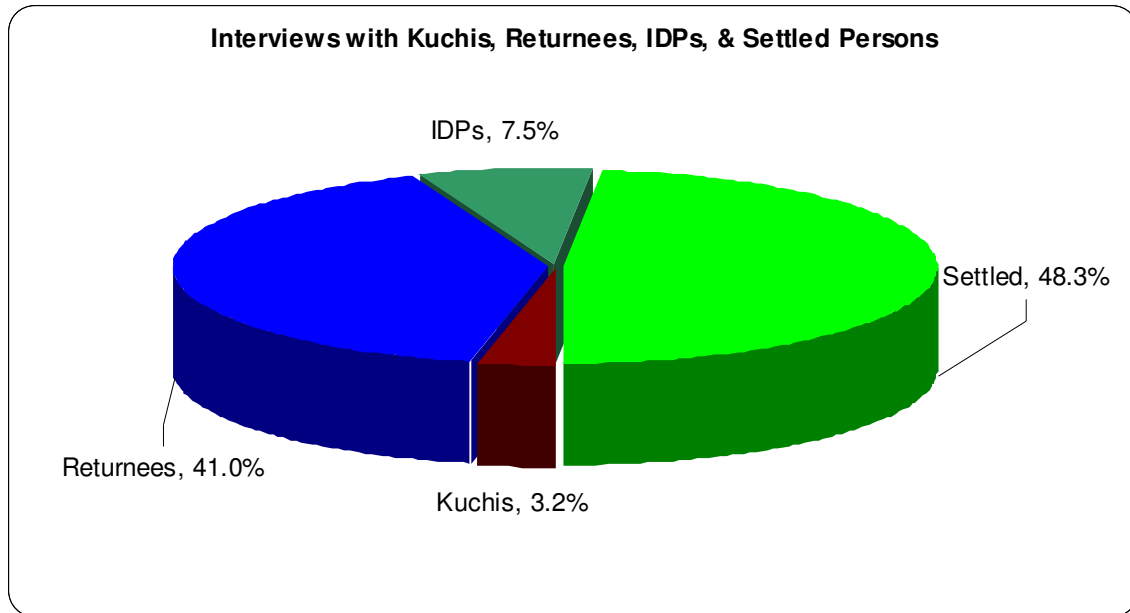


A large number of interviewees fell in the vulnerable category, including families headed by women, older persons, children, persons with disabilities, returnees, or IDPs, or women, older persons, children, persons with disabilities, returnees, or IDPs without families. 54.2% of HRFM interviewees were such people.

HRFM undertook important steps to ensure a strong representation of vulnerable groups in its interviews and monitoring efforts. At first, HRFM teams consulted provincial governors to identify the most vulnerable and disadvantaged districts. District administrators were then consulted and requested to introduce the most vulnerable communities and villages. Eventually HRFM teams took samples from communities and villages with due consideration to disadvantaged people. The present research was executed throughout the year in order to take into account the climatic and geographical characteristics of each province and region. Since it is impossible to travel to certain districts during several months of the year, some provinces were monitored once throughout the year, and others were monitored several times.

Factors like social representation, human rights violations, high rate of refugee return, conflict-affected areas, clashes of local commanders, and areas with a large number of IDPs were considered as criteria to select districts for economic and social rights monitoring.

Various factors played roles in selecting interviewee characteristics. HRFM teams endeavoured to include members of all ethnic groups, especially minorities, disadvantaged people, families headed by women, returnees, IDPs, people from different age groups, and the poor as samples in research population. As a result, 3.2% of interviewees were Kuchis, 7.5% IDPs, 41.0% returnees, and 48.3% native residents.



HRFM also adopted an approach that examines issues from a family perspective. Therefore, in most instances questions were answered on behalf of the family and a limited number of queries are related to specific individuals. It is for this reason that HRFW cannot disaggregate some economic and social indicators by sex or age. Parents responded on behalf of their children to questions, even those related to education and child labour. Such responses therefore solely reflect parental views on education and child labour.

HRFM qualitative data paves the way for the interpretation of quantitative data. The bulk of qualitative data was obtained through semi-structured interviews with governmental and UN representatives. Most government officials cooperated and spoke openly about the challenges facing the protection and promotion of economic and social rights. Some officials, however, did not keep their appointments or refused to talk to HRFM teams<sup>10</sup>.

<sup>10</sup> For example, we can mention Ministry of Public Health (MoPH) authorities who did not turn up for dialogue despite repeated contacts.

## Cross-Cutting Issues

Cross-cutting issues are those that relate to several economic and social rights. These are problems that hinder access to economic and social rights in Afghanistan. This section discusses the socio-economic situation of vulnerable persons as well as other cross-cutting issues such as security, national ID cards and birth certificates, aid-effectiveness, participation in development, poverty and effective remedies.

### Women

If compared to conditions during Taliban regime, women are currently living under fairly good circumstances. However, this does not mean that women are currently enjoying the full range of the economic and social rights. AIHRC statistics, investigation, and monitoring on the situation of women vividly show under what conditions women live and how their overall situation is.

The 1387 (2008/09) annual report of the Ministry of Education (MoE) indicates that there are 6.2 million students being educated in schools across the country, of which 35.5% are girls<sup>11</sup>. Despite statistics released and statements made by public officials on women's participation in education and higher education sectors, fewer girls than boys can go to school and fewer women than men can take part in educational, scientific, and cultural activities due to insecurity, threats, war, suicide attacks, acid-throwing attacks, and other security-related factors.

Women's employment and economic activity is another indicator to gauge their overall situation. A lack of official statistics and studies on women's economic status render it difficult to achieve an understanding of this indicator. Nevertheless, little has been done to create employment for women, including through fostering handicrafts, and developing small- and large-scale enterprises so that women are provided with economic opportunities. HRFM data shows that women's unemployment rate is 54% in cities and 62% in villages.<sup>12</sup>

In addition, women are extremely dissatisfied with existing gender-based discrimination in public, private, and other contractual sectors, such as carpet-weaving, spinning. Discrimination against women in organisational contexts ranges from discriminatory behaviour to a lack of reinforcement, encouragement, and appreciation for women's initiatives and efforts. According to a soon-to-be-released research on women's employment in Afghan public institutions, 60% of employed women stated they were never appreciated by their supervisors for their outstanding work, the credit of women's work was often given to men, and women are silenced for fear of losing their jobs.<sup>13</sup>

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<sup>11</sup> Summary annual report 1387 (2008/09), MoE, and summary plan 1387 (2008/09), MoE

<sup>12</sup> 2008 report on women's situation, section on economic situation, [http://www.aihrc.org.af/Wom\\_situation\\_2008.pdf](http://www.aihrc.org.af/Wom_situation_2008.pdf).

<sup>13</sup> Situation of women employed in Afghan government institutions, AIHRC

Harmful traditional practices impose a difficult life on women in Afghanistan and can be considered as a pivotal factor in analysing women's situation. *Bad* and *badal* marriages, traditionally justified domestic violence, early marriages, and forced marriages often victimise women. Tradition plays a key role in social relations, family relations, and the justice system in Afghanistan and unfortunately relevant authorities scarcely resort to legal, cultural, and awareness-raising mechanisms in response.

Diverse and extensive trends of domestic violence in Afghanistan have made the AIHRC and other relevant institutions concerned. Domestic violence includes beating, physical and mental abuse and torture, sexual violence, and rape, which have afflicted vast numbers of Afghan women. As a result of such violence, there was an increase in suicides and self-immolation. 2,081 cases of violence against women in Afghanistan were recorded in 2008 by the AIHRC.<sup>14</sup>

### **Persons with Disabilities**

According to the Convention on the Rights of Persons with Disabilities, "persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others"<sup>15</sup>. The Afghan concept of disability is mostly limited to physical disabilities, while mental and sensory disability too socially isolates the affected persons and hinders their full participation in society. There are no standard terms in Afghanistan related to the types of disability, levels of need, and other disability-related notions.

Persons with disabilities are among the most vulnerable segments of population and the government has taken no measures to enable their full participation in society and to ensure their access to social and educational services. Due to the lack of public awareness about the concept of disability, persons with disabilities are often perceived as a family and societal burden and are humiliated and discriminated against. Article 22 of the Afghan Constitution has emphasised the equality of all people and has outlawed all forms of discrimination among citizens. Article 53 of the Constitution requires the government of Afghanistan to take the necessary measures to ensure rehabilitation, training, and active social participation of persons with disabilities and provide them with medical and financial assistance.

Under ANDS, the government is obligated to provide further assistance to meet the special needs of persons with disabilities, including their inclusion in the community through providing education and job opportunities<sup>16</sup>. No significant progress is visible in this area.

Different government ministries and civil society institutions have responsibility to address the needs of persons with disabilities including MoLSAMD, MoPH, Ministry of

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<sup>14</sup> AIHRC Report on the Situation of Women's Rights in 2008

<sup>15</sup> Article 1, Convention on the Rights of Persons with Disabilities

<sup>16</sup> ANDS, Chapter 7

Education (MoE), Ministry of Women's Affairs (MoWA), Ministry of Justice (MoJ), Ministry of Foreign Affairs (MoFA), Ministry of Transport and Aviation (MoTA), Ministry of Hajj and Endowment (MoHE), Ministry of Urban Development (MoUD), and National Assembly. In addition to government institutions, tens of civil society organisations are active in this area in Afghanistan, but the lead role is played by the MoLSAMD.

Thirty years of war in Afghanistan had unfavourable effects and one of these is the rise in the number of persons with disabilities. The Afghan conflict not only physically incapacitated people, but it also had negative implications for the psyche of Afghan public. Afghanistan is a country largely affected by mines in which around 55 people lose their lives in mine-related incidents per month. The death toll was at 138 people per month in 2001, referring to the fall in death toll in previous years. The Afghan government is party to 2003 Ottawa Convention and as such it is bound to complete mine action by 2013 and declare Afghanistan as a mine-free country. According to the UN, 4 million people still live in areas that have not been de-mined. Several national and international institutions are involved in mine action in Afghanistan, but they face such challenges such as inadequate budget and insecurity.

There is no precise assessment of the number and situation of persons with disabilities in Afghanistan and different authorities have presented different statistical data on the number of persons with disabilities. Handicap International estimates that there are 800,000 persons with severe disabilities, however, according to the national disability survey in Afghanistan, out of 25 million Afghan people, 747,500 to 867,100 people have severe disabilities, 17% of which are persons with war disability and 6.8% are victims of mines and other unexploded ordinance (UXO). On an average basis, for every five families, there is a person with a disability.<sup>17</sup>

The government's response to the needs of persons with disabilities has varied during different periods. Such treatment has sometimes been politicised and this is discrimination *per se* and a serious challenge to ensuring social security and fair and effective relief for persons with disabilities. The ratification of the National Law on the Rights and Privileges of Persons with Disabilities is pending in the National Assembly over differences on Jehadi- and non-Jehadi persons with disabilities. Residential sites named 'towns of persons with disabilities' reflect the government's discriminatory and non-human rights-based treatment of persons with disabilities. Such treatment, apparently aimed at helping these people, further socially isolates persons with disabilities and hinders their social inclusion.

The government's programmes have been inadequate and ineffective in ensuring social security for this category to address the depth and scope of needs of persons with disabilities. Afghanistan's National Assembly has approved no budget for assisting persons with disabilities, except providing a monthly stipend of 400-600 Afghanis for

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<sup>17</sup> National Action Plan for Persons with Disabilities, 2008-2011



these people.<sup>18</sup> Services have not been provided equally all over the country and many persons with disabilities are either having no access to adequate services or have to go to faraway places to access such services. For example, physical rehabilitation services are being provided in only 80 of all 364 districts, or in only 19 out of 34 provinces. Persons with disabilities have less access to services and social security in rural areas than in urban ones.<sup>19</sup>

In HRFM, about 2% of interviewees stated that the heads of their families are persons with disabilities and these are some of the most vulnerable households in society. Approximately 70% of persons with disabilities aged over 15 are jobless. Disability has had a direct and strong correlation with the rising trend of unemployment. This is more vivid as far as men's unemployment is concerned. For example, 53% of men with disabilities are unemployed compared with 25% of men without disabilities who are jobless<sup>20</sup>. Measures at creating job openings for persons with disabilities have been reflected in the draft National Law on the Rights and Privileges of Persons with Disabilities. Pursuant to this Law, 3% of state employees should be persons with disabilities and 20% of educational and vocational opportunities should be allocated to these people. The existing percentage is currently very low in most government institutions. For example, MoLSAMD has so far established 13 educational and vocational training centres and only 10% of users are persons with disabilities.

### **Refugees, Returnees, and IDPs**

Presidential Decree 297 on Dignified Refugee Return states, “The Interim Afghan Administration... safeguards the right and freedom of all returnees... guarantees their safe and dignified return... expects that in conformity with the principle of voluntary repatriation, Afghans will be given the opportunity to decide freely to return to their country...”

UN Guiding Principles on Internal Displacement underline the need for voluntary, dignified, and safe repatriation of refugees and IDPs to their previous houses, lands, and residences. Voluntary and dignified repatriation is based on free, informed, and individualised choice. Complete, objective, up-to-date, and accurate information should be provided to refugees and IDPs on issues of physical, material, and legal security in their countries of origin.

The Guiding Principles also state that governments should award repatriation permission to those refugees and IDPs who want to voluntarily return to their previous houses, lands, or residences. This right cannot be restricted and should not be arbitrarily and illegally subjected to limitation of time.

Refugees, returnees, and IDPs face many problems inside and outside Afghanistan, directly restricting their access to economic and social rights. According to UNHCR,

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<sup>18</sup> Interview with Sadeq Mohebbi, Chief of Protection of Persons with Disabilities Unit, MoLSAMD, August 2009

<sup>19</sup> Ibid

<sup>20</sup> National Action Plan for Persons with Disabilities, 2008-2011

around 7 million registered Afghans lived in Pakistan and Iran in the climax of the Afghan conflict in 2001. After Afghanistan's stabilisation in 2002, many Afghans began repatriating. Since March 2002, UNHCR has assisted the return of about 4.3 million refugees, mostly from Pakistan and Iran<sup>21</sup>. In 2008, UNHCR facilitated the repatriation of about 278,484 people and it estimates 220,000 people will return in 2009. Presently, there are around 2 million Afghan refugees in Pakistan and 1 million in Iran (registered refugees).

Although growing insecurity in Afghanistan has discouraged further refugees to return, the governments of Pakistan and Iran have insisted on their unwillingness to allow refugees to remain in territories under their jurisdiction. Afghanistan's economy and infrastructure lacks capacity to absorb existing refugees, let alone more refugees in the future. If an adequate standard of living and livelihood options are not ensured, some refugees will become IDPs immediately. Presently, there are 235,000 IDPs in the country. Returnees and IDPs face similar problems, though differences exist, and the same problems prevent refugees from returning.

Growing insecurity, homelessness, disputes over property, and lack of livelihood options are the factors obstructing the return of refugees and the reintegration of returnees and IDPs. Insecurity in many parts of the country have made return to places of origin almost impossible. Several regime changes in the course of the Afghan conflict have given rise to several ownership claims on one single land plot. Many commanders have illegally expropriated lands and distributed them among their soldiers and relatives. Family size increased almost three times during forced migration and their return to their places of origin is obstructed, for their existing lands or houses are too small to accommodate them all. Additionally, many people who fled Afghanistan lacked property and are reluctant to return to their places of origin because there are no livelihood options. Inadequate economic opportunities have made return to one's place of origin either impossible or undesirable. Most people who are unable to return to their places of origin migrate to other cities due to lack of livelihood options and homelessness and therefore join the category of the urban poor.

## **Refugees**

The fate of refugees hinges on negotiations between the governments of Afghanistan, Pakistan, and Iran, and UNHCR. According to the Ministry of Refugees and Repatriation (MoRR), Afghanistan is unable to accept more returnees from Iran or Pakistan, for there are limited economic opportunities and the government is unable to provide basic services and infrastructure<sup>22</sup>. The two host governments, however, are being increasingly uncomfortable with the presence of Afghan refugees in their territories and Iran is particularly pursuing its programme to involuntarily expel and deport Afghan refugees.

In the year 1387 (2008/09), 71,049 refugees voluntarily returned to Afghanistan from Pakistan and Iran without government and UN assistance, while 289,510 people were

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<sup>21</sup> <http://www.unhcr.org/49ba2f5e2.html>

<sup>22</sup> Third Report on Economic and Social Rights in Afghanistan, AIHRC

deported from Iran at Islam Qala and Zaranj borders<sup>23</sup>. While the provincial Departments of Refugees and Repatriation have undertaken some efforts to assist deportees, the absolute majority of these people are economic migrants who went to Iran in hope of finding better livelihood options and the help offered is severely disproportionate to their financial needs.

Afghan refugees are in an oscillating condition in Iran. Previously refugees were made to return gradually. From 2001 to early 2009, it is estimated that 858,756 Afghan refugees in Iran were able to repatriate and 950,000 registered Afghan still remain in Iran.<sup>24</sup> At the same time, Afghans are prohibited to be in certain areas in Iran; last year witnessed an increase in the number of prohibited areas. Since Afghans continuously migrated to Iran in the past 30 years, many of them have become residents in these prohibited regions. Afghans residing there have to relocate to other areas, get them re-registered, or their refugee status will be revoked and they will be at risk of deportation. Iran's refugee policy has become considerably harder in recent years. In 2001, Iran began implementing its programme to deport migrants who lack work permits.

MoRR, which is responsible for facilitating the voluntary and gradual repatriation of refugees, acknowledges that around 1.3 million Afghans have gone back to Iran for such reasons as unemployment and poverty.<sup>25</sup> The Iranian government however, regards this category of Afghans as illegal residents in its territory and is pushing for their forced expulsion and deportation.

AIHRC border monitoring in Islam Qala and Zaranj frontiers shows that 96.3% of deportees entered Iran in search of employment through illegal means, mainly smuggling (87.3%), and that 44.7% were deported before being employed.<sup>26</sup> 44.2% of deportees identified the use of force during their arrest.<sup>27</sup> Unfortunately, the Afghan government's diplomatic efforts to assist refugees have failed and the Iranian side has not been committed to and lived up to the bilateral or multilateral accords and agreements.

Since 2002, around 3,495,135 people have voluntarily repatriated from Pakistan and less than two million refugees are said to still remain in Pakistan. The Pakistani government announced plans to return 900,000 Afghan refugees in 2006 and both UNHCR and the government of Afghanistan opposed this decision.<sup>28</sup> In the same year, the government of Pakistan resolved to close down two refugee camps in North-West Frontier Province (NWFP) and another two in Balochistan. By March 2008, two refugee camps (Jalozai and Kach Gari) were closed down in NWFP and 7,281 Afghan refugee families were forcibly deported from Pakistan as a result.<sup>29</sup> The Pakistani government's policies and actions are affected by instability in this country and insecurity in NWFP has caused a number of refugees to leave Pakistan for security reasons. A massive deportation of

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<sup>23</sup> Government's Accountability Report to the Nation, 1387 (2008/2009), p. 321.

<sup>24</sup> UNHCR website, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486eb6>

<sup>25</sup> Government's 1387 (2008/09) report to people, p321

<sup>26</sup> Border monitoring database, 1387 (2008/09), AIHRC

<sup>27</sup> Border monitoring database, 1387 (2008/09), AIHRC

<sup>28</sup> Third Report on Economic and Social Rights in Afghanistan, AIHRC

<sup>29</sup> Government's Accountability Report to the Nation, 1387 (2008/2009), p. 321.

Afghan refugees from Pakistan has the potential to give rise to a major humanitarian crisis. Presently, the available option is to engage with Pakistan through diplomacy so as to pave the way for the voluntary and gradual repatriation of Afghan refugees from Pakistan, improve Afghanistan's security situation, and ultimately enable Afghanistan to receive its refugees from Pakistan.

## **Returnees**

Many returnees who were able to socially reintegrate returned to Afghanistan in the first few years after the fall of Taliban regime. They were either trained or had acquired sufficient capital outside Afghanistan to ensure successful living after returning. The recently returned people, however, face more problems, given their miserable economic condition.<sup>30</sup> The continuous inflow of refugees has added to inadequate servicing of people in the country since Afghanistan is unable to provide adequate livelihood options for its existing population.

According to the MoRR, Afghanistan lacks capacity to assist more returnees.<sup>31</sup> Primitive and insufficient basic services and infrastructure exist only in urban centres and rarely in rural areas and homeless refugees are a concern, for they join the queue of the urban poor. To address this issue, the government of Afghanistan designed a land allocation scheme, which has itself become a problem due to its shortcomings and inadequate infrastructure.

The Afghan government lacks capacity to help returnees and assistance offered by UNHCR is limited only to registered returnees who form a small category of all Afghans who are in migration or return or are deported. The HRFM data indicates that only 48.1% of returnees have been assisted during repatriation and 48.6% have repatriated on their own<sup>32</sup> or have been deported, in which case no specific assistance (except little transportation allowance) has been rendered to them.

The HRFM findings show that of all interviewees, 41% were returnees, with 25.8% repatriating from Pakistan, 11.4% from Iran, and the rest from other countries. The stay period in host countries of returnees varies: 34% stayed in host countries for 11 to 20 years, 30% for four to ten years, 13.8% for one to three years, and 21.2% for over 20 years<sup>33</sup>. These findings indicate that it is very difficult for returnees to socially reintegrate in the Afghan community, taking into account the existing context and the fact that they lived outside Afghanistan for many years.

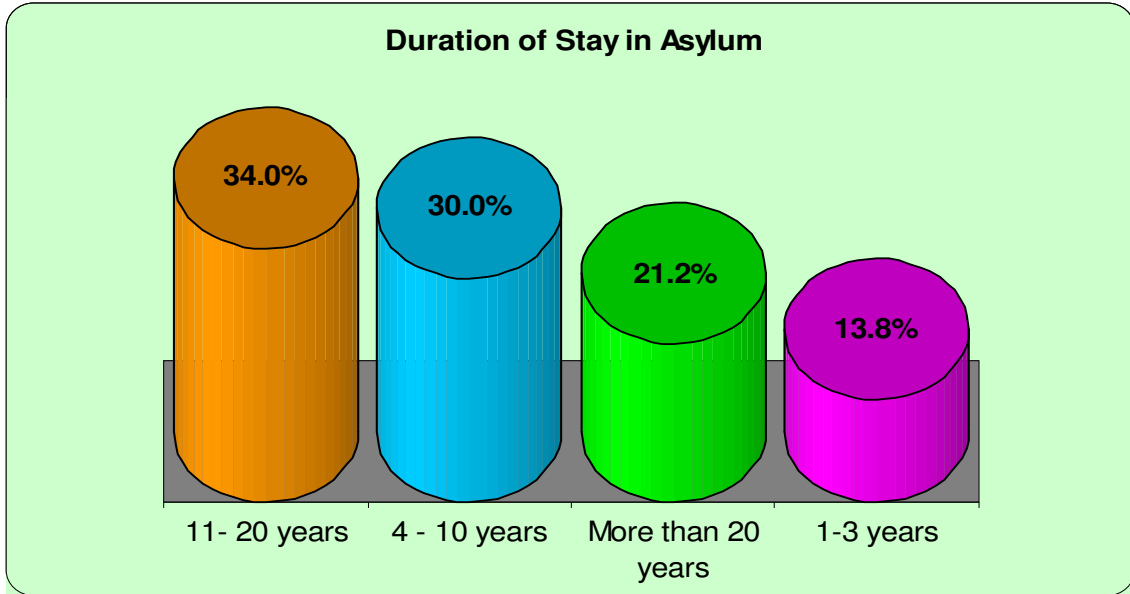
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<sup>30</sup> Third Report on Economic and Social Rights in Afghanistan, AIHRC

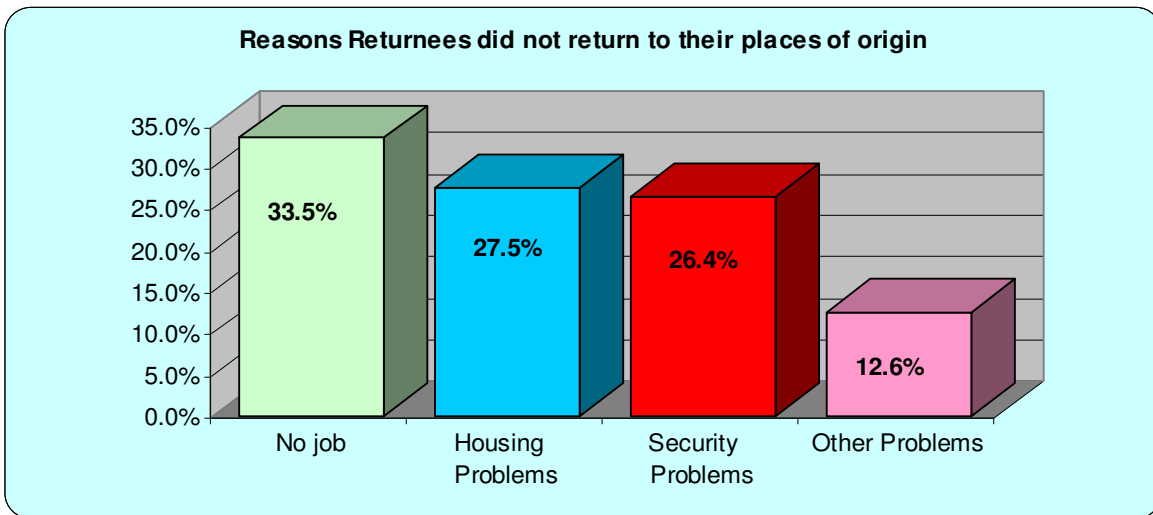
<sup>31</sup> Ibid.

<sup>32</sup> HRFM database, AIHRC

<sup>33</sup> Ibid



A significant number of returnees do not go to their places of origin for various reasons. According to HRFM data, 33.5%, 27.5%, and 26.4% of returnees cited lack of employment opportunities, housing difficulties, and insecurity as the reasons why they do not return to their places of origin. As indicated above, over half of returnees spent over 11 years outside the country<sup>34</sup>, and this long, out-of-the-country stay and acclimatisation to an urban lifestyle have made returnees unwilling to return to their rural homelands and have caused difficulties in returnees’ social reintegration.



### IDPs

Afghanistan has around 235,833 IDPs<sup>35</sup> who fall into five categories. The first category, which constitutes approximately 70% of registered IDPs, are people who were internally

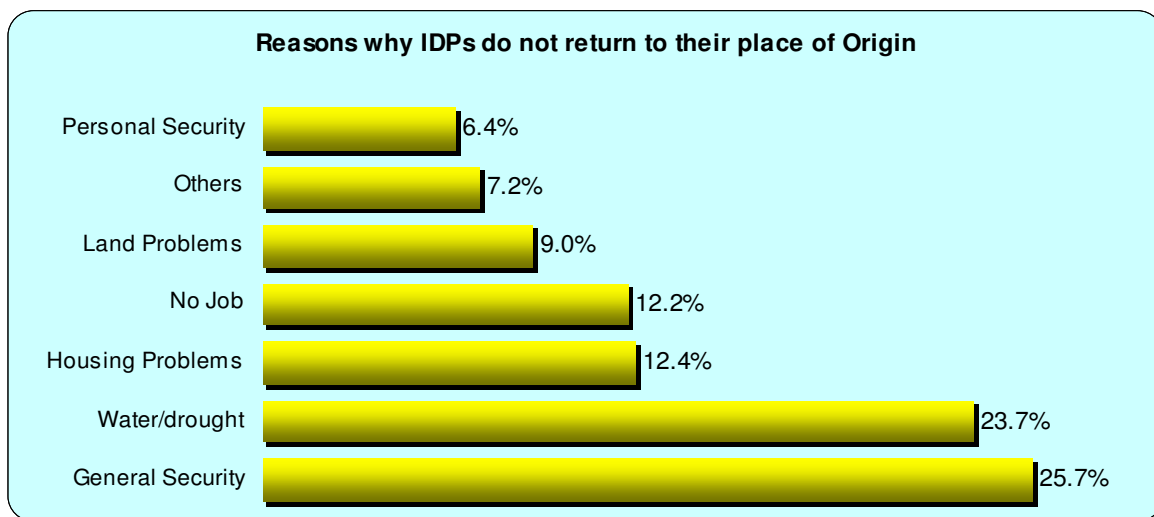
<sup>34</sup> Ibid

<sup>35</sup> <http://www.unhcr.org/49b8e91c2.html>

displaced before 2001 and who fled the scourges of war and drought.<sup>36</sup> The second category includes people who were internally displaced after 2001. Growing insecurity, harassment of Pashtun families in Afghanistan’s north by local inhabitants on the suspicion of their support to Taliban, drought, and lack of economic opportunities compelled Afghans to leave their homelands in search of a better standard of living in other parts of the country. The third category encompasses returnees who have joined IDPs. These are landless returnees who either had their land illegally expropriated or who had no lands at all or no employment options in their places of origin. Their plight started after the Jalozai and Kach Gari refugees camps were quickly closed down in Pakistan’s NWFP in September 2007. With the camps closed, many refugees were unable or unequipped to return and as a result, they set up ‘camps’ beyond the Pakistani-Afghan frontier on Afghanistan’s soil.

The foregoing does not include people who were internally displaced as a result of armed conflict between national and international security forces and anti-government elements. Thousands of people have been internally displaced as a result of the ongoing war, though it is difficult to determine the exact number of this category of IDPs. Some of these IDPs returned to their places after the fighting wars over and some live in insecure areas that are difficult to access.

IDPs constitute a significant segment of HRFM research population. HRFM data indicates that 25.7%, 23.7%, and 24.6% of people were internally displaced due to insecurity, drought and waterlessness, and housing and employment difficulties respectively.<sup>37</sup>



It is impossible for the absolute majority of IDPs to return to their places of origin. Most of them end up in city slums or camps that lack basic infrastructure and service. Few IDP camps have safe water, and health facilities. For the limited number of IDP camps that

<sup>36</sup> Third Report on Economic and Social Rights in Afghanistan, AIHRC

<sup>37</sup> HRFM database, AIHRC

have primary schools, this is the highest educational level available for the IDPs within the camp. Food aid to IDP camps officially stopped in 2006 and most camp residents earn their livelihoods through daily-wage work, especially on poppy farms in the south.<sup>38</sup> Moreover, rising food prices have exerted extra pressure on IDPs and other vulnerable groups of people. The IDP problem is a complex one in Afghanistan, which arises in different time periods, in different places, and for different reasons. It is, therefore, not possible to find a simple, immediate, appropriate solution and long-term strategies are needed for this problem-solving to happen.

## **Kuchis**

Afghan Kuchis are generally categorised into three groups. Settled Kuchis are those who have abandoned their Kuchi way of life and become accustomed to living like other Afghan people in cities or villages away from traditional Kuchi lifestyle and with full reintegration with other members of the community. The second group comprises Kuchis who choose short-term migration throughout the year and migrate within a province or a district for a short period of time in a year. The third category includes Kuchis who choose long-term migration and move from province to province throughout the year. The fact of being a Kuchi is a factor that deprives some Kuchis from accessing their economic and social rights, noting that settled Kuchis generally have a better standard of living than short or long term migratory Kuchis.

Continued and multi-year droughts in Afghanistan have disrupted the traditional way of life of Kuchis. Their pastures have dried and their animals have died of starvation. The largest Kuchi concentration, which amounts to about 60,000 people, includes Kuchis who are unable to return to Rigestan plain.<sup>39</sup> Drought in the north and local residents' opposition to Kuchi return are factors that have led to the displacement of another 10,000 Kuchis. These factors combined have disrupted customary Kuchi living and compelled them to live in camps with food assistance, without infrastructure, and through daily-wage work. It is impossible for Kuchis to return to their traditional lifestyle as animals have died and it takes several years to recover from drought. It is unlikely for Kuchis to cope with the challenges, because they are unfamiliar with stable livelihood means and do not own immovable property historically.

Of all the HRFM interviewees, 3.2% were Kuchis, of which 65.7% are settled Kuchis, 4.7% are Kuchis with short-term migration patterns, 13.1% are Kuchis with long-term migration patterns, and 16.5% did not answer to the question to which of the three categories of Kuchis they belonged. The HRFM findings indicate that Kuchis are in a poorer economic situation than are the rest of Afghanistan's people.

Kuchis' enjoyment of the right to health and education are problematic. Since the collapse of the Taliban regime, the President has, on several occasions, promised to build mobile schools and clinics for Kuchis, but few such promises have been kept.<sup>40</sup> Around 55.2% of Kuchis said they used government health services compared to a high

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<sup>38</sup> Third Report on Economic and Social Rights in Afghanistan, AIHRC

<sup>39</sup> Ibid

<sup>40</sup> <http://www.unhcr.org/refworld/topic,463af2212,47b9986c2,47b99800c,0.html>

percentage of Kuchis who said they did not use health services for various reasons. About 61.1%, 25.5%, and 2.7% of Kuchis respectively cited inaccessibility, nonexistent or poor-quality medicine and medical equipment, and discrimination in hospitals and health clinics as reasons why they did not use health services. This data shows the considerably low degree to which Kuchis' right to health is enjoyed and how Kuchis face twice as much discrimination in using government health services. Such discrimination however, has not been cited against Kuchis in private health services.

Like their right to health, Kuchis' right to education is enjoyed considerably less by Kuchis than other segments of Afghanistan's population. Only 33.6% of Kuchi children regularly go to school and 66.4% of Kuchi children never or rarely go to school, while around 42.3% of school-going Kuchi children drop out before they reach the sixth grade. This places Kuchis far behind non-Kuchis who are twice as likely to attend education (60.2% of non-Kuchi children go to school). On the other hand, of all interviewees, only 23.8% of children drop out before reaching the sixth grade.<sup>41</sup>

### **National ID Cards and Birth Certificates**

National ID cards and birth certificates are very important to establish the identity of people and their enjoyment of citizenship privileges. Lack of national ID cards provide an enabling environment for human rights violations of individuals, particularly in cases of marriage, punishment, and due process of law. AIHRC statistics indicates that in many cases of forced and early marriages, the age of children is determined to be higher due to lack of birth certificates or national ID cards and as a result, child marriages occur. Issuing birth certificates and national ID cards is an imperative in other countries worldwide, however, the Government has been negligent in this respect. Though this problem is a legacy of previous regimes, the Government still could have implemented a comprehensive census and issued national ID cards for people. In 2007, the Independent Election Commission (IEC) and the Ministry of Interior (MoI) signed a protocol for distributing ID cards. According to this protocol, all Afghan nationals aged over 18 should have received ID cards pending the holding of the second presidential election, but the protocol has fallen short of implementation.

In HRFM, 74.1% of families stated that their children did not have national ID cards. A high proportion of people whose children lack national ID cards have, of course, never asked for one. About 2% of interviewees said that they stopped requesting national ID cards, because they were required to pay a bribe. In addition, HRFM shows that a small minority of people called *jogi* (or Roma) have no immovable property because they have no national ID cards. There are more people without national ID cards in the south and east of Afghanistan than the rest of the country.

Fewer birth certificates than national ID cards are issued. Paragraph 1, Article 7, of the Convention on the Rights of Child (CRC) reads, "The child shall be registered immediately after birth and shall have the right ... to acquire a nationality..." But few children have acquired birth certificates in Afghanistan. While birth certificates are issued in some highly populated cities, there is no such programme in all Afghanistan's

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<sup>41</sup> HRFM database, AIHRC



provinces. Some hospitals, even maternity ones, and clinics do not issue birth certificates, even in Kabul.

HRFM indicates that only 5.6% of children have birth certificates and the majority of children, namely 87.5%, do not have such certificates in Afghanistan. Of those whose children lack birth certificates, 94.2% have not requested such certificates.

## **Security**

Security is the biggest challenge Afghanistan faces. Insecurity has negatively affected all aspects of economic and social life and rendered difficult the implementation of reconstruction, development, and investment programmes. Insecurity is rising considerably and has reached Afghanistan's north in recent years. According to a report of the UN Secretary-General, security incidents saw an increase of 31% compared to last year (2007).<sup>42</sup> The same report notes that an average number of 857 security incidents were recorded in the second half of 2008 on a monthly basis, and a monthly average of 625 incidents in the first half of the year. December 2008 also witnessed an increase of about 42% in the number of security incidents compared to December 2007. These reveal a noticeable increase in the number of security incidents in the country. These incidents include murders, assassinations, threats, abductions, military strikes, advanced use of explosives, and suicide attacks on civilians, civil servants, religious scholars, aid workers, and employees of construction projects.<sup>43</sup>

Insecurity has different dimensions in Afghanistan, including unemployment, foreign interference, corruption, lawlessness, a weak central government, lack of coordination between national and international forces, and inadequate capacity of Afghan security forces. NATO-led ISAF and the Government have paid little attention to the root causes of insecurity and have focused mainly on increasing troop numbers. There has been no positive change in overall security situation *and* insecurity has been rising, despite the increase in the numbers of international and national security forces.

In HRFM, 75% of respondents said the government opposition was responsible for the deteriorating security situation. Around 11.4%, 4.3%, and 0.4% of respondents said that commanders and other armed persons, Afghan National Police (ANP), and Afghan National Army (ANA) were responsible for the aggravating security situation respectively. As is evident from HRFM findings, while interviewees regard insurgents as responsible for the worsened security situation, local commanders and other illegal armed men were also viewed as sharing responsibility. One reason is the lack of successful implementation of the programme Disbandment of Illegal Armed Groups (DIAG). Illegal, irresponsible armed men have been involved in most of abduction and threat cases in some provinces, especially in Herat and Kabul.

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<sup>42</sup> Report of the Secretary-General, The situation in Afghanistan and its implications for international peace and security, March 10, 2008, p. 5,  
<http://unama.unmissions.org/Portals/UNAMA/SG%20Reports/09march10-sg-report.pdf>

<sup>43</sup> Ibid.

Different type of security incidents occurred in 1387 (2008/09). Murder formed the greatest number of security incidents (34.5%), thereby showing the scale and severity of insecurity. 34.5% of HRFM's interviewees stated they saw murder-related security incidents during the past twelve months (1387 (2008/09)). In addition, 16.5%, another 16.5%, 14.3%, 2.4%, 6.4%, and 3.6% of interviewees had been exposed to such security-related problems as harassment, beating and inhumane treatment, physical attack, rape, illegal detention, and torture.

It is rare for people to report security incidents. The authorities to whom people reported such incidents reveal certain facts. In HRFM, around half of interviewees (50.5%) stated they reported security incidents to informal mechanisms (*shuraljirga*, elders, *mullahs*, and family members) and 48.76% stated they reported these incidents to formal mechanisms (government officials, ANA, courts, ANP), meaning that half of people have either no access to formal mechanisms or factors like mistrust cause them to report security incidents to informal mechanisms.

Civilian casualties caused by the government opposition and international security forces are another problem and civilians are the main victims. The government opposition kills civilians by carrying out suicide attacks, blasts, roadside mine attacks, and attacks directed at residential areas. Although human rights organisations, including the AIHRC, have called on parties to the conflict to end civilian casualties, there has been a rise in such casualties in recent years. Pro-government forces too cause civilian deaths through imprecise aerial operations and lack of coordination between international and national security forces. Though the Government has several times condemned civilian casualties caused by international security forces and promised the necessary coordination in military operations, civilian casualties are still on the rise.

Civilian casualties caused by international security forces severely undermine people's trust in these forces and tension between the Afghan people and international community is increasing on a daily basis thus, negatively affecting the scale of people's cooperation and consequently the success of NATO-led ISAF mission. AIHRC has repeatedly expressed its concern over civilian casualties through press communiqués, meetings with commanders of international security forces, denounced civilian deaths as unacceptable, and vociferously urged parties to the Afghan conflict to end such casualties. The Commission believes that Afghanistan's security issue does not have a sole military dimension, but rule of law, justice, development, reconstruction, and employment creation are needed to substantially change the lives of ordinary Afghan people, isolated and vulnerable groups in particular.

The Afghan government and officials from some NATO member states usually raise the issue of initiating negotiations with Taliban and urge the insurgency to end its armed skirmishes. The truth is that neither the Afghan government nor the countries most involved in Afghanistan have a clear-cut programme for negotiating with insurgents. The AIHRC believes that principles of justice and human rights should not be compromised in negotiations, because peace is impossible to happen without justice.

Increased and continued insecurity and violence have caused public apprehension, and confusion and fear about the future are part of people's daily lives. The right to security of persons is the duty of the Afghan government and the international community. It is imperative for the Afghan government and its international partners to design a comprehensive and effective strategy to ensure security in Afghanistan and the larger region.

### **Aid Effectiveness**

Since 2001, donor countries have pledged approximately US\$25bn in aid for the reconstruction and development of Afghanistan, of which only US\$15bn has been paid. This is several times lower than the aid offered to other post-conflict societies. If we suppose Afghanistan's population to be 30 million and divide US\$25bn on it in the course of eight years, each Afghan should have received an aid of US\$104 on an annual basis. But if we consider the sum of US\$15bn that has been paid, each person should have received a mere aid of US\$62.5, while annual per capita aid was US\$679 in Bosnia-Herzegovina and US\$233 in East Timor. Attempts to achieve a 'cheap success' in Afghanistan have cost both international community and the people of Afghanistan heavily.

This figure is incomparable with military expenditures. Since 2001, the United States alone has spent US\$127bn on war in Afghanistan and it now expends US\$36bn dollars on an annual basis or US\$100m on a daily basis, while all other donor countries spend only US\$7m for Afghanistan's reconstruction and development per day.<sup>44</sup> But if this assistance had been properly spent, significant changes would have been made in the lives of Afghan people.

According to the Paris Declaration on Aid Effectiveness, governments and donor agencies have a duty to consider five fundamental principles to guarantee aid effectiveness. These include ownership by partner countries of a development agenda; donor alignment with partner countries' needs and systems; coordination of donor policies, procedures, and actions; management of development output; and mutual accountability. Afghanistan's experience in the past eight years indicates that many donors have failed to harmonise their priorities with those of the people and government of Afghanistan and to create transparent mechanisms of mutual accountability.

A 2008 research by ACBAR revealed shocking facts. For example, 40 per cent of donor countries' assistance to Afghanistan returns to these countries through company profits and advisers' handsome salaries and about half of aid is offered on the condition that goods and services must be purchased from the donor country itself.<sup>45</sup> Ultimately only around 20 per cent of aid might reach Afghan beneficiaries.<sup>46</sup>

Imposed donor priorities and lack of consideration of Afghanistan's genuine needs are other factors for aid ineffectiveness in Afghanistan. Experience during the previous eight

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<sup>44</sup> Matt Waldman, 'Failing Short: Aid Effectiveness in Afghanistan', ACBAR, 2008

<sup>45</sup> Ibid

<sup>46</sup> <http://www.nytimes.com/2009/10/02/opinion/02bergen.html>

years has proven that donor priority is usually short-term, superficial, and based on their political and even military agenda. In lieu of funding infrastructural projects that have a large and lasting impact on poverty reduction, donors prefer to fund small-scale and sporadic projects that are usually based in urban areas and covered by the media.

Lack of transparency and accountability in contracts is another factor that reduces aid effectiveness. Large donor countries and organisations often have a list of their international contracts and most of their large contracts are assigned pursuant to that list. For example, the United States Agency for International Development (USAID) spends half of its assistance through five big American companies.<sup>47</sup> On the other hand, large contracts pass several hands and each company or institution extracts its profit before these reach the targets. According to ACBAR's research, contracts even pass five hands and each time 10 to 50% of profit is extracted.<sup>48</sup> Certainly the end contractor company will be left with inadequate money for the quality implementation of the project and aid effectiveness is thus lost.

Aid militarisation and securitisation<sup>49</sup> and implementation of reconstruction and development projects by Provincial Reconstruction Teams (PRTs) have not only decreased aid effectiveness, but they have also given rise to people's suspiciousness about the intentions of donors. People regard PRT assistance as a cover to achieve military objectives and a tribute to local power holders. This has also jeopardised NGO staff, spread insecurity in hitherto secure provinces for the purpose of attracting PRT attention, and disturbed aid equilibrium. For example, donor countries often focus the bulk of their assistance on provinces where they have a PRT and as a result, many provinces in Afghanistan, which lack PRT presence or where PRTs belong to countries with smaller budgets for this purpose, have been deprived of aid.

The most important pillar of a government's legitimacy is its ability to provide services for its people within its territory. A government that cannot provide its citizens with fundamental services will lose its credibility and legitimacy in the eyes of people. The Afghan government's legitimacy is therefore largely in the hands of international security forces, non-governmental organisations (NGOs), and private companies. To reinforce the government's legitimacy, strengthen stability, and ensure economic and social rights for people, donor countries should spend their assistance in ways that increasingly bolster the government's credibility and strengthen its newly established institutions. This will increase both the government's capacity and its popular credibility and enable it to administer its affairs on its own, without relying on foreign aid. But experience in the past eight years indicates that donors and the government of Afghanistan have failed to achieve this objective and they both therefore share the responsibility for this failure.

Poor capacity, rampant corruption, and favouritism in Afghan government institutions are significant factors that have decreased aid effectiveness. About eight years after the

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<sup>47</sup> Ibid, p18

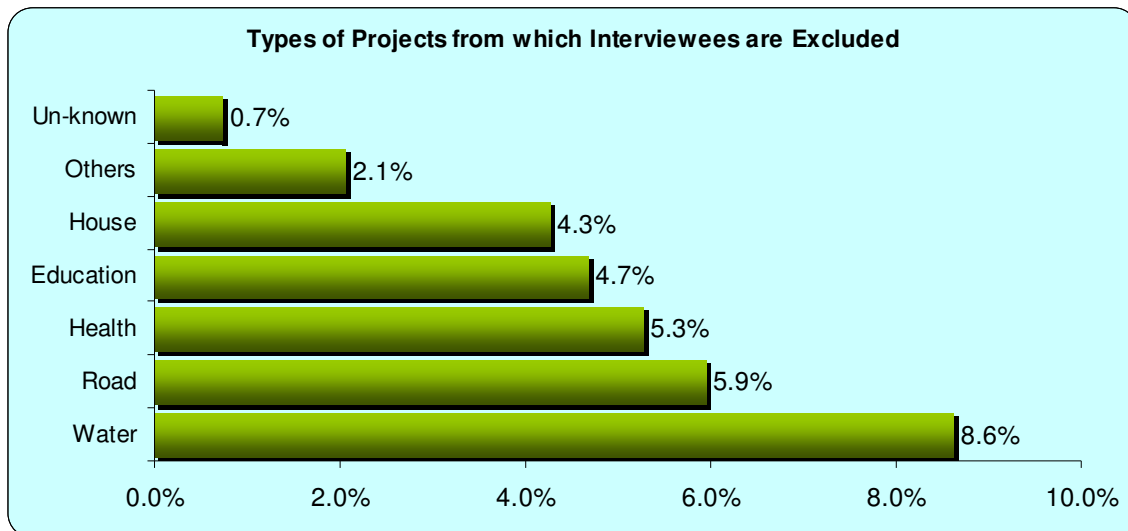
<sup>48</sup> Ibid

<sup>49</sup> Annex 4, Final Report of the Conference on the Role of Military Forces in Establishing Rule of Law, <http://www.haguero-network.org>

beginning of the Bonn process, many ministries are still unable to spend even half of their development budgets. The Government of Afghanistan's Report to the People in 1387 (2008/09) showed that all Afghan government ministries and institutions were able to spend only 49% of their development budgets.<sup>50</sup>

### Participation in Development

Participation in development is a key economic and social right as development, especially of an economic character, is directly linked with whether a person enjoys an adequate standard of living. Economic and social rights, such as the rights to health, education, food, housing and work will become meaningful through the participation of people themselves. As people are the central subject of development, it is therefore essential that they participate in and benefit from development. The right to development is an inalienable human right and all human beings are entitled to participate in economic, social, cultural, and political development in which their fundamental rights and freedoms can realise<sup>51</sup>. Under ICESCR, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Convention on the Elimination of Racial Discrimination (ICERD), CRC, UDHR, and the Afghan Constitution, conditions should be provided in which people can equally and non-discriminatorily participate in Afghanistan's development. In more specific terms, ICESCR requires States parties to focus their attention on meeting the needs and ensuring the rights of the vulnerable people and enable them to be included in and contribute to development.

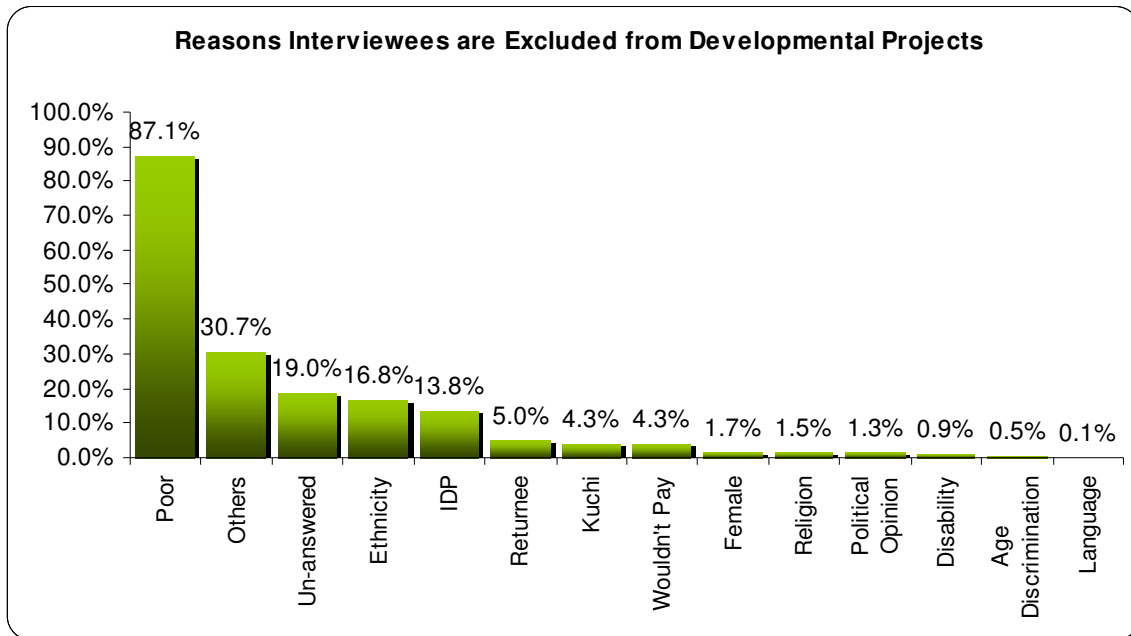


The HRFM data indicates that 14.4% of respondents were deprived of participation in development projects. The projects were related to basic areas of economic rights, such as water (8.6%), road (5.9%), housing (4.3%), health (5.3%), and education (4.7%). Other areas in which respondents were deprived of participation include literary courses, food and non-food aid, National Solidarity Programme (NSP), land distribution, electricity supply, and even construction of mosques.

<sup>50</sup> Government's Accountability Report to the Nation, 1387 (2008/2009), p. 255.

<sup>51</sup> Declaration on the Right to Development, adopted by the General Assembly on December 4, 1986

If we look at the tribal and backward structure of Afghan society, in which rights are with powerful, rich, and influential people, the reasons behind deprived participation of people in the above-mentioned development project becomes clear. About half of people deprived of participation in development (46.6%) said poverty was the main reason for their development deprivation. As discussed in detail in the previous report<sup>52</sup>, insecurity has a direct link with people’s development deprivation. Though resources allocated to insecure areas are more than those allocated to secure ones, people’s participation in employing such resources is at a low level. If development programmes do not consider the systematic participation of the vulnerable and poor, the rich will become richer, the influential will become more influential, and the poor will become poorer day by day. In addition to chronic poverty, Afghan society faces many other problems that hinder the participation of the needy and marginalised in the process of development.



## Poverty

Afghanistan is one of the poorest countries in the world. A considerable segment of Afghan population (42%) lives under the poverty line<sup>53</sup>. Although poverty has a long historical background in Afghanistan, the country has been poor for ages and civil war and its destructive outcomes have further intensified its poverty level. Daily income is a reasonable indicator to identify poverty levels. The amount of calories in a person’s diet is also an indicator of poverty (called “food poverty”). On an average basis, a person should consume about 2,100 kilocalories every day. The amount of calories in a diet completely depends on a person’s income, financial capacity and position within the household. It is estimated that 61% of families are likely to take in calories much lower

<sup>52</sup> The section on participation in development, Third Report on Economic, Social, and Cultural Rights

<sup>53</sup> Organisation for Economic Cooperation and Development (OECD), 2008 Survey on Monitoring the Paris Declaration

than the minimum nutrition standard<sup>54</sup>, because poor families cannot afford sufficiently nutritious food.

Income largely depends on the type of work. It is clear that a high rate of employment indicates improvement in people's revenues. In HRFM, 57% of all interviewees stated that they work and about 42% stated that they do not. Of 57% of interviewees who work, about 63.6% said that their daily income is less than 50 Afghanis (equivalent to US\$1) and these individuals constitute around 36.4% of all interviewees. About 33.6% of them earn an income of over 50 Afghanis a day. Of all interviewees, around 36% stated that they make less than 50 Afghanis a day and 19.2% of all interviewees stated that they make over 50 Afghanis a day. About 42% of all interviewees did not respond, possibly because they make illegal income or because they have no income at all. Therefore, it is difficult to determine the exact level of poverty due to a lack of information. However, this statistics show that the scale of poverty does not reflect any major change compared to that in the last year, because around 37% of all interviewees stated that they earn less than 50 Afghanis a day in the past year.

HRFM findings indicate that 63.9% of interviewees stated that their families are in debt and about 35.5% of them stated that their families are not in debt. 31% of families in debt have borrowed money from their relatives and friends and around 27.3% of these families have borrowed money from shopkeepers and businesspersons. People have borrowed from shopkeepers mainly to buy food items and this shows the severity of poverty.

Although HRFM indicates an increase of 0.4% in the number of debtors since 2005, the amount of debt has almost doubled. According to a 2005 estimate by the AIHRC, every family had a debt of around AFS 57,750 (equivalent to US\$1,155), while this year's HRFM estimates that every family has a debt of AFS 102,392 (US\$2,047) on an average basis, revealing an increase of almost US\$900 in family debt.

Poverty leaves a negative impact on other aspects of life too. Many children who are deprived of education are so because their families are indebted. Poor families are forced to make their children work. In HRFM, 10% of interviewees stated that their children do not go to school, because they have to work. This category of children is a significant one, referring to poverty as a factor responsible for child labour and their educational deprivation. Similarly, poverty has grown child labour across the country.

Poverty too has direct effects on people's health, nutrition, standard of living, and even domestic violence. Poor people cannot afford state or private health services, for they cannot manage to pay for their transportation and other costs. Poor families suffer from a low standard of living and most of them lack proper housing and even some of these families have been compelled to sell their small children to protect themselves from starvation. Domestic violence is also linked with poverty and poverty's psychosocial impacts on family cause behavioural and adjustment problems in the domestic ambience, so poverty increases domestic violence.

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<sup>54</sup> National Risk and Vulnerability Assessment (NRVA), 2007

Unemployment and poverty are also correlated with insecurity. Many experts believe armed insurgency exploit public unemployment and poverty to recruit soldiers. On the other hand, people's poor economic situation has disillusioned them and widened the rift between people and government, thus contributing to increasing insecurity. In addition, cultivation and trafficking of narcotics is a serious challenge to the Government and its international supporters and this too has a direct nexus with the way people make their livelihoods. Lack of other means of income or low income levels out of legitimate agricultural products cause farmers to resort to cultivating illicit opiates and produce narcotics. Instead of focusing on providing alternatives, counter-narcotics activity has been violent and has not resulted in a substantial decline in opium production.

Although it was hoped that the assistance of the international community would lead to change in Afghan people's economic situation in after 2001, Afghanistan witnessed no significant change. Though strategies and policies related to Afghanistan reconstruction deal with poverty reduction and improvement of people's living, these strategies and policies have not been fully implemented. The general objective of Afghanistan National Development Strategy (ANDS) is poverty reduction, but the strategy has failed to produce clear-cut commitments and programmes to achieve this goal.<sup>55</sup>

In the past eight years, international donors and the government of Afghanistan have paid little attention to agriculture as a poverty reduction means, but the 1387 (2008/09) Paris Conference on Afghanistan considered the subject of agriculture seriously for the first time and more money was allocated to develop this specific sector. Agriculture is important in the sense that the majority of Afghan people are farmers and are also engaged in animal husbandry. The growth of this sector, if directed towards meeting the needs of people, can ameliorate people's economic conditions.

HRFM data indicates that agriculture provides an income source for 38.5% of people and 1.9% of interviewees stated that remittances sent home by relatives overseas formed their revenue source. Of the 38.5% of interviewees for whom agriculture is the income source, 23.3% stated that they are landlords, 5.9% stated that they are leased farmers, 5.3% stated that they are daily-wage workers, and 3.1% stated that they share the produce. Of the 58.4% of interviewees who are not farmers, the majority of them stated that they don't have a stable employment. HRFM shows that of these interviewees, 13.1% have stable employment, 16.7% have stable self-employment, 6.9% are skilled daily-wage workers, and 46.5% are unskilled daily-wage workers. There are a large number of interviewees who are engaged in unskilled daily-wage work. HRFM learnt that approximately 27.2% of all interviewees are engaged in unskilled daily-wage work.

As previously indicated, the Afghan government is committed to implementing the Afghan Constitution and the ICESCR and increased efforts are therefore needed to realise the rights contained therein. Though the presence and financial support of international donors created unique opportunities for the reconstruction and development of Afghanistan, people's standard of living has not changed considerably and many people

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<sup>55</sup> Afghanistan Research and Evaluation Unit (AREU), report on poverty in Afghanistan, p13, 1387 (2008/09)



continue to live under the poverty line and a significant number of them still suffer from hunger and are unemployed. The slow process of Afghanistan's reconstruction and economic development has undermined people's hope for the future. Limited efforts have been made to ensure sustainable reconstruction and economic development in the country and the current economic programmes are turning Afghanistan into a consumer market. For example, the electricity supply is a large project and this project imports electricity for Afghanistan from countries in Central Asia. Gas and petroleum are also imported by Afghanistan. Economic infrastructure is yet to be built and the hitherto executed projects are not sustainable. The highways and roads that were constructed in the past several years have been damaged and lost their efficiency due to poor construction materials and ongoing armed conflict.

### **Effective Remedy**

An effective remedy refers to any action(s) taken by the Government to respond to human rights violations. If human rights are violated by state agents, the Government is then directly responsible for such violations, and if human rights are violated by non-state agents, the Government should provide effective remedy for aggrieved persons. Effective remedy includes prosecution of perpetrators and other legislative and judicial measures.

The Government has paid little attention to effective remedy and has been unable to protect the human rights of individuals due to corruption, poor capacity, and incompetence of justice and judicial institutions. The Government's indifference to human rights abuses has caused people's mistrust in rule of law and inability to enforce the law has further added to people's deprivation of economic and social rights. Under the Afghan Constitution and the Law on the Structure, Duties, and Mandate of the Afghan Independent Human Rights Commission, AIHRC addresses human rights violations and complaints in collaboration with the Afghan justice system. It is ultimately the justice system that bears the responsibility to address human rights violations and complaints, and the Commission plays a monitoring and advocacy role. The AIHRC receives hundreds of human rights violations and complaints annually and reports them to judicial authorities, but these authorities do not seem to be successful in addressing these complaints. For example, the government could provide effective remedy for only 150 cases of human rights violations out of a total number of 1,100 in 2008. After victims approached the AIHRC and the Commission followed up their complaints, 361 cases were successfully resolved by end-2008 and the remaining cases have either been closed or are still being addressed.<sup>56</sup>

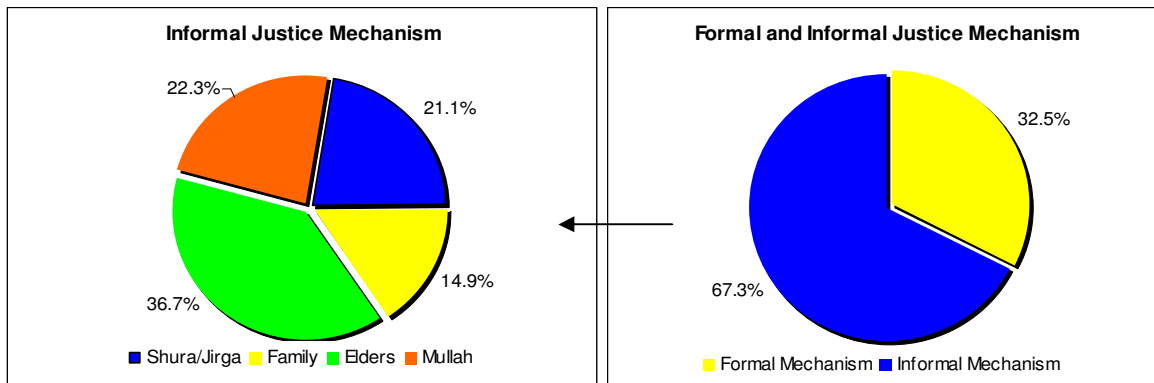
Judicial reform has been slow in the country and considerable results have yet to be witnessed. Although the Government of Italy is committed to supporting reconstruction and reform of the judicial system, the system still faces such problems as corruption, incompetence, and poor capacity. For these reasons, many people have lost their confidence in the system and less frequently refer their cases to courts. Afghanistan's 2007 Human Development Report shows that the majority of people do not refer their cases to courts of law to resolve their disputes, but would rather consult local elders,

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<sup>56</sup> AIHRC database, 2008

*shuras*, and *jirgas*. In the largest national survey in which 6,226 respondents were randomly selected, only 16% of respondents said they had more confidence in state courts<sup>57</sup>.

Though there is no updated, precise information in this regard, the HRFM findings, particularly those about disputes on land and water, show that people consult informal local mechanisms more often than the formal judicial system to resolve these disputes. Approximately 20.7% of all interviewees stated that they are involved in disputes on their houses and lands and of these, about 67.4% stated that they consult informal local mechanisms to resolve their disputes while only 32.5% consult formal judicial mechanisms. Of the 67.4%, 26.1% consult local *shuras* and *jirgas*, 36.7% consult elders, 14.9% consult family and relatives, and 22.3% consult *mullahs*. These figures are indicative of the fact that most people have either no access to formal judicial mechanisms or if have such access, but they do not have confidence in these mechanisms and therefore do not consult them to resolve their disputes.



## The Right to Work

The right to work is essential for the realisation of other human rights and an inseparable, inherent component of respect for human dignity. Everyone has a right to a work that allows him or her or his or her family to live a dignified life<sup>58</sup>. The ICESCR and the Afghan Constitution recognise the right to work, protection of workers, and prohibition of forced labour. Articles 6 and 7 of the ICESCR and Articles 48 and 49 of the Afghan Constitution emphasise that the state should provide the ground for the protection of the right to work. The Afghan government joined the International Labour Organisation (ILO) in 1934 and has so far ratified 15 ILO conventions.

Afghanistan's Labour Law was endorsed and entered into force in 1385 (2006/07). Applicable national and international human rights standards have been, to a large extent,

<sup>57</sup> Human Development Report, 2007, pp74, 96, and 97

<sup>58</sup> General Comment 18, Committee on Economic, Social, and Cultural Rights (CESCR), November 2005

incorporated in Labour Law, which protects workers. Nonetheless, Afghanistan's labour system lacks adequate monitoring and protection mechanisms and there is no effective and efficient executive structure within the government. The Ministry of Labour, Social Affairs, Martyrs, and Disabled (MoLSAMD) has been unable to plan and execute a programme for the protection of workers, reduction of employment levels, and regulation of occupational affairs. Regulating occupational affairs and executing occupational programmes requires the collection of data to understand the current situation of work in the country, but the Afghan Government has so far been unable to take hold of precise scientific data and information about work, work-related issues, and unemployment.

Under the Afghanistan Compact, the Government has also undertaken to reform the civil service and employ professional, competent, and trustworthy individuals in its civil service based on a system of merit. Regarding the equality of social rights, the Government has also pledged to increase women's participation in all governmental institutions, including elected and selected institutions in the civil service. The Government has recognised non-discrimination in employment in most of the relevant international instruments<sup>59</sup>.

## **Employment and Unemployment**

The right to work has a close relationship with the right to an adequate standard of living and economic progress and the realisation of this right can solve the economic and social problems of the society. Therefore, the State should try to fulfil its obligation by resolving the issue of unemployment and help families and communities provide for their lives' needs and thereby contribute to security and economic development of Afghanistan.

ANDS has stressed the development of private sector and free market so that citizens can enjoy its advantages. This goal cannot be achieved if workers' skills remain at the current low rate. Security, efficient administration, professional workers, access to loans of diverse duration, stable electricity supply, and transport infrastructure are the prerequisites for development of markets. So far the Government has failed to provide the minimum necessary facilities for people. It is important to consider economic development as the foundation for cutting unemployment.

ANDS estimates put unemployment rate at 40%. MoLSAMD, however, says 30 to 35% of people who are qualified to work are unemployed, meaning that there are 3 million unemployed people in the country with two-thirds of them being illiterate and not professionally trained and with one-thirds being educated<sup>60</sup>. HRFM data shows that employment creation is one of the interviewees' main priorities and job opportunities, in turn, largely depend on their living standard.

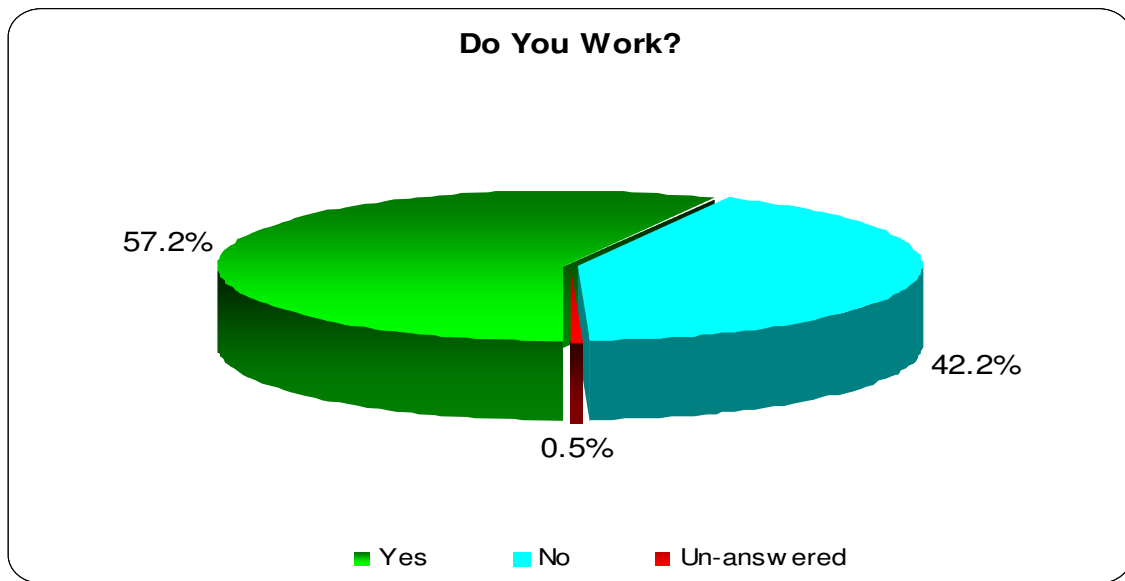
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<sup>59</sup> Article 6 of ICESCR, Article 32 of CRC, and Paragraph 2 of Article 1 of ILO's Equal Remuneration Convention, Article 2 of ILO's Discrimination (Employment and Occupation) Convention, and Article 5 of ICERD

<sup>60</sup> Interview with Mohammad Ghaws Bashiri, Deputy Minister of Labour, Social Affairs, Martyrs, and Disabled, *Jawza* 1388 (May/June 2009)

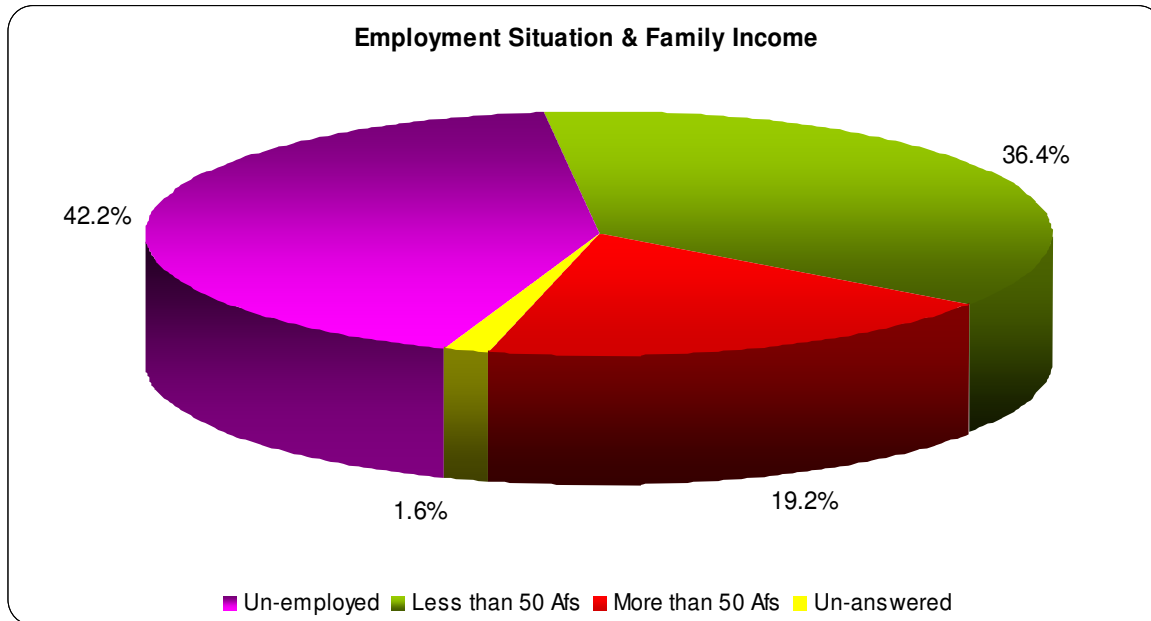
Inadequate investment in production industries and donors' limited assistance and attention to Afghanistan's agricultural sector has added to the number of the unemployed, while approximately 85% of Afghan people are engaged in farming and animal husbandry.<sup>61</sup> It is also important to note that the previous years' droughts have deteriorated agriculture and animal husbandry and many people engaged in agriculture and animal husbandry were made unemployed, who left their hometowns for cities in search of job.

In such a country where people massively depend on income and production out of natural resources to make their livelihoods and continue their lives, it is important to design a comprehensive policy on natural resources, especially land, and that this policy should be designed in a way that it prevents the occurrence of disputes on ownership claims of these resources. Development of agriculture and animal husbandry should be the top priority for ANDS, because they directly contribute to Afghanistan's economic development. Development of agriculture and animal husbandry can be a substitute for poppy cultivation.



Interviews conducted by HRFM staff with 12,072 people in 1387 (2008/09) indicate that 57.2% of interviewees are employed and 19.2% make an income of over 50 Afghanis a day. The figures show that 42.2% of interviewees are unemployed, which is close to ANDS estimates. Daily income of 36.4% of these people is less than 50 Afghanis and this cannot meet the daily needs of a typical Afghan family, which is a large one.

<sup>61</sup> AIHRC, Third Report on Economic and Social Rights in Afghanistan, Qaws 1387 (November/December 2008)



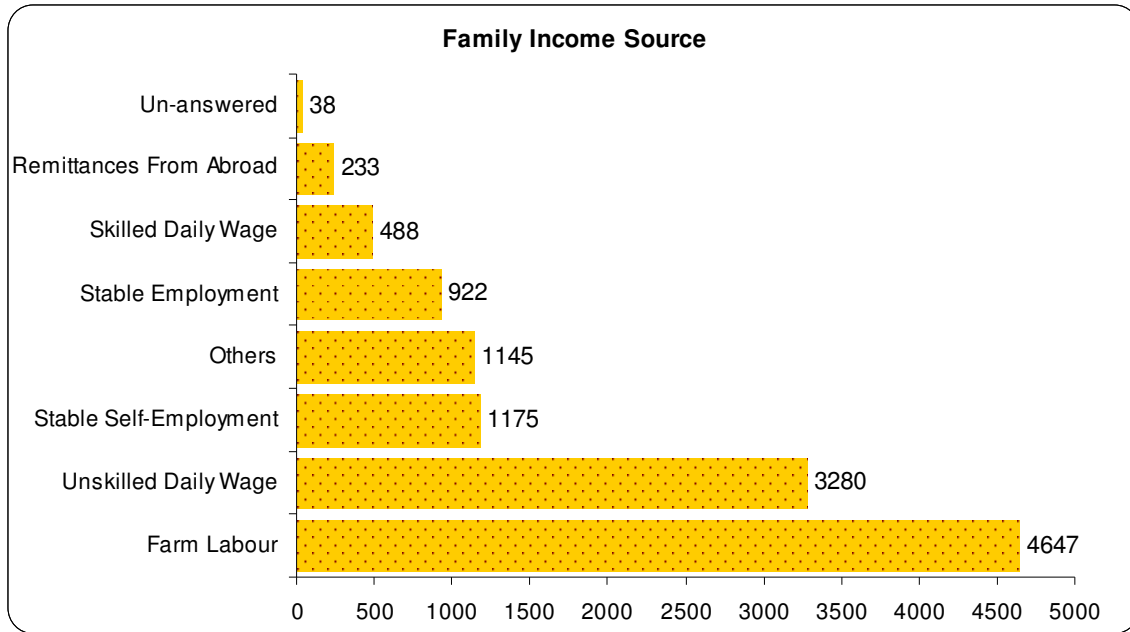
Figures also indicate that 63.9% of people have families that are in debt, of which 27.3% said they had borrowed from shopkeepers or businesspersons, showing the severity of their poverty, for people who borrow from shopkeepers or businesspersons are those who have to meet their basic, existential needs, especially food items like flour and oil.

The Government has not had much success in creating stable employment for its citizens. Improvement in work conditions in recent years which has benefited some is due to the presence of national and international NGOs, UN agencies, and private sector, not because of the design and implementation by the government of an employment framework. Creating stable employment for the unemployed requires the planning and execution of a national strategy. According to the MoLSAMD, a strategy called National Placement Strategy is being designed.<sup>62</sup>

It is a Government's duty to plan and implement technical and vocational training programmes to prepare its technical and vocational work force. Using the available resources, training has been provided to uneducated youth, widows, persons with disabilities who are qualified for work, former combatants, families of martyrs, and other vulnerable segments of population to help them enter the job market. These technical and vocational training programmes were executed in Kabul and other provinces, in which 316,304 people had participated<sup>63</sup>. This is next to nothing, given massive unemployment and severe inadequacy of skilled workers.

<sup>62</sup> Government's Accountability Report to the Nation, 1387 (2008/09), MoLSAMD Section, p, 341

<sup>63</sup> Government's Accountability Report to the Nation, 1387 (2008/09), MoLSAMD Section, p, 340.



There is no specific statistics on the sectors in which Afghan work force is engaged. HRFM data shows that 38% of interviewees are farmers, 27% are unskilled daily-wage workers, 10% have stable self-employment, 8% have stable employment (government or non-government institutions), 4% are skilled daily-wage workers, and 2% rely on remittances sent home by relatives abroad to make ends meet. Estimates indicate that 70 to 80% of Afghanistan’s population is, in one way or another, dependent on agriculture and animal husbandry. These estimates do not seem exaggerated, and HRFM data on employment of 38% of people in agriculture should not be looked at as the complete picture of people employed in agriculture, because returnees and IDPs form a significant section of interviewees (48.5%) who are mainly employed in agriculture and animal husbandry.

As mentioned above, a high percentage of workers (27%) rely on unskilled labour to support their families. Unskilled workers, the majority of whom are paid daily wages, constitute the bulk of people employed in informal economy. As indicated in the previous economic and social rights report, there are no official statistics on the number of informal workers who gather every day at city squares in hope of finding a source of income and livelihood. No one monitors their working circumstances, remuneration, working hours, and occupational hazards. There is no extensive and inclusive programme to develop the skills of these workers and help them transition to formal employment. These workers are most vulnerable to forced labour, trafficking, and ill-treatment by employers and police officers. As informal workers are not organised, they do not have a collective pressure tool. It is therefore important for the Afghan Government to start monitoring this type of work and to establish an appropriate mechanism to protect this category of workers.

Considering the Government’s broad commitments regarding the right to work, figures indicate that unemployment, lack of people’s access to suitable work, low wages,

incomes less than 50 Afghanis a day, child labour, and lack of women's massive participation in all fields of work are the main challenges facing the right to work.

### **Forced Labour and Trafficking**

Forced labour is illegal under Article 49 of the Afghan Constitution. Afghanistan is a fertile land for trafficking in persons and forced labour if we take into account the country's long and uncontrollable borders, extreme poverty, and lack of programmes and mechanisms to combat trafficking in persons and forced labour. Other factors like early marriage, domestic violence, and child abuse encourage traffic in person. Persons are mainly trafficked for purposes of sexual abuse. No major efforts have been taken in this respect in Afghanistan, for this is a sensitive issue and there is no accurate statistical information. According to statistics provided by ILO, at least 65 cases of human trafficking for purposes of sexual abuse have been recorded in Afghanistan since 2006.<sup>64</sup> It is suspected that a number of women and children are also trafficked out of Afghanistan for purposes of sexual abuse and forced labour.

Trafficking in person for purposes of economic and sexual exploitation also has social and economic implications. The Law on Combating Human Abduction and Trafficking was endorsed by the President on Saratan 24, 1387 (July 14, 2008) and published in the official gazette. Although this law has not been ratified by the parliament yet, it is hoped that its presidential endorsement is a positive step towards preventing human abduction and trafficking. This law requires the establishment of a high-level commission to prevent and combat the crimes of human abduction and trafficking and to coordinate the activity of the relevant authorities in this respect. This commission is yet to be established.

There is evidence that some Afghan nationals are subjected to forced labour and abuse by their employers in neighbouring and Gulf countries. Some of them are even deprived of all or part of their remuneration after years of work and they cannot complain to the relevant authorities of these countries, for they don't have authentic stay and work permits. The Afghan government has no specific mechanism to protect this category of nationals.<sup>65</sup>

### **Migrant Workers (Deportees from Iran, Internal Migrant Workers)**

Insecurity, unemployment, and social upheaval in Afghanistan have caused a flood of people to leave for neighbouring countries, especially Iran, in search of an income source. These migrant workers often do not enjoy their human rights as set out in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, when they live and work in host countries. Under this Convention the rights to freedom of movement, freedom from torture, life, freedom from

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<sup>64</sup> Third Report on Economic and Social Rights, p. 13, AIHRC

<sup>65</sup> "We are not responsible towards workers who go abroad illegally and if there are people who work overseas based on MoLSAMD's protocol and permission, we are responsible towards them". Interview with Mr. Muhammad Ghaus Bashiri, Deputy Minister of Labour, Social Affairs, Martyrs, and Disabled.

forced labour, education, have been explicitly set out but unfortunately, the two Governments of Iran and Afghanistan have not yet become parties to this Convention.

AIHRC interviewed 3,620 migrants deported from Iran in Islam Qala and Zaranj borders. Of 3,620 interviewees, 21.3% (771 people) were women. Employment-driven migration to neighbouring countries, especially Iran, is simply not possible for the Afghan workers and entails many expenses that most people cannot afford. The government of Iran has intentionally limited the issuance of its visa and considerably increased its rate. On the other hand, it has made the purchase and sale of its visa dependent on Iranian airlines. About 78.3% of interviewees (3,288 people) stated they migrated to Iran because of unemployment in Afghanistan<sup>66</sup>.

It is clear that migration to neighbouring countries is employment-driven and it will drop if job openings are created within the country. The rate of unemployment among unskilled and uneducated youths is high in Afghanistan. This category of people do not have technical and professional training and work experience, and are, therefore, unskilled workers. This problem exists in both urban and rural areas, but is more widespread in the latter. They constitute the majority of migrant workers who, wave after wave, often illegally migrate to Iran every year and face manifold problems in Iran once they are there. First of all, they have to borrow a lot of money from their friends and relatives in Iran so as to pay their smugglers. According to an Altai Consultancy<sup>67</sup> research on deported refugees, it is estimated that refugees pay an annual amount of US\$94m to smugglers. The governments of Afghanistan and Iran could have made an income of over US\$221m by providing conditions of legal migration and legal employment for these people<sup>68</sup>.

Given the fact that Afghans' illegal employment-oriented migration arises out of a logical economic need in both countries, Iran's job market is in dire need of cheap and economical Afghan work force, which shares cultural and linguistic commonalities with the people of Iran. Besides, Afghan workers need Iran's job market, for they face unemployment in their own country. Neighbourliness and cultural affinities are the main reasons why both sides are interested to perpetuate this transaction. Unfortunately, failure on the part of the Afghan and Iranian governments in regulating and managing this common economic need has paved the way for lucrative human smuggling and trafficking on both sides of the shared Afghan-Iranian border, victimising thousands of poor Afghan workers in the hands of criminal gangs.

It is not easy for a newly arrived Afghan migrant worker to find appropriate work in an unfamiliar Iran. HRFM data indicates that around 44.7% of refugees deported in 1387 (2008/09) were those deported from Iran before having been employed<sup>69</sup>. Property is another serious issue facing refugees. AIHRC interviewees with deported refugees at Islam Qala and Zaranj borders in 1387 (2008/09) indicate that 29% of refugees were

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<sup>66</sup> Human rights monitoring database on 1387 (2008/09) deportees

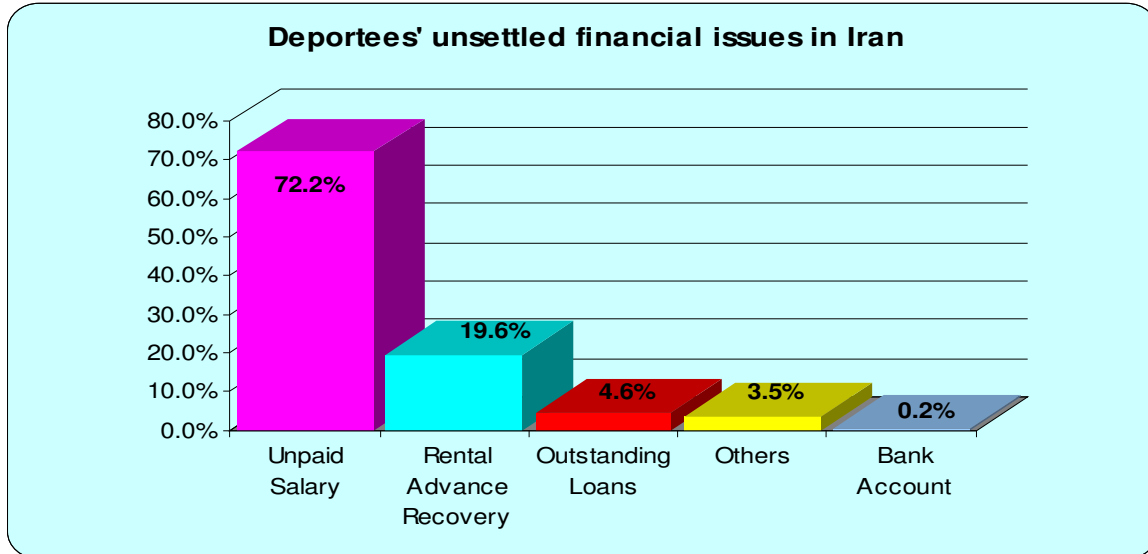
<sup>67</sup> Altai Consultancy's research on deported refugees from Iran, June 2008

<sup>68</sup> Ibid

<sup>69</sup> HRFM database on deportees, 1387 (2008/09)



deported while their property still remains in Iran. The absolute majority of deportees have unresolved financial issues in Iran. 19.6%, 72.2%, and 4.6% respectively cited rent prepayment, unpaid salary, and non-repaid loan as their unresolved financial issues. Besides, 99.8% were not allowed to clear their financial affairs<sup>70</sup>.



Afghans in Iran make an income four times larger than that they make in Afghanistan, despite facing manifold problems, discrimination, and other hardships<sup>71</sup>. Migrant workers tolerate many hardships and much violence while earning this money in Iran. The Iranian government began its plans to massively deport refugees since 2003. It also set heavy crimes and punishments on employers who had recruited Afghans with no work permits. This approach intensified in 1386 (2007/08) and still continues intermittently, because the government of Iran intends to deport all undocumented Afghans.

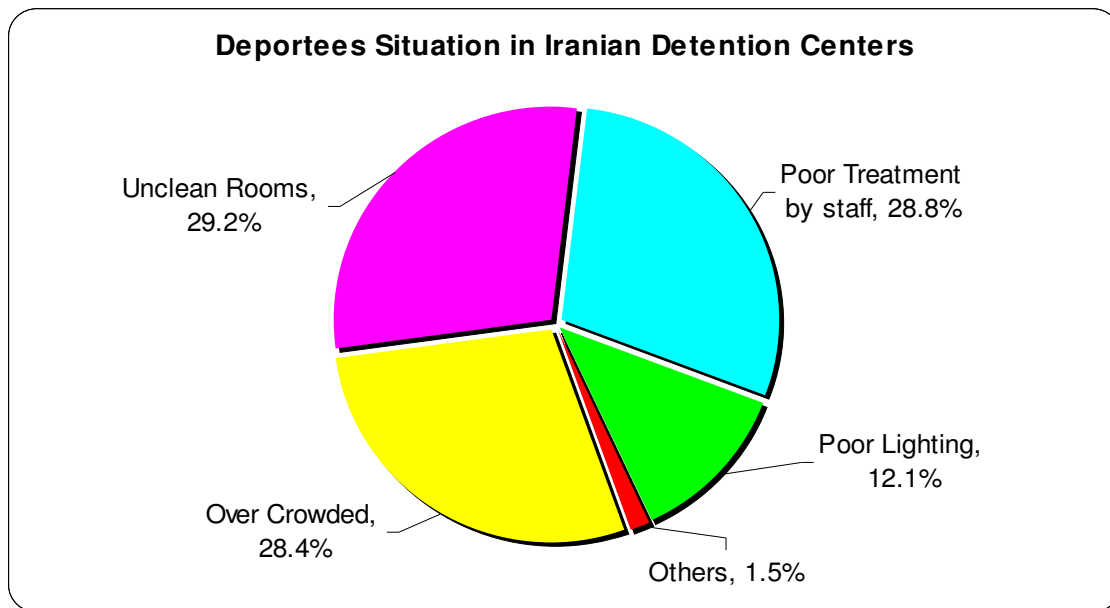
HRFM findings on migrants deported at Zaranj and Islam Qala borders indicate that refugees are subjected to flagrant discrimination and disproportionate violence in the hands of Iranian officers; approximately 80% of deportees were ill-treated by Iranian authorities. Contrary to ILO's Convention 143, all of them were forced to pay deportation expenses. Over 99% of deportees complained of inhuman detention conditions: 29.2% complained of dirty rooms, 28.8% complained of ill-treatment by detention officers, and 28.4% complained of overcrowded detention facilities, and 12.1% complained of inadequately lit rooms. 64.3% of deportees stated that they were not provided with necessary water and food in detention places. Over 78% of deportees said they had not been informed in advance of their expulsion; the absolute majority of these refugees (92.2%) were expelled out of Iran without judicial proceedings; and some of them (2.6%) were fined in cash<sup>72</sup>. Another duty that the government failed to fulfil is to establish contact between deportees and their families as over 82% of deportees (women and

<sup>70</sup> Ibid

<sup>71</sup> Altai Consultancy's research on deported refugees from Iran, June 2008

<sup>72</sup> HRFM database on deportees, 1387 (2008/09)

children included) were unable to enter into contact with their families prior to their expulsion.



The Afghan government has an obligation to protect the rights of Afghan citizens both inside and outside Afghanistan. The actions taken by the government have been not only ineffective, but inadequate also. In meetings between Afghan and Iranian sides in previous years and in commitments and agreements reached at these meetings, there have been no practical results to improve the status of migrants and facilitate their dignified return back from Iran to their country. Although there is a large number of undocumented Afghans in Iran, the governments of Afghanistan and Iran have not taken effective, appropriate measures to improve the status of migrants and pave the way for dignified refugee repatriation. More importantly, the government of Afghanistan should have exerted diplomatic pressure on Iran so that the latter would adopt a more lenient refugee approach based on international human rights standards. In any case, it is an obligation on the Afghan government to protect the rights of its citizens both inside and outside the country.

### **Internal Migrant Workers**

Internal migrant workers are in a more unfavourable situation than are external ones. The bulk of these people cannot afford their overseas trip expenses and some cannot go abroad because of family problems. Hence, they are forced to leave their hometowns for big cities or neighbouring provinces in search of work. Many workers gather at main city squares across Afghanistan every day to look for jobs. This can be seen in Kabul streets and main city squares. The HRFM findings show that 35.9% of IDPs have left their hometowns in search for work, only due to drought and unemployment.<sup>73</sup> Though relevant Afghan authorities have stated on several occasions that they would take

<sup>73</sup> HRFM database

measures to resolve the issue of unemployment, this problem still persists and no major improvements can be observed in the lives of workers, especially migrant ones.

## **Child Labour**

Child labour has been prohibited in Article 10 of the ICESCR, Article 32 of the CRC, and Article 49 of the Afghan Constitution. Also according to Article 13 of Afghan Labour Law, which was approved in 1385 (2007), it is legal to employ persons aged over 18. At the same time, the provisions of this Law have allowed the employment of persons from the age of 15 onwards for light work and the employment of persons aged over 13 for apprenticeship programmes. The Afghan Labour Law stipulates that, “Employment of persons under 18 is prohibited to a type of work that is harmful to their health and causes physical damage or disability”. Harmful work depends on a child’s age, working hours, and work typology. No child under 18 should be employed to a type of work that is ‘harmful’ to their health, safety, and morals and that exceeds 35 hours per week. In HRFM, out of 12,074 interviewees, 38% of families said that their children under 15 work and 24% of them are children who are the primary income source for their families<sup>74</sup>. Many child labourers do not have family supervisors. They are forced to work and engage in hard labour. Most children work, because they are the only supervisors of their families and constitute the primary income source for their families, because their fathers are either old or unable or disabled or deceased.

1.5 million Afghan children are the breadwinners of their families and are forced to work<sup>75</sup>. Labour Law outlaws child labour, but the current situation in the country and previous wars in which some families lost their supervisors and breadwinners have forced children to work in a bid to support their families.

In 1384 (2005/06), 48% of interviewees (3,866 people) said that at least one child aged below 15 worked in their family. In response to a question on the number of working children in their families, approximately 59.6% of them stated that less than half of their children worked.

In 1385 (2006/07), 37% of interviewees (11,071 people) said that at least one child aged below 15 worked in their family. In response to a question on the number of working children in their families, around 48.9% of them stated that most of their children worked. In 1386 (2007/08), 36% of interviewees said that their children aged below 15 worked. 38% of interviewees in 1387 (2008/09) HRFM stated that their children aged below 15 worked. A comparison of the degree of child labour from 1384 (2005/06) to 1387 (2008/09) shows that there has been no change in the number of working children in the past three years.

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<sup>74</sup> 1. States Parties recognize the right of the child to be protected from ... performing any work that is likely to be hazardous or to interfere with ... the child's health or ... development”. Paragraph 1, Article 32, CRC

<sup>75</sup> Interview with Mohammad Ghaws Bashiri, Deputy Minister of Labour, Social Affairs, Martyrs, and Disabled, Jawza 1388 (May/June 2009)

## Implications of Hazardous Child Labour

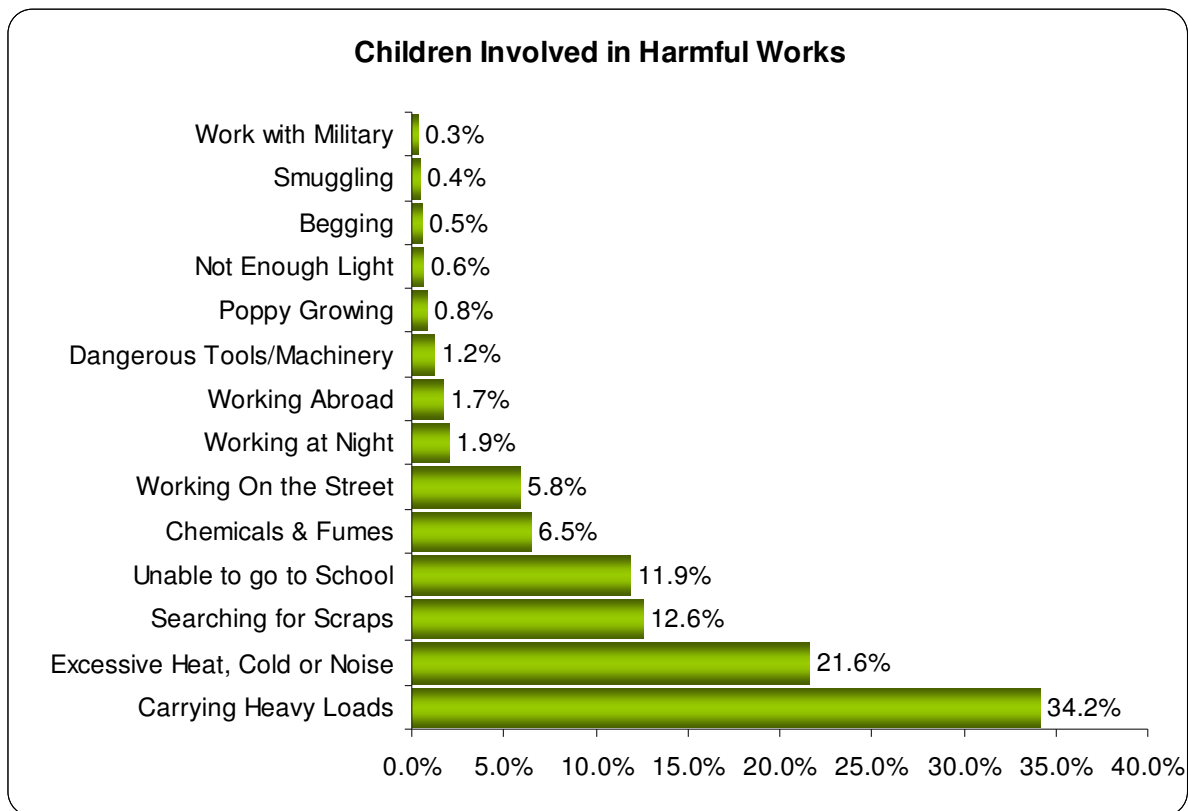


Child labour exposes children to effects and hazards that may threaten their health and lives:

- 1. Carrying heavy loads:** This type of labour is widespread, both in rural and urban areas. Of all 12,074 interviewees, 6,274 said that their children are engaged in labour and 34.2% of these children carry heavy loads as part of their labour. Children's daily labour includes working in business markets and carrying sacks full of materials, heavy packages, and boxes by cart and in villages it includes fetching firewood on back and water on shoulder from far places. Some little girls and boys fetch big barrels of water on their shoulders from places of even one kilometre away. Boys also fetch firewood on back from mountainous areas. Children are responsible to provide water and firewood in rural areas.
- 2. Street labour:** This is more commonly found in cities. Of all 6,274 child labourers, 5.8% are engaged in such street labour as hawking, cleaning windcreens, burning *spand* (material 'believed' by some to protect them against evil spirits once it is burnt and spread around them), and the like. This kind of labour may expose children to trafficking, abduction, and sexual abuse.
- 3. Foraging garbage and other waste materials:** 12.6% of children do this work in cities. This happens when no other work is possible and often very little children

aged about 6 and 7 do this job either in person or in group and they normally belong to the same family. They move from place to place in cities and forage for food and other things they need in garbage. This is hazardous and harmful to their health, for garbage places are dirty and filthy and harm children's health as a consequence. The government should take measures to prevent child labour, especially in this respect. Under Paragraph 3, Article 10, ICESCR, the government has an obligation to protect children<sup>76</sup>.

- 4. Labour in extremely cold and hot environment:** 21.6% of child labourers are not protected in sub-zero cold environment in central provinces like Ghor and Bamiyan and they are further not protected in an environment of over 40 to 45 degrees celsius in such places as Herat, Farah, and Kandahar. They are exploited in all circumstances.



Children need age-appropriate recreation and rest, but they are forced to work all day. The term 'child labour' refers to any work children engage in to make money in urban areas. Children's work at home and in farm is often not considered 'harmful'. As a result,

<sup>76</sup> "Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law".

this report only studies work outside home as the indicator for child labour and it should, therefore, not be regarded as the indicator for child labour in all cases.

Child labour is commonplace in Afghanistan and it usually exceeds permitted working hours per week. Most of them work in unsafe, unhealthy, and unfavourable conditions that include long working hours, abuse (ill-treatment, physical hazard, and health risk), polluted environment, and dangerous equipment. Child labour is normally economically reasoned and it is looked at as a means for children's long-term development by acquiring industrial skills. In most cases, both children and their parents view child labour as positive, despite its hazards. Currently there is no mechanism to scale down child labour. The only existing actions are being taken by NGOs. ANDS has just certain provisions for increasing public awareness to cut child labour.

The lower house of Afghan parliament ratified ILO's Forced Labour Convention in the past year. Once endorsed by the president, Afghanistan will be legally bound by the Convention, meaning that the government will have a legally binding obligation to protect children from economic exploitation and labour, and assist vulnerable children and parents.

One consequence of child labour is that children do not go to school. Of all interviewees, 11.9% are forced to work due to miserable family conditions and are therefore unable go to school. This is an egregious infringement of CRC and the ICESCR, in particular the right to education.

## **The Right to Social Security**

Articles 22 and 25 of UDHR and Article 9 of ICESCR have enshrined the right to social security. Article 53 of the Afghan Constitution has ensured the right to social security for disadvantaged social groups, such as persons with disability, families of the martyred and disabled, pensioners, older persons, unsupported women, and the orphaned, and has required the State to fulfil this right.

The right to social security entails protection from different forms of vulnerability arising out of unemployment, illness, disability, pregnancy, old age, or death in the family. This right is directly linked with the right to personal integrity, for, in case of any of the said conditions, a person loses his or her ability to demand his or her rights and live a dignified life. The Government has an obligation to design and implement protection policies and programmes to enable the vulnerable to enjoy their human rights. The right to social security should be provided for all without any forms of discrimination<sup>77</sup>. The nature of social security policies and programmes can vary from country to country. Likewise, the components of this right can differ in different contexts. What is certain is that there has to be a sustainable system of social security to meet the needs of the needy.

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<sup>77</sup> General Comment 19, UN CESCR, November 23, 2007

According to ANDS, approximately half of Afghanistan's population (12 million people) need social security, while only 2.5 million people have benefited from social security programmes thus far<sup>78</sup>. 42% of Afghan people still live under the poverty line<sup>79</sup> and 30% of families take is below the minimum nutrition standard and face severe food poverty<sup>80</sup>, despite international aid and achievements in the past eight years. Although ANDS has looked at this problem more from a development perspective and sometimes from a humanitarian viewpoint, its programmes are still ambitious and if implemented by 2013, this is a significant step towards ensuring the right to social security for Afghan people.

## Older Persons

Old age is part of human lifespan, creating conditions for the emergence of special behavioural and mental traits. Governments have a duty to take special and substantial measures to ensure the human rights of older persons. Paragraph 1, Article 12, ICESCR requires that, "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Article 53 of the Afghan Constitution also sets out that, "The state shall guarantee the rights of retirees, and shall render necessary aid to the elderly, women without caretaker, disabled and handicapped as well as poor orphans, in accordance with provisions of the law". Islam also exhorts people to pay due respect to older persons and their veneration of the elderly has profound roots in our country's culture.

While older persons have a special standing in Afghan society and are treated with respect, there is an unknown number who are unable to look after themselves or their families are unable to care for them. There are no institutionalised measures for older persons and no Government institution that is dedicated to promoting and protecting the rights of older persons. The lack of statistics means that the Government does not even have sufficient information as a basis to plan. Unfortunately, no measures have so far been taken by the government, especially MoLSAMD, to ensure human rights of older persons. To ensure the rights of older persons, action is required to enact laws, educate the family unit and the broader society on the physical, mental, and legal issues facing the older segment of the population, and create institutions for those elderly people who lack accommodation. A large number of older persons are not supported by the Government, yet they are responsible for their families. Of all respondents, 15.2% were older who were the breadwinners and responsible for their families.

*"My two sons were killed in war, my house was bombed by Soviet warplanes, I was forced to leave my hometown [Ghorband district] along with my wife and little girl for Kabul city where I settled and started a difficult life. I am unable to work and I live my life through begging. The government has never helped me and no gate allows me in".*  
An eighty-year-old man

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<sup>78</sup> ANDS, Chapter 7, Social Security

<sup>79</sup> Ibid

<sup>80</sup> National Risk and Vulnerability Assessment (NRVA), p. 68

## Persons with Disabilities



Persons with disabilities registered by MOLSAMD receive a monthly stipend of 300-500 Afghanis (US\$6-10) and this is clearly not enough for having an adequate standard of living, does not allow persons with disabilities to live above the most minimum standard (US\$1 per day), and is hugely ineffective in ensuring an adequate standard of living for this segment of Afghan population, while persons with disabilities usually have several-member families. Financial assistance is one way of providing social security and should be supplemented by genuine and extensive efforts to enable persons with disabilities to live at the highest possible standard through education and vocational training. Rehabilitation, vocational training, elimination of discrimination, and active involvement of persons with disabilities in society require coordination among MoLSAMD, MoE, MoPH, MoWA, Ministry of Finance (MoF), and NGOs and UN agencies.

## Maternity Leave

Article 54 of Labour Law stipulates, “Female employees shall be entitled to a paid maternity leave of 90 days with one-thirds of the leave granted before birth and two-thirds after that. If the birth is unnatural or includes twins or more children, 15 more days will be added to the leave. Salary and other rights will be provided according to health certificate”. But in AIHRC research 4.5% of women employees said they could not properly enjoy their maternity leaves. Daikundi, Nangarhar, Bamiyan, Laghman, Jawzjan, Herat, Takhar, Balkh, Kandahar, Faryab, Paktia, Kunduz, Khost, and Baghlan provinces hold the greatest numbers of these women in a descending order.



In some provinces, women employees lack necessary awareness on Labour Law and its privileges they are entitled to. Executive directors who are mostly men exploit women's lack of awareness and compel them to use maternity leaves less than three months in duration.

*"I was told by the manager that I am entitled to a paid maternity leave of 45 days and if the leave exceeds this duration, there will be a cut in my salary".* A woman from Bamiyan

In some regions like Daikundi province, female teacher are unable to take maternity leaves of over a month or 40 days, because there are not enough teachers in schools there. Female teacher confess that there are plenty of students and the number of teachers is disproportionate to that. If they are absent, 60 to 100 schoolchildren will be left without teachers<sup>81</sup>.

### **Unsupported Families and Orphans**

As a consequence of a three-decade-long war, ongoing conflict, and other causes, a large section of Afghan society has lost its breadwinner. Unfortunately, like other areas, the Government does not have precise statistics on unsupported families and orphans and only 100,000 families of the martyred have so far been recorded<sup>82</sup>. Of all HRFM interviewees, 0.4% of families are headed by children and 12.9% headed by women, and these children and women are the family breadwinners.

Under the ICESCR<sup>83</sup> and CRC<sup>84</sup>, the government has an obligation to protect all unsupported families and orphans by designing and implementing an inclusive and comprehensive social protection programme. The MoLSAMD's approach is neither sufficient nor inclusive, and it is also discriminatory. The Ministry pays a paltry monthly stipend of maximum 700 Afghanis (equivalent to approximately US\$14) to the families of those martyred and disabled in war. Other families who are unsupported due to other causes are not incorporated in this programme<sup>85</sup>.

Based on existing statistics, there are presently 9,347 orphaned children in institutions around the country, of which 39% are institutionalised nocturnally and 61% diurnally. AIHRC findings indicate that the accommodation, nutrition, health, and education of these children are not compatible with the accepted norms. Even cases of violence against these children by institution authorities have been reported. Besides, there are doubts whether or not genuinely eligible children are admitted to these institutions, because there

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<sup>81</sup> Situation of women employed in Afghan government institutions, AIHRC

<sup>82</sup> Interview with Soraya Paikan, Deputy Minister of Labour, Social, Affairs, Martyred, and Disabled, August 2009

<sup>83</sup> General Comment 19, CESCR

<sup>84</sup> Article 26, CRC

<sup>85</sup> Interview with Soraya Paikan, Deputy Minister of Labour, Social, Affairs, Martyred, and Disabled, August 2009

is evidence that some of the diurnally institutionalised children are relatives or sometimes family members of institution authorities.

## Right to Marriage and Found a Family

The right to marriage and found a family is among economic and social rights that States parties to the ICESCR are obligated to protect. Family is, in fact, the foundation of society and it is important that this foundation should have health and integrity.

### Family Life



Article 10 of ICESCR recognises that “marriage must be entered into with the free consent of the intending spouses”. The right to family protection usually is interpreted as the right to consent in marriage, prohibition of child marriage, and equal rights of men and women in marriage and its dissolution<sup>86</sup>. In Afghanistan’s situation, it is impossible to discuss these rights under the provisions of ICESCR for protection of family life alone.

Women have a limited space in Afghan public life and most of them do not work out of their houses. Therefore, most violations against women occur in the limits of family life. The right to protection of family should firstly focus on freedom of marriage, equal rights

<sup>86</sup> AIHRC and UNHCR, 2006, National and International Legal Standards, Kabul

of men and women in marriage and its dissolution, and domestic violence. Article 54 of Afghan Constitution too contains provisions for the protection of family unit. Nonetheless, domestic violence against women in Afghanistan takes place in such diverse forms as forced marriage, child marriage, trafficking, forced prostitution, honour killings, abuse, neglect, and psychological torture<sup>87</sup>.

### **Family Law (Registration of Marriage and Divorce)**

The present rules on marriage and family life are ambiguous and in contravention with the Constitution and international legal standards. The Afghan Civil Code contains certain provisions on marriage, its dissolution, and protection of family. The Code just alludes to these issues and more extensive regulations are needed to protect family life. A new law that is being codified bases family protection on the Afghan Constitution and applicable international law. The current rules have determined a marriage age of 18 years for boys and 16 years for girls. These rules not only directly infringe Article 3 of ICESCR and Article 16 of CEDAW, but they also contravene Article 22 of the Afghan Constitution. According to these legal provisions, men and women have an equal protection of law and equal rights. Besides, the Committee on Elimination of Discrimination against Women has commented that difference in marriageable age for men and women is in direct conflict with CEDAW<sup>88</sup>.

Although Islamic *sharia* and the Constitution have conferred appropriate rights on men and women, *de jure* and *de facto* equality between men and women has not been accurately provided. The current rules do not offer protection for women. A man can divorce his wife without any due process of law. Lack of registration of marriage and divorce has caused the ill-treatment of women. A woman can remarry three months after divorce and in case of objection she should produce three witnesses in court to substantiate her divorce. A woman can start divorce proceedings if she has enough evidence and this includes that her husband is sick or exposes her to danger, her husband cannot support her, her husband has been absent for four years, or he has been sentenced to 10 years or over in prison. In any of these cases, a court of law can order the giving to her of her marriage portion and custody of girls until they reach the age of nine and boys until they reach the age of 11.

A marriage certificate comprises registration of marriage, entrance into marriage, and the responsibilities of the intending spouses. Article 61 of the Afghan Civil Code requires all marriages to be registered. But to date there has been no mechanism to register marriages and divorces. It is necessary to raise public awareness on the merits of having a marriage certificate, but before that happens, there should be an immediate system to register marriages. MoWA intends to create a marriage registration authority in each province. It is highly unlikely for people in rural and remote areas to approach these authorities in provincial capitals to record their marriages and they are not expected to do it. Lack of

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<sup>87</sup> UNIFEM, (2008), Primary Database on Violence against Women

<sup>88</sup> Committee on Elimination of Discrimination against Women, (1994), General Comment 21: Equality in marriage and family relations

marriage registration facilities has been the reason why the formal policy on requiring marriage registration has failed.

### **Forced Marriage**

Article 10 of the ICESCR has recognised family as “the natural and fundamental group unit of society” and has decreed that “marriage must be entered into with the free consent of the intending spouses”. This provision is often ignored in Afghanistan. In this connection, the Afghan Civil Code has made the marriage of an adolescent aged 15-16 dependent on the consent of the father or competent court and has forbidden the marriage of any child below the age of 15.<sup>89</sup> Any force or compulsion in marriage is a violation of the marriage protocol.

190 cases of forced marriage were registered by the AIHRC<sup>90</sup> and 186 such cases were recorded by MoWA<sup>91</sup> in 1387 (2008/09). Cases of forced marriage recorded by the AIHRC reveals a direct correlation between forced marriage and domestic violence.

*“A fourteen-year-old girl was compelled by her father to marry a fifty-year-old man in exchange for 20 sirs (1 sir is usually equal to 7 kilograms) of barley and 10 pounds of opium. The girl does not want to marry that man; the Commission protected this girl and its employees were able to annul this marriage in cooperation with elders and local influential figures after continued talks with the two families concerned”<sup>92</sup>.*

Pursuant to the Afghan Civil Code, “in marriage, no woman shall be exchanged with another,”<sup>93</sup> “a person who marries a widow or an under-eighteen girl against her consent and wish shall be sentenced to prison,”<sup>94</sup> and “*bad* is against the laws and its perpetrators are sentenced to a prison term of medium duration”<sup>95</sup>.

Of all complaints received by the AIHRC in 1387 (2008/09) related to violations of the right to marriage and found a family, 12 are related to *bad* and *badal*<sup>96</sup> marriages. Reports received from AIHRC satellite offices refer to 46 cases of *bad* and *badal* marriages in 1387 (2008/09).

*“A father approached the Commission to annul the marriage of her girl (his daughter?) that took place thirteen years ago in compensation for an unintentional killing committed by the girl’s uncle. Her father says their family paid a huge sum of money to the victim’s family at that time, but his then six-month-old daughter was also handed over to them as bad, as a result of the local commander’s pressure. The now thirteen-year-old girl does not consent to the marriage and her father approached the AIHRC for this reason”.*

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<sup>89</sup> Afghan Civil Code, Volume I, Kabul: MoJ, Kabul, 1355 (1976/1977), Article 66

<sup>90</sup> AIHRC, Report on the Situation of Human Rights in Afghanistan, 1387 (2008/2009)

<sup>91</sup> Annual Report of MoWA

<sup>92</sup> Report on the Situation of Human Rights in Afghanistan, 1387 (2008/2009)

<sup>93</sup> Afghan Civil Code, Article 69

<sup>94</sup> Afghan Penal Code, Article 517, Paragraph 1

<sup>95</sup> Afghan Penal Code, Article 517, Paragraph 2

<sup>96</sup> Due to technical problem in the database, the issue of *Bad* and *Badal* are not recognized separately, though; legally these two terms are different from each other.

*Follow-up by AIHRC resulted in the pertinent court issuing a judicial decision on the nullification of the girl's betrothal.*

Undoubtedly such marriages are the cause of familial tension, disintegrating the family unit in the short- or long-term and wreaking havoc on family life.

Making marriage registration compulsory is a key guarantee to the observance of marriageable age, either according to statutory laws or in accordance with customary law or religion. Marriage registration helps regulate marriage affairs and reduce negative implications of marriage. Therefore, all marriages and divorces should be registered by dedicated offices throughout the country and such a registration should only give legal effect to marriage. There is no doubt that this requires the codification of an appropriate law on compulsory registration of marriage and establishment of marriage and divorce registration authorities across the country.

### **Child Marriage**

Child marriage has many negative effects and outcomes with some of them being irreparable. For example, child marriage incapacitates the affected children to complete their childhood development, hinders their education, causes them to lag behind in their physical, mental, and intellectual development with their premature pregnancy, and inflicts physical, mental, and psychological scars on them that may remain until the very end of their lives.

International organisations have undertaken many efforts to decrease the number of child marriages and to pressure the government to regulate and implement relevant laws as well as programmes to raise public awareness of such faulty traditional inclinations. International conventions do not explicitly mention an 'age' that is very early for a girl to marry, but international organisations like UNICEF and the UN Population Fund have recommended that 18 should be considered the minimum marriageable age for a girl.

Child marriage is extremely harmful to women for several reasons. Such marriages often prevent women from completing their education and they are separated from their families at a formative age. The Afghan MDG report indicates that boys have a greater chance than girls to complete their primary education. There are two boy graduates for every one girl who completes her education<sup>97</sup>. A research study on children's equal access to education has found that more girls than boys drop out of school at the primary education level.<sup>98</sup> In addition, child marriage forces women to have sexual intercourse before they are physically and mentally ready for it and to give birth before their body is able to cope with the physical pressure of delivery. Further research by Medica Mondiale shows that women who marry in their childhood are emotionally distant from their children and as a consequence, both mother and child's mental health is affected. Also in Afghanistan, very young women are sometimes made to marry very old men.

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<sup>97</sup> MDGs, Chapter 5, Goal Two: Achieve Universal Primary Education

<sup>98</sup> Children's Fair Access to Education in Afghanistan, 1387 (2008/09), AIHRC

It is difficult to determine the number of girls that have been made to marry at an early age because there is no standardized national data collection system that captures this information. Of all 100 complaints received by AIHRC on violations of the right to marriage, 27% of them are related to under-fifteen marriages.<sup>99</sup> Additionally, AIHRC child rights field monitoring conducted last year shows that 7% of all interviewed children married before reaching the legal age of marriage.<sup>100</sup> This is while national statistics put the rate of girl child's marriage at 57%.<sup>101</sup>

Different factors are responsible for early marriages with the most important one being poverty. Early marriage is sometimes looked at as a means of survival. If girls marry at an early age, their families have one less stomach to fill and they hope their girls' lives will get better. AIHRC research on children's equal access to education in Afghanistan shows that family economic weakness is a main cause of underage marriages and school dropout. According to this research, 450 girls were on the list of prolonged absentees and when school authorities were asked about these students, they said the girls had married and their families had prevented them from attending school, because they had grown older. Early marriage is, therefore, a basic cause of violations of girls' right to education<sup>102</sup>.

There are many reasons behind the early marriage of girls. Societies that have experienced war or other severe social upheavals often show an increase in violations of child rights. Therefore, increased numbers of early marriages is usually symptomatic of social problems. Additionally, in societies where virginity is a value, early marriage is a way to protect girls from pre-marital sex. Finally, since in Afghan law, the marriageable age for boys is higher than that for girls (18 and 16 respectively) this gives rise to the perception that early marriage of a girl is acceptable. Although the Afghan Civil Code has outlawed forced and child marriages, there are no cases in which parents have been prosecuted for the marriage of their children.

Early marriage disproportionately affects girls. There are 1,662 cases of child marriage in interviewed families, out of which 1,494 (90%) are related to girls and 168 (10%) concern boys. 10% of HRFM interviewees stated that they made their children marry below the age of 16. Debt was a contributing, not a determining, factor in decisions on child marriages, because about 8% of families without debt and 12% of families with debt had made their children marry. 55% of child marriages are entered into to solve economic problems and 30% are *badal* marriages that are again economically significant, because such a marriage is intended to reduce marriage expenses<sup>103</sup>.

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<sup>99</sup> AIHRC database

<sup>100</sup> Further details in the section on the right to marriage

<sup>101</sup> ANDS, Chapter 7, p126

<sup>102</sup> Children's Fair Access to Education in Afghanistan, 1387 (2008/09), reasons for dropping out of school

<sup>103</sup> AIHRC, Report on the Situation of Human Rights, 1387 (2008/09)

## Escape from Home

Escape from home is stigmatized in Afghanistan. While it is not specifically defined in the Afghan Penal Code, it is understood from various legal provisions to mean an action to run away, with no intent to return back to home, and abandon family members without the permission of parents or legal custodians.

Physical and psychological torture at home by family members, as well as forced marriages, are important reasons why some women run away from their houses. 101 cases of escape from home were recorded by the AIHRC and 226 by MoWA<sup>104</sup>. These women do not have the courage to express their problems in fear of further abuse and retaliation, so they run away from home and break their connection with family members and the community and do not want to come back again.

Escape from home is not a crime or offence in Afghan legislation. Courts have had different practices and decisions on cases involving escape from home. Many courts have treated it as a crime. This emanates from the belief that a woman should not leave her home without the accompaniment of her *mahram*, or close relative. Girls and boys who run away from their houses to get married are often imprisoned with the man being accused of abduction and the woman of adultery. This is contrary to Article 425 of the Afghan Penal Code.

As the principal governmental department responsible for the protection and promotion of women's rights, the Ministry of Women Affairs (MoWA) deals with cases of violence against women as well as cases of escape from home. The Ministry investigated 226 cases of escape from home in 1387 (2008/09).

The Legal Department of MoWA counsels women and girls who run away from home that they should return back to home. If their return is not possible, they are referred to justice institutions. They are sent generally to Special Family Court and sometimes to Legal Department of Kabul Provincial Headquarters.

Women's rights institutions have recently established shelters, which are intended to accommodate women who are left unsupported and homeless as a result of domestic violence and other incidents and who have no other place to take refuge in. These shelters are only used for temporary accommodation of these women and when it is assured that a woman's problem has been solved, she returns to her family through MoWA on security. Though small in number, shelters have become places where these women feel safe.

## Domestic Violence

Violence refers to any violent acts necessarily or probably resulting in physical, sexual, or mental suffering or trauma and any threats depriving a person of or limiting his or her freedom in the society and private life<sup>105</sup>.

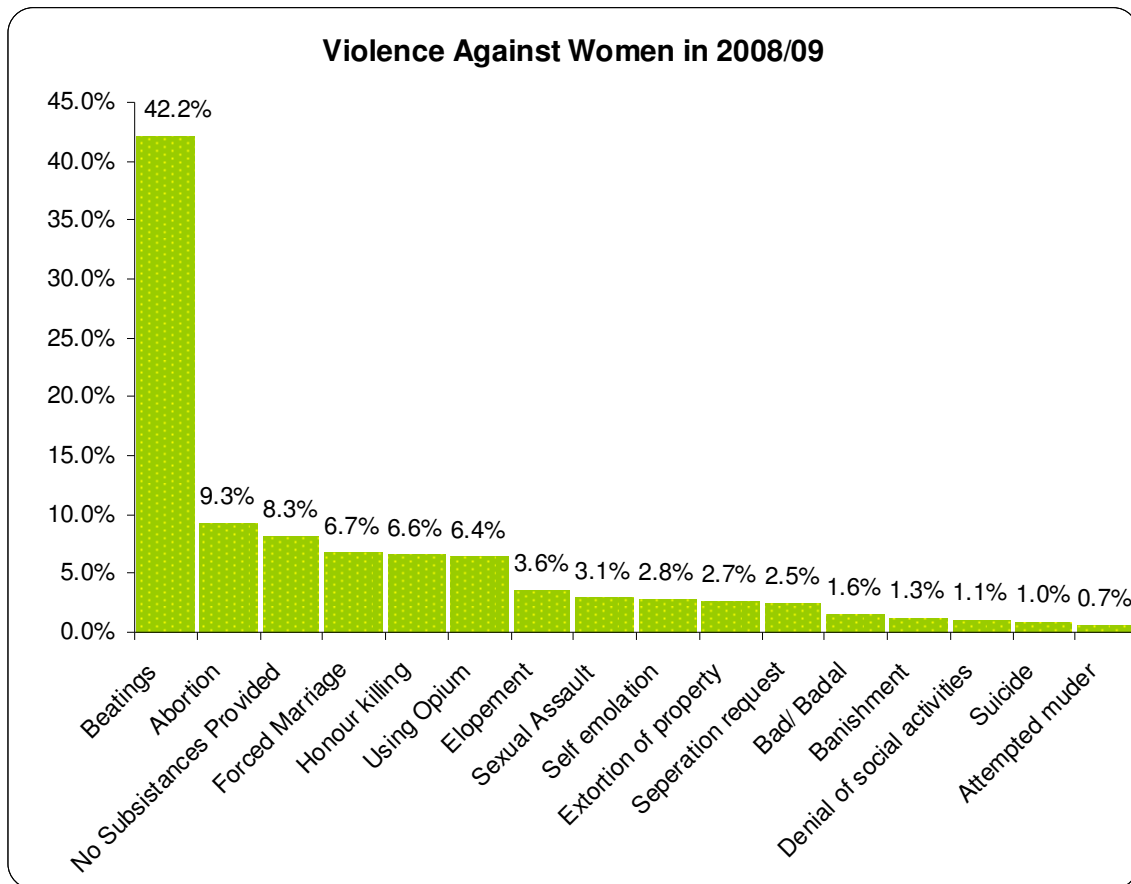
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<sup>104</sup> Annual Report of MoWA

<sup>105</sup> Research report on domestic violence, Murray A. Straus, Richard J. Gelles, the USA, 1995

Domestic violence has different causes, of which we can refer to socioeconomic status, illiteracy, and violence against women. It manifests itself in such forms as beating, forced marriage, refusal to pay alimony, expulsion from home, obstruction of social activity, and rape, some of which have been specifically criminalised in the Afghan Penal Code and some others have not been criminalised. Domestic violence not only includes violence against women, but it also comprises violence against children and older persons and sometimes even violence against men.

*“Shakiba approached the AIHRC, which found out that her thumb had been cut off by her husband. Her husband did this, because Shakiba could not bring tea to her husband, for the teapot had slipped off her hands onto the floor. She complained of fracture and pain in her hands and gave this as the reason to her husband. It is when her husband decided to use a chopper to sever her wife’s thumb”.*



It is important to note that the above statistics include cases that have been identified and investigated by the AIHRC; the actual number of cases is likely much higher.

Violence is sometimes so severe that women are forced to run away from home and even prefer to go to prison in order to avoid being at home. Most women do not have the opportunity to flee home which is why some of them commit self-immolation and some



are killed in violent incidents. These cases often are not investigated. Psychological violence and neglect are other documented forms of violence against women. A husband can threaten to divorce, separate his wife from her children, and refuse to maintain the family. Since most women are disadvantaged and have few educational opportunities, this type of violence has many negative consequences on women, because they are severely financially dependent on their husbands and relatives.

Secrets of family relationships and domestic violence are never made open, given the cultural and ethical sensitivity in the Afghan society, and no one is even ready to discuss such issues within the family. Domestic violence against women usually happens in different phases as is evident in the following case, where violence has led to horrible, irreparable outcomes:

*“I am sixteen years old. After my father died, I was compelled by my uncle to marry my husband. I came to know my husband is addicted to heroine some days after our wedding. I asked him to give up heroine, but he beat me instead. He told me to abuse heroine too. I tolerated violence that night and some nights after that and did not give in to his demand. Eventually I started abusing heroine so as to prevent further battering. For me, life has come to an end. There is no need to resist his demands. He says he will kill me if I tell these things to other people”.*

### **Detrimental Traditions and Unacceptable Customs**

The high rate of illiteracy in Afghanistan has provided grounds for the application of unacceptable customs. It is natural for a country with the highest rate of illiteracy to apply traditions and customs as sacred taboos and to consider its violation as stigma and shame. The greater a person’s application of superstitions is, the stronger his or her social standing will be.

According to the recent figures, the rate of forced marriages has increased and these marriages have taken such forms as *badal* marriages, *bad* marriages, and marriages in exchange of money. *Bad* is an unacceptable custom that has dominated certain areas of the country in the distant past and when a family commits a murder for various reason and is accused and blamed, the other party receives her girl as compensation for the murder committed.

*“My brother killed a man in last year. Tribal elders gathered and compelled my father to marry me to the murdered person’s brother at the age of 13”. A girl from Qaisar district, Faryab province, forced to marry a 45-year-old man under the custom of bad*

These unacceptable traditional practices have been criminalised under Article 427 of the Afghan Penal Code.

## The Right to an Adequate Standard of Living



The right to an adequate standard of living is a key economic and social right, which also depends on the right to work and an individual's economic and social security situation. It comprises adequate housing, clothing, water and sanitation, and food and freedom from hunger. ICESCR requires States parties to take appropriate measures to continuously improve conditions of living<sup>106</sup>. The Committee on Economic, Social, and Cultural Rights has stated, "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>107</sup>.

Article 14 of the Afghan Constitution has recognised provision of housing and improvement of people's lives and has identified practical steps to realise it, including settlement of Kuchis. Security of tenure, housing, water, and food are key components of the right to an adequate standard of living. The absence of these components are the main constraints to and affect the enjoyment by the people, especially vulnerable groups like refugees, IDPs, and Kuchis, of an adequate standard of living. ANDS too stressed an adequate standard of living and determined a series of objectives for improving conditions of living. According to ANDS, the ratio of people who make less than a dollar

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<sup>106</sup> Paragraph 1, Article 11, ICESCR

<sup>107</sup> General Comment 12 of the Committee on Economic, Social, and Cultural Rights (1999): Right to adequate food, paragraph 14

a day should fall annually by three per cent and the ratio of people who suffer from hunger should fall annually by five per cent.

By end-2010, ANDS states that the capacity of municipalities should be strengthened so that they can manage urban development and provide effective, efficient, and transparent urban services. There is no clear programme in the ANDS for the resolution of disputes over housing and property and this is a weakness in the strategy, while Afghan cities, especially the capital Kabul, have serious housing shortcomings. A considerable part of Kabul and other cities lack an urban master plan.

The right to food has been recognised and protected in a number of international declarations and conventions, including UDHR, ICESCR, CRC, and the Universal Declaration on the Eradication of Hunger and Malnutrition. Article 11 of ICESCR has recognised “the right of everyone to an adequate standard of living for himself and his family, including adequate food...” Paragraph 2, Article 11, ICESCR also stipulates that immediate and urgent measures should be taken to protect people from hunger and malnutrition. In its General Comment 12 on the right to adequate food, the Committee on Economic, Social, and Cultural Rights sets out, “The right to adequate food is realised 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>108</sup>.

Diverse government authorities are responsible to supply water in Afghan cities. The Department of Engineering Research, Ministry of Mines and Industries, Ministry of Energy and Water, MoRRD, Ministry of Agriculture and Animal Husbandry, Environment Authority, and Directorate of Water Supply and Canalisation function and share responsibility in water affairs and water supply. Directorate of Water Supply and Canalisation has the responsibility to supply water in urban areas (34 cities). The Directorate has a specific four-phase water supply strategy.

The first phase that has short-term objectives is being undertaken. The general objective of phase 1 is to produce 120,000 cubic metres of water per day for 30% of people at the national level. The second phase, also with short-term objectives, entails the construction of reserves and installation of machinery that will persist into 2013. Phase 2 aims at increasing the supply of healthy water to people by 60% at an estimated cost of US\$70m, which is planned to be spent in 17 major Afghan cities. The third phase that has medium-term objectives has been allocated a budget of US\$ 530m. The fourth phase that has long-term objectives requires a budgetary allocation of US\$ 2.1b and aims at providing healthy water to all Afghan people (100%) by the year 2024. International donors have pledged commitments for medium- and long-term water supply projects, but the Directorate lacks adequate capacity to receive and spend this budget. Department of Water Supply, Hygienic Education, and Environmental Sanitation of the MoRRD, which is responsible to supply water in Afghan villages, says that the spending of US\$ 250m will enable 90% of rural people in Afghanistan to have access to healthy potable water by 2013. The

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<sup>108</sup> General Comment 12 of the Committee on Economic, Social, and Cultural Rights (1999): Right to adequate food

Department added that by 2013, water supply grids and water wells (one well for every 25 families) will be built<sup>109</sup>.

## **The Right to Adequate Housing**

According to the ICESCR, government has the responsibility to take steps towards the realisation of the right to an adequate standard of living for everyone, which includes the right to adequate housing. The quality of housing and security of tenure are significant, for 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. Adequate housing is realised when a person lives with access to security, health services, child care centres, and other social facilities. Residential houses should not be built in polluted places or near air pollution sources which threaten the health of residents.

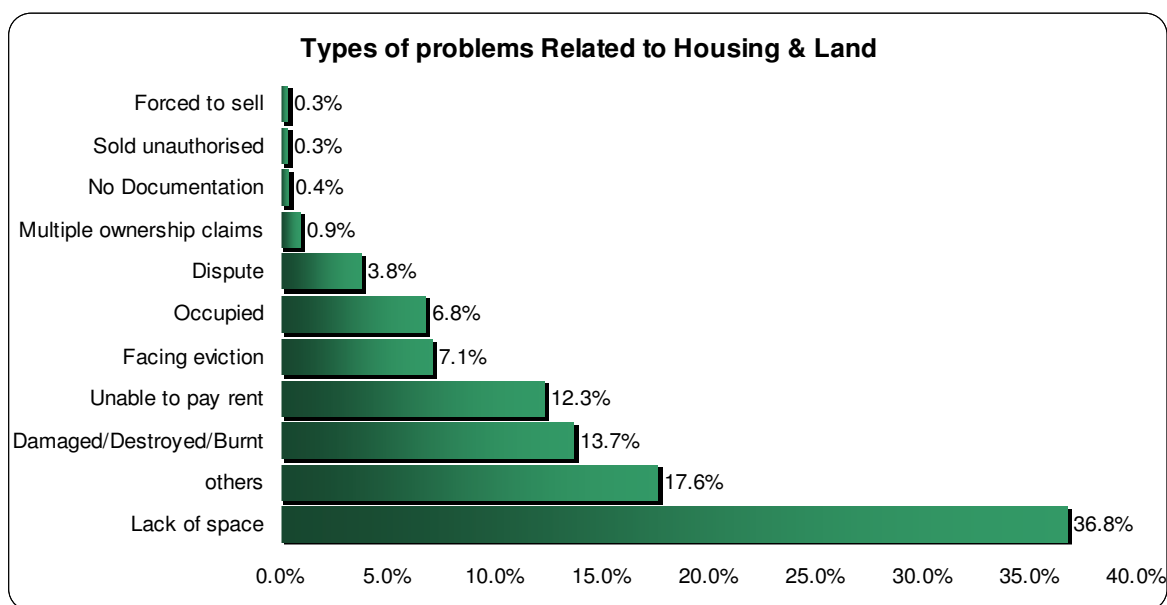
## **Security of Tenure**

Security of tenure includes sustaining the right to property, so that property has legal security. Property should be immune from any types of intrusion, interference, illegal expropriation, or destruction and the owners should not be evicted against their will. Thirty years of war in Afghanistan resulted in competing legal claims to land. Existing mechanisms to ensure security of tenure are either ineffective or do not have mandate to act effectively. According to the Third Report on Economic and Social Rights in Afghanistan, 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 and local judicial mechanisms. People do not have much trust in civil courts for reasons of corruption and incompetence and most of people, therefore, refer to local informal mechanisms (*jirgas* and *shuras*) to resolve their disputes. HRFM findings indicate that only 32.5% of interviewees refer to formal judicial mechanisms, while around 67.4% consult informal ones (*jirgas*, *shuras*, family, elders, and *mullahs*). Therefore, it is traditional setups like *jirgas* and *shuras* that resolve the majority of disputes over property. In such cases, tradition sometimes precedes law and as a result, legal provisions are infringed. Most property ownership documents are customary and these are incomplete and contradictory.

HRFM findings show that 28.9% of all interviewees stated that they have problems with their lands and housing. There are different types of problems with lands and housing. According to HRFM, 6.8% of interviewees said that their lands or houses had been illegally expropriated, 3.8% had disputes over their lands or houses, 0.3% had properties that had been sold without their permission, 7.1% stated that they were facing eviction, 12.3% couldn't afford their rent, and 36.9% had overcrowded houses. These people either live with their relatives or have large families. In addition, 0.3% stated that they were forced to sell their houses and 13.6% stated that their properties had been destroyed or demolished or set afire. The following figure shows problems related to house and land.

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<sup>109</sup> Interview with Atiqullah Khawasi, Head, Department of Water Supply, Hygienic Education, and Environment Sanitation, MoRRD, August 15, 2009



Illegal land expropriation and violations of the right to property have been on rise in the previous years. AIHRC’s case management database indicates a high rate of violations of the right to property and illegal land expropriation has been a significant and serious violation.

Of all interviewees, 6.8% (254 people) stated that their land or house had been illegally expropriated and the expropriators were as follows:

Who expropriated	Number of interviewees	%
Commanders	20	7.9%
Governmental institutions	21	8.3%
Neighbours and villagers	38	15.0%
Family/relations	40	15.7%
Other	135	53.1
Total	254	100

HRFM findings show that 1.2% of all interviewees said that they have disputes over their lands or housing in one way or another. In response to a question about the persons with whom they have disputes, 24.6% had disputes with people in their own community, 22.5% had disputes with their family members and relations, 37.7% had disputes with people from the other village, 15.2% had disputes with other people, and 1.4% did not answer this question.

Of all people who answered questions about their lands and housing, about 3.8% were involved in disputes (140 people). They said their differences still remained and only 5% of interviewees (7 people) reported that their problems had been solved. Of all interviewees who answered this question (70 people), 50% did not believe their

differences and disputes would be resolved, while 20.7% believed their disputes would be resolved. The number of interviewees who believed their disputes would be resolved is very small and calls for reflection. Despite a high level of disputes over land or housing, most formal judicial mechanisms are not active and trusted by people.

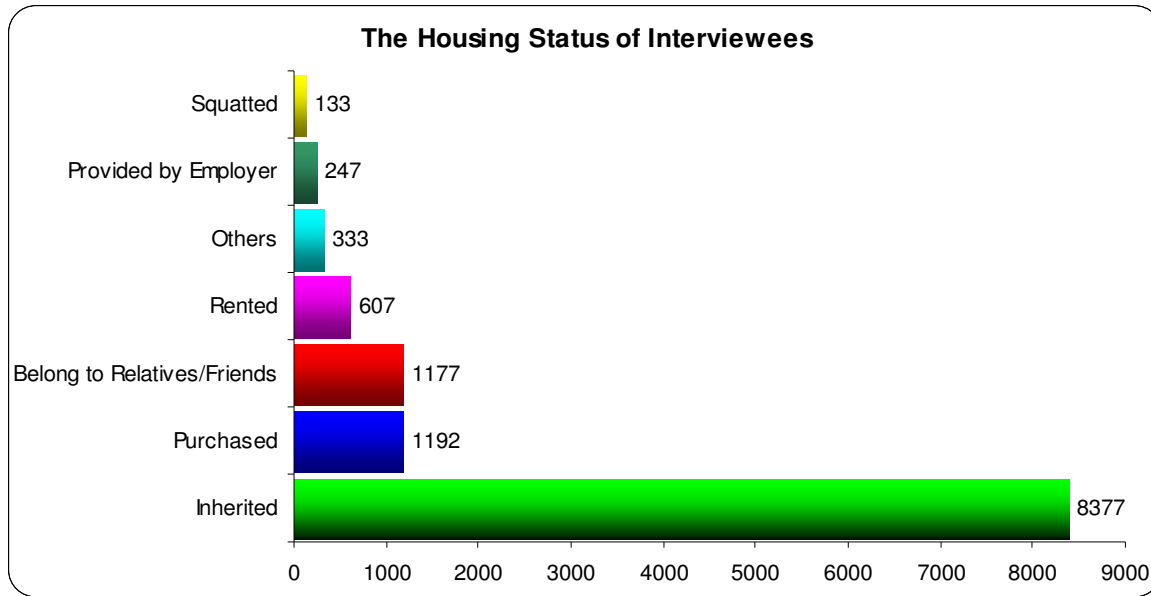
*“Shah Mahmoud states that a person has illegally occupied his lands for two years, while the occupied lands are his through inheritance from his father and that the occupier has no ownership documents. He complained to the Office of District Administrator to restore his rights, but the District Administer paid no attention to him. He approached the AIHRC so that it can follow up his case and restore his rights.”*

### **Land Allocation Scheme**

Ensuring an adequate standard of housing includes such issues as availability and quality of housing, the number of people living together, security of tenure, freedom from forced evictions, and sanitation. Achieving an adequate standard of living for the entire Afghan 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 programmes, none of them has been seriously implemented. Most housing projects are focused in Kabul and the largest government housing project, the Deh Sabz Town Project has been delayed. The Ministry of Urban Development and Kabul Municipality have been acting passively as far as the construction of private towns in Kabul is concerned. Few such towns are compatible with the master plan and other programmes of the Ministry of Urban Development and Kabul Municipality. Other towns are not compatible with government’s master plan and they, therefore, await an uncertain, opaque future.

It is very difficult to provide adequate housing for the poor and vulnerable groups, because land and housing prices have increased considerably in the previous years and even medium-income families cannot afford to provide adequate housing. This problem is more acute in cities as a result of massive refugee return and the soaring prices of housing and is not considered a crisis.

According to HRFM, 69.4% of interviewees stated that they lived in houses they inherited and 9.7% stated that they lived with their relatives/friends, 9.9% stated that they lived in houses bought by them, and 5% stated that they lived in rented houses.



In 2005, the Afghan government developed a Land Allocation Scheme (LAS) in order 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 remain vacant. Early on, concerns over corruption in land distribution process were expressed by beneficiaries, which undermined the process. A more serious concern is the lack of infrastructure and livelihood possibilities that have greatly reduced settlement level in these small towns. Most of these towns are located far from urban centres. The best example is Baricab Land Allocation Site built in 2006, which is located 35km away from Kabul, 10km from Bagram Air Base, and 15km from Charikar. This site does not have a flat topography and it is difficult for vulnerable people like older persons and persons with disabilities to access it<sup>110</sup>. The site has limited facilities and infrastructure with little capacity to provide livelihood options to the residents and that is why some families do not construct their homes. Most of these sites lack clean water and if they have roads, they lack electricity and if they have schools, they do not have hospitals. According to the Third Report on Economic and Social Rights, almost two-thirds of these land allocation sites lack health centres and all these sites, except Sheikh Mesri in Nangarhar province, do not have transportation systems that connect them with markets.

IDPs constitute a large category of vulnerable people who face housing problems. Unemployment, successive droughts, and continued war in southern and southwestern provinces have caused the displacement of thousands of families in urban centres and other provinces. There are about 235,000 IDPs, according to the Third Report on Economic and Social Rights. Most IDPs have gathered in one area and have built themselves shelters by plastic, stone, and mud. These areas lack infrastructure and basic

<sup>110</sup> AIHRC, Third Report on Economic and Social Rights in Afghanistan, p37

facilities and there are no livelihood options. Few IDP camps have clean water, primary schools, and healthcare centres.

## The Right to Food



The right to food means assurance that all people have dignified access to the food they need. States should increasingly employ their resources to reduce levels of hunger, food insecurity, and malnutrition. This right comprises four elements, which include availability, accessibility, adequacy, and sustainability. The concept of food availability means that food should be provided either directly from production or through distribution, processing, and market system. This right requires that food should be both physically and economically accessible, meaning that citizens should be able to easily access the food they need. On the other hand, the available food should have quality so that it can meet food needs and that food should be safe and culturally acceptable to all, with due consideration to their personal status, age, living conditions, job, and sex. This food should be available not only for the current generation, but for the generations to come also.

The right to food requires the government to help their citizens provide their food needs by creating a favourable economic, political, and social environment. Inadequate economic activity is not the only reason for hunger and malnutrition, but these issues in Afghanistan depend on the ability of farmers to produce adequate food and on the access



of people to livelihood options. In case farms have good agricultural produce, major problems can be solved and people can have access to food. This right is also related to Millennium Development Goal 1, eradication of extreme poverty and hunger.

Afghanistan has a high agricultural capacity and good water sources, and agricultural and economic experts believe that Afghanistan has a capacity high enough to exceed the limit of self-sufficiency in food and agricultural production. Afghanistan has 7.9 million hectares of arable land, of which only 3 million hectares are cultivated and about 5 million remain uncultivated<sup>111</sup>. Afghanistan uses merely 30% of its existing water sources. Reconstruction of irrigation system and investment on water sources can increase food production so that the remaining 5 million hectares of arable land can be used and on the other hand, harvest from irrigated land is at least twice that from rain-fed or non-irrigated land<sup>112</sup>.

The Ministry of Agriculture, Irrigation, and Animal Husbandry estimates that about 85% of Afghan people are farmers, though one needs to be sceptical about this figure given the population increase in urban areas. Sufficient investment is yet to be made in Afghan agriculture and water sources. Until the Paris Conference, the Afghan government and international community did not pay necessary attention to agricultural development and this was a mistake *per se*. Agricultural approaches in Afghanistan remain localized and outdated and have yet to be mechanised; there are no reserves or refrigerating rooms to sustain food items and fruit. Farmers are forced to urgently offer their products to markets and even sometimes Afghan fruit is sent to Pakistan, kept in Pakistani reserves for a while, and then exported to Afghanistan to be sold at a higher rate<sup>113</sup>.

1387 (2008/09) was a difficult year for agriculture. Drought dominated throughout Afghanistan and many domestic animals died. The Afghan government needed over 2.30 million metric tonnes of wheat to meet the needs of the people and at the same time, food prices increased. Although government and World Food Programme (WFP) assistance were able to help the needy to some extent by lowering and controlling food prices, prices still remained high<sup>114</sup>.

Another major problem in Afghanistan is the lack of economic power to purchase food items. Food items are available in most Afghan markets, but people do not have the necessary income to purchase their food in markets. This, of course, varies geographically. For example, in Central Highlands and Northeast, people not only lack economic power to purchase food items, but they also cannot physically access food items in these areas, because there is a limited quantity of food items there<sup>115</sup>.

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<sup>111</sup> Personal interview with Professional and Technical Deputy Minister of Agriculture, Irrigation, and Animal Husbandry

<sup>112</sup> AIHRC, Third Report on Economic and Social Rights, p. 14

<sup>113</sup> Personal interview with Professional and Technical Deputy Minister of Agriculture, Irrigation, and Animal Husbandry

<sup>114</sup> Ibid

<sup>115</sup> NRVA, 2005

Food security is a good indicator for poverty in Afghanistan, because food-insecure families were unable to provide themselves with adequate and nutritious food<sup>116</sup>. HRFM data shows that the majority of interviewees regard the creation of job opportunities as their top priority, followed by drinking water and food. As previously noted, employment and job opportunities fully depend on income levels and income too can be an indicator of poverty. HRFM findings reveal that 36% of all interviewees and 63.6% of those who work make a daily income of less than 50 Afghanis (approximately equivalent to US\$1), 19.2% make a daily income of over 50 Afghanis, and 44.8% either did not work or they were unwilling to answer this question, for their income may be illegal or they may have no income at all.

37% of vulnerable people made an income of less than 50 Afghanis per day and 22% made an income of over 50 Afghanis per day in the past year, which refers to a 1% decrease in the number of people who make less than 50 Afghanis per day, but in contrast there is a 3% decrease in the number of people who make a daily income of over 50 Afghanis. Most importantly, there is a 3.8% increase in the number of people who did not answer this question or were unemployed. These indicate that poverty is spreading in Afghanistan and people's income levels have been on the decline.

It is difficult to determine other indicators of poverty given the lack of systematic data<sup>117</sup>. Government official statistics say that 44% of Afghan families are food-insecure. As previously noted, about 35% of families cannot provide their daily caloric needs<sup>118</sup> and 61% of families have poor-quality food, taking into account the diversity of the food they eat.<sup>119</sup> A study on the situation of nutrition found out that over 6% of children under the age of five suffer from acute malnutrition (low ratio of weight to height) and 45-60% of children in the same age group suffer from chronic malnutrition (low ratio of weight to height)<sup>120</sup>. However, FAO data shows that there has been improvement in the situation of children with chronic malnutrition compared with previous years and that the percentage has fallen from 60 to 50%.

As indicated earlier, sustainability is a key element of the right to food. Since there has been no significant investment in agriculture in Afghanistan despite strong agricultural capacity in the country and since agricultural products fully depend on nature, there is no assurance of sustainability of the right to food. In a year with heavy rainfall and snowfall, agricultural production is satisfactory and it is not satisfactory in a year that experiences drought and not much rainfall. The Afghan government acknowledges it did not play its necessary role in addressing this issue and it was the increase in rainfall and snowfall that made 1388 (2009/10) a good agricultural year and not the government's performance.<sup>121</sup> Therefore, agriculture fully depends on natural and human factors; the latter have not

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<sup>116</sup> Personal interview with Dr Akbar Shahrestani, Food Security Officer, Food and Agriculture Organisation (FAO)

<sup>117</sup> AIHRC, Third Report on Economic and Social Rights

<sup>118</sup> Ibid

<sup>119</sup> Ibid

<sup>120</sup> Ibid

<sup>121</sup> Personal interview with Professional and Technical Deputy Minister of Agriculture, Irrigation, and Animal Husbandry

been effectively involved in agricultural development, making this sector a highly vulnerable one.

### **The Right to Water and Sanitation**



People need to have access to adequate, high-quality, and acceptable water to lead a life of health and dignity. Water sources should be adequately and continuously available for a person for such purposes as drinking, personal hygiene, washing, cooking, and family hygiene. Quality of water is also important and water should be free of any types of pollution and other dangers that threaten the health of people. In addition, water should be adequate and compatible with World Health Organisation (WHO) guidelines. Above all, water services and facilities should be made accessible for all, including the poorest and most isolated groups of people.

The Afghan government has pledged under ANDS to reduce by half the ratio of people with no access to healthy potable water by 2020; 50% of families in Kabul and 30% of families in other urban areas shall have access to tap water by 2012; 90% of people in villages shall have access to drinking water; and 50% of people shall have access to sanitation in villages.

Water supply projects are ongoing in the 34 provincial capital cities. The Directorate of Water Supply, responsible for urban water supply, has been able to provide healthy water

to an average 30% of urban dwellers. The Directorate noted that it previously produced 15,000 cubic metres of healthy water per day in Kabul and around 30,000 at the national level, but it has now raised this to the level of 120,000 cubic metres of healthy water.<sup>122</sup> Previously 65 to 70% of produced healthy water was wasted due to a limited water supply grid. Data indicates that the Directorate currently has the capacity to produce 160,000 cubic metres of healthy water.

According to an assessment by the Directorate of Water Supply, of all provinces, Herat (95%) has the highest level of access to healthy water and Kandahar and Mazar-e-Sharif have the lowest levels (less than 16%). Kabul has the gravest problem in ensuring the right to water. Given the congestion of population and lack of a sewage system in this city, the absolute majority of underground water sources are contaminated and unsafe. About 70% of interviewees do not have access to healthy water and use wells that are not safely covered. The open sewage system is extremely worrisome as it pollutes water wells.<sup>123</sup> HRFM data shows that 33.7% of people use unhealthy, unclean water.

The Directorate of Water Supply says it needs US\$750m to complete an urban water supply grid. Currently, a water supply grid exists in 17 major cities and only 30% of interviewees use tap water. But HRFM data shows that 7.5% of interviewees stand in queue for over an hour to get water. The Head of the Directorate criticized the government and international donors for their inattention to the development of a water supply grid and added that the Directorate faces an inadequate budget and low capacity.

It is difficult to access water in rural areas given the country's successive droughts. In HRFM, 23.9% of interviewees stated that there are not enough water wells, 4.4% stated that there are repeated water cuts, 3.5% stated that water wells are dry, 2.3% stated that water wells are destroyed, and 4.2% stated that well water is saline.

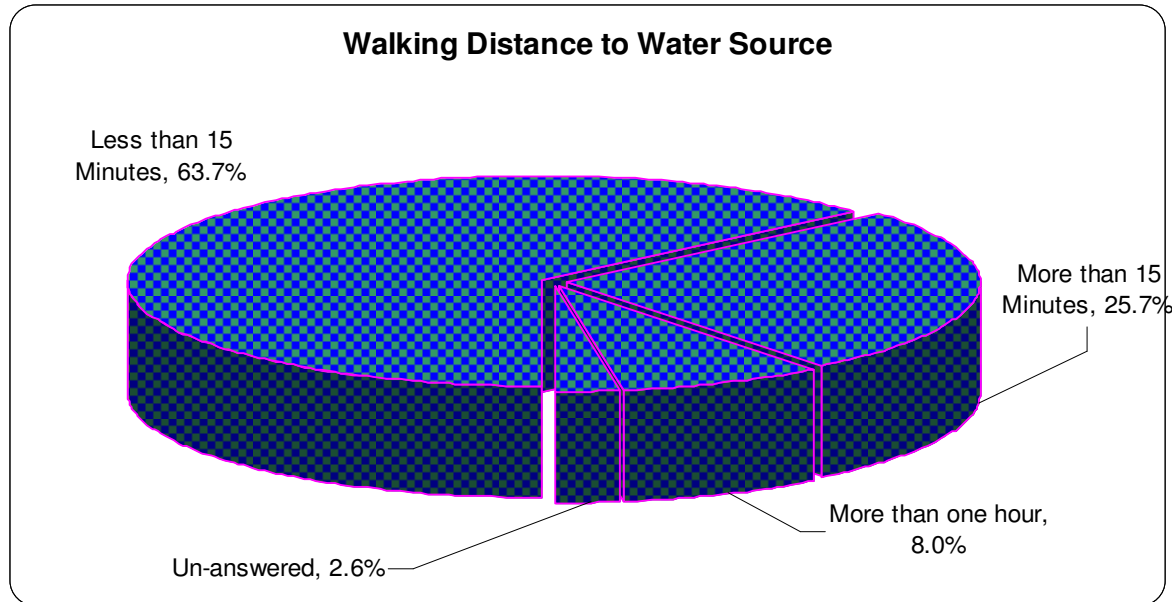
Rural dwellers are also suffering from the long distance of water sources. According to HRFM, 25.7% of interviewees stated they have to walk over 15 minutes one way to reach a usable water source, 8.0% (967 people) stated they have to walk over an hour one way to reach a usable water source. Although the Water Supply Department of MoRRD said it did not have accurate information in this respect, it also added that some people have to traverse a distance of around two hours one way to reach water sources.<sup>124</sup> In addition, HRFM found out that approximately 62.7% of interviewees have problems in providing water for family use and 2.3% stated that they had to buy water.

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<sup>122</sup> Interview with Najibullah Patan, Head, Directorate of Water Supply and Canalisation, June 22, 2009

<sup>123</sup> Ibid

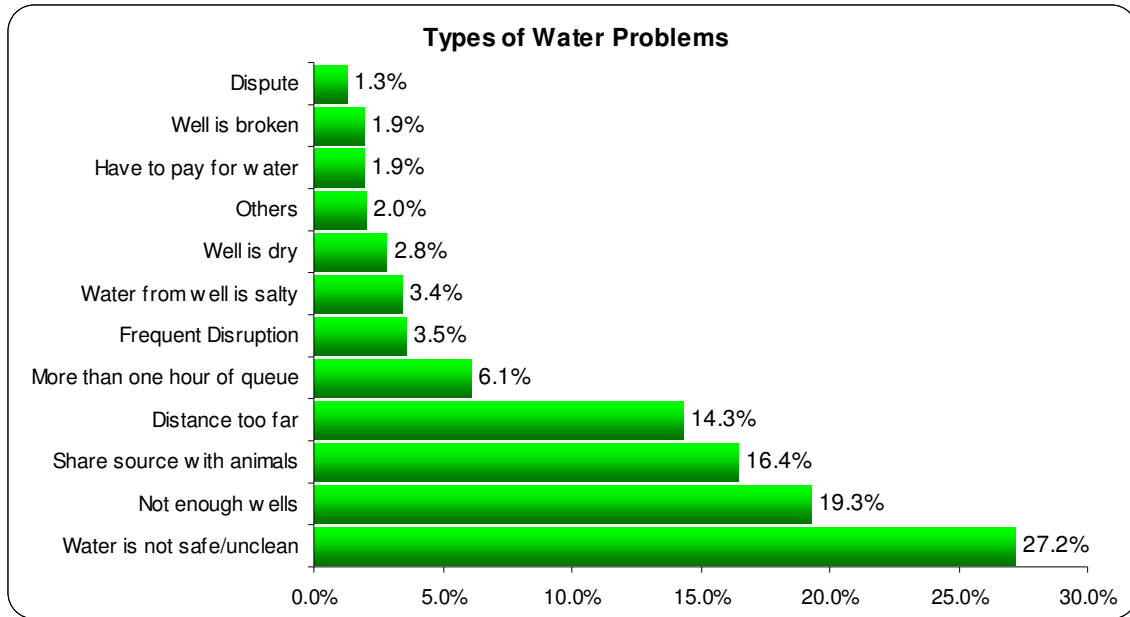
<sup>124</sup> Interview with Fahimullah Ziaee, Manager, Water Supply Project, MoRRD, August 15, 2009



Most water sources are open and there is no assurance on their safety. Open water sources are, especially in rural areas, used jointly by humans and animals. HRFM data shows that 20.4% of water sources are jointly used by humans and animals. The Department of Water Supply, Hygienic Education, and Environmental Sanitation of MoRRD has been able to dig 11,824 wells and 72 water supply grids in villages since 1381 (2002/03). According to the Head of the Department, so far 31% of rural people have access to healthy potable water and 90% of rural people are expected to have access to drinking water by 2013. Hygienic and sanitary education is important as most people lack such an education. The aforesaid department has been able to present awareness-raising programmes to only 1.4 million people since 1381 (2002/03), while Afghanistan is second after Sudan to have the highest number of cases of water-borne diarrhoea.

Water supply projects are administered by MoRRD and executed by the private sector. According to MoRRD's Department of Water Supply, Hygienic Education, and Environment Sanitation, insecurity, lack of coordination, a weak private sector, and long bureaucratic procedures are the main challenges facing the development of the country's water supply grid. Successive droughts have rendered many water wells built by the Directorate and other institutions dry and unusable. The Directorate said that assessment has begun, but it estimates that almost 30% of water wells have gone dry<sup>125</sup>.

<sup>125</sup> Interview with Atiqullah Khawasi, Head, Department of Water Supply, Hygienic Education, and Environment Sanitation, Ministry of Rural Development, August 15, 2009



Water supply projects, including projects to dig water wells, are implemented in consultation with village development councils, for these projects aim to bolster local ownership so that people safeguard these water sources themselves. Water wells dug in villages by village development councils and other institutions are not open and have hand pumps. MoRRD says chlorine has been poured into wells to treat water therein.

Vulnerable people, particularly Kuchis, returnees, and IDPs, face more challenges to access healthy water. HRFM data indicates that of all 382 Kuchis, 53% have access to open water sources and 47% to covered ones. Additionally, of all 201 returnees, about 47% have access to open water sources and around 53% to covered ones. IDPs have more problems in accessing healthy water. About 74% of IDPs have access to open water sources and around 26% to covered ones. There is no plan to solve this problem at the earliest, despite these manifold challenges. Open water sources are bearing grounds for water-borne child diseases and fatalities.

## The Right to the Highest Attainable Standard of Health



The right to the highest attainable standard of health means that all individuals should have an ever-increasing access to health services and facilities without distinction of any kind. This involves four dimensions, namely, physical accessibility, economic accessibility, informational accessibility, and non-discrimination. Health services, materials, and facilities should be physically and safely available for all, especially vulnerable categories of people and all persons should be able to afford such services, materials, and facilities. On one hand, people have the right to search for information on health-related issues and on the other, health services and facilities should be provided for all people without discrimination of any form. Another significant issue is the acceptability of health services and facilities, meaning that these should be compatible with people's mentality and culture and planned so that they will be accepted by the general public.

Article 12 of the ICESCR recognises that all people have the right to the highest attainable standard of health. Pursuant to international human rights instruments, health services should be provided cheaply and non-discriminatorily for all. Article 52 of the Afghan Constitution requires the government to provide the means for the prevention and cure of ailments and to render free health facilities for all citizens. Article 12 of the ICESCR also contains provisions for the reduction of stillbirth and infant mortality rates and for child's healthy growth and development. The Article stresses the improvement of public hygiene and prevention and treatment of pandemic, endemic, and other diseases so that governments are required to combat such health evils.<sup>126</sup>

The Afghanistan Compact of 2006 and the Afghanistan National Development Strategy (ANDS) endorsed by the president in 2008 both emphasise these commitments. According to ANDS, under-five and maternal mortality shall drop by 21 and 35% by 2012 respectively, and the basic healthcare package shall cover 90% of Afghanistan's population by 2010.

ANDS objectives are benevolent, but these are, according to some experts, very far-fetched and ambitious. Afghanistan's Millennium Development Goals (MDGs) set more clear-cut goals by 2020. The Health and Nutrition Sector Strategy has 2014 as its deadline for reaching its goals. According to the Strategy, by the year 1389 (2010/2011), 90% of Afghanistan's population shall have an easy access to health services and maternal and under-one and under-five mortality rates shall be down respectively by 15 and 20%; by the year 1393 (2014/2015), maternal mortality rate shall fall by 21%; and by the year 1389, national vaccination campaign shall cover over 90% of the entire Afghan population.

### **Access to Health Services**

Although health services are almost free of charge for all Afghan people, vulnerable segments of population encounter many problems since health services have poor quality or inadequate geographical coverage. That is why men's life expectancy is only 47 years and it is 45 for women—almost half of life expectancy in world's developed and wealthier countries.

The Afghan Government and its international partners always allude to the development of the health sector as one of their significant achievements in the past several years. The Government claims approximately 85% of all Afghan people presently have access to health services. Although HRFM findings reveal that such a claim is close to reality, health services nevertheless face several major challenges in Afghanistan. Poor-quality health services and facilities, long distances of health centres from remote districts, and growing insecurity are among these challenges. On the other hand, experienced and specialised doctors are unwilling to work in outlying areas for economic and geographical reasons.

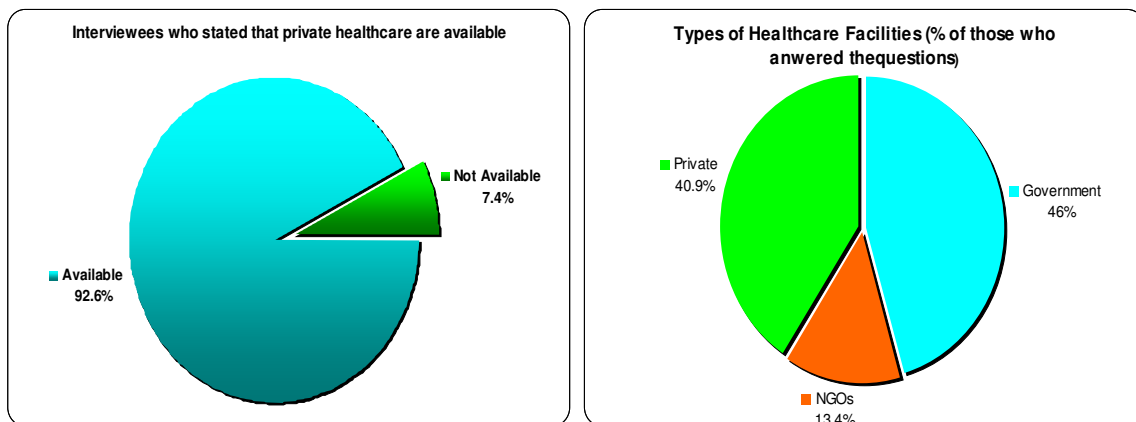
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<sup>126</sup> Article 12, ICESCR



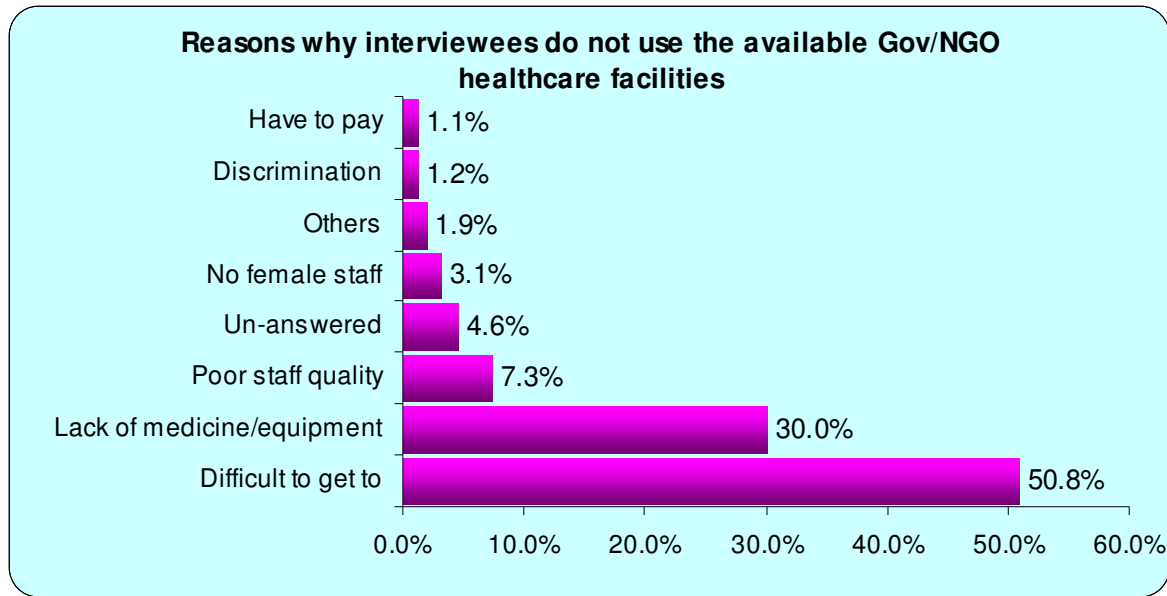
In HRFM, 92.4% of all interviewees said that state or NGO health services were available to them, around 7.4% said these services were unavailable to them, and 0.1% did not answer this question. At the same time, 56% of all interviewees stated that private health services were available to their families, around 30.2% said such services were unavailable for their families, and about 13.0% did not answer this question. If we add the percentage of people who responded that state or NGO health services were unavailable to them (7.4%) and the percentage of people who stated that private health services were unavailable to them (30.2%), we will have a percentage of 37.6%. Therefore, in aggregate terms, about 62.4% of interviewees have access to state or NGO or private health services, and around 37.6% of interviewees have no access to state or NGO or private health services. This figure stands in gross contrast to the claim made by the MoPH that 85% of all Afghans are covered by health services.

State or NGO health services are greater than private ones. In HRFM, 45.7% of interviewees stated they have access to state health services, 40.9% stated they have access to private health services, and 13.4% stated they have access to non-state health services.



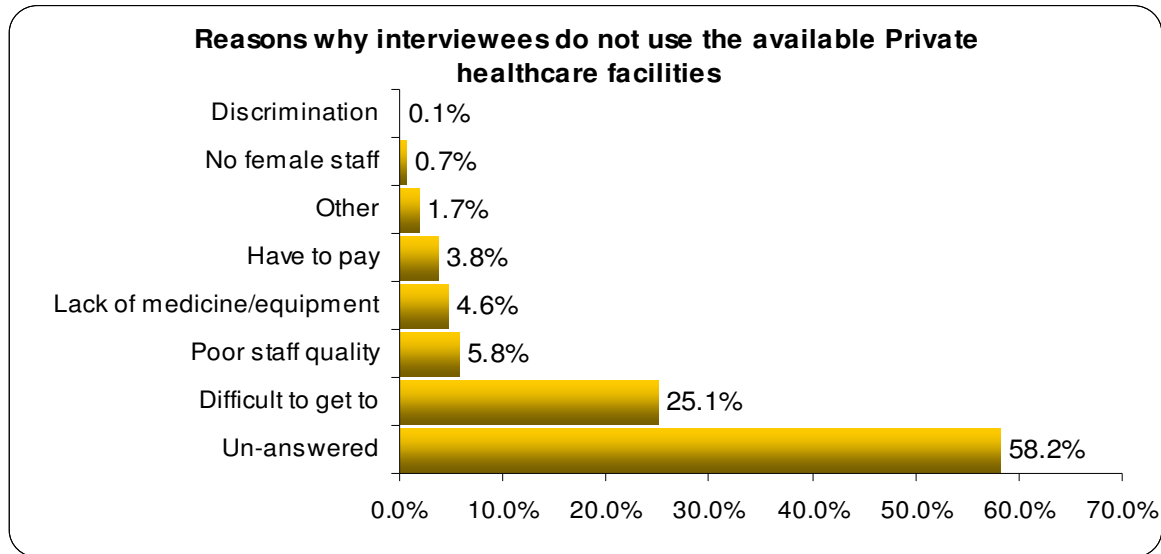
According to HRFM interviews, the number of hospitals is less than that of health centres and mobile clinics, indicating that health centres and mobile clinics offer around 75% of health services and the remaining services (25%) are rendered by hospitals.

As mentioned earlier, approximately 93% of people have access to state and non-state health services, but there are problems in the quality of their access to these services. These problems, according to HRFM, include long distances of centres, poor-quality medicine, poor facilities, and inexperienced personnel. Around 29.2% of interviewees said that they do not use state or NGO health services. Data shows that 61% of interviewees use state or NGO health services and around 8.4% did not answer this question. Accessibility is the most important factor for not using health facilities. The following figure presents these reasons.



Data shows that physical inaccessibility is the most significant reason why people are not able to access health services, both public and private. Long distances of health facilities make it very different for people in outlying districts to access them. Some interviewees stated that they are forced to pay a lot for transportation in order to reach health centres like hospitals and some use horses and donkeys to take their patients to health centres, spending several hours on the way to reach these centres. Health services offered by private institutions also have shortcomings and problems. HRFM data shows that around 8.6% of interviewees do not use private health services, around 47.1% use such services, and around 44.3% did not reply. Interviewees who do not use private health services provided the same responses as those who do not use state or NGO health services. Reasons why interviewees do not use private health services include inaccessibility, poor-quality medicine and equipment, and inexperienced personnel. Approximately 25.1% of interviewees do not use such services because of inaccessibility, 3.8% do not use because they have to pay money, 4.6% do not use because of poor-quality medicine and equipment, 5.8% do not use because health personnel are inexperienced, and 1.7% do not use because there are no female staff. Poor-quality medicine is a key shortcoming of health services in Afghanistan. This problem is more serious in rural areas and outlying districts, because the MoPH exerts less control there. The Ministry burnt around 3,525 items of outdated and non-standardised medicine amounting, in general, to 86 tonnes.<sup>127</sup> This shows the Ministry's monitoring of health services in the country and at the same time, it is indicative of a huge amount of outdated and non-standardised medicine in the health market.

<sup>127</sup> MoPH, government's report to people, 1387 (2008/09), p217



The foregoing shows that people have a problem of physical access to health centres, either private- or state- or NGO-sponsored and hence, there should be an increase in the number of health centres in different areas, especially in disadvantaged ones. Another problem is poor-quality medicine and equipment, and inexperienced and low-capacity health personnel, to which many interviewees referred. More efforts should be taken to raise the quality of health services.

A key component of the right to health is the acceptability of health services. Such services should be so provided that people do not feel alienated and to be ‘the other’. The presence of female midwives, nurses, and doctors is a must in hospitals and other health centres. In many areas, patients do not consult hospitals and clinics unless they are in a critical condition. This problem is more often seen among women, especially in areas where there are no women nurses and doctors. The government should train more women as birth attendants, midwives, nurses, and physicians. As part of government’s reporting to the electorate, MoPH said that hundreds of female health personnel were trained in 1387 (2008/09). The Ministry’s report says that 19,975 community health personnel were trained in 34 provinces in the previous year with 50.8% of them being men and 49.2% being women.

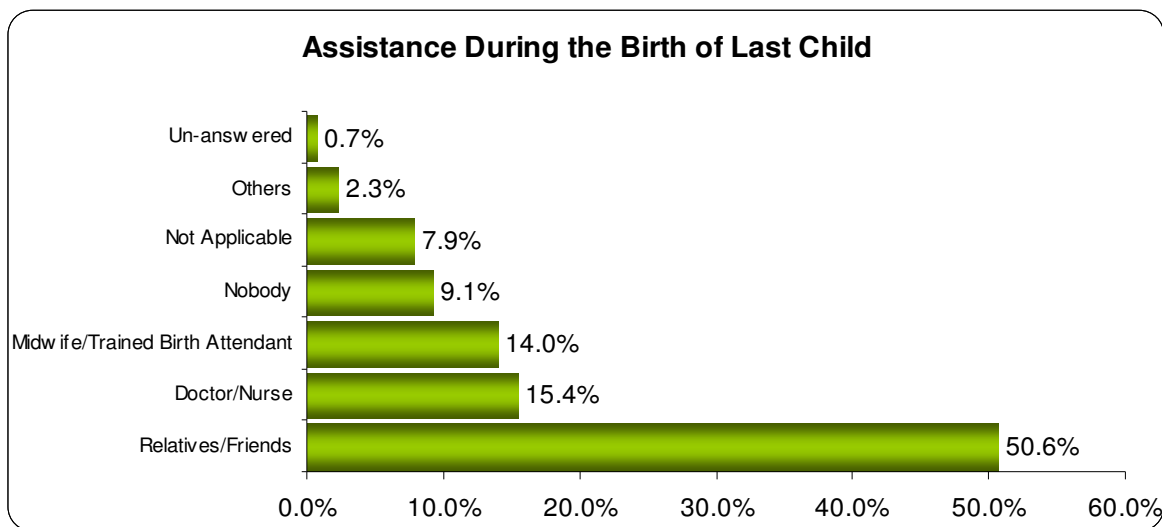
Infant mortality rate is 129 in every 1,000 live births, under-five child mortality rate is 191 in every 1,000 live births, and maternal mortality rate is 1,600 in every 100,000 live births, placing Afghanistan with the second highest maternal mortality rate in the world just after Sierra Leone<sup>128</sup>. Though efforts to raise parental awareness on child bearing and rearing have greatly contributed to the fall of under-five child mortality rate, the existing child mortality level is unacceptable. Under-five mortality rate in Afghanistan is caused by infectious factors and diarrhoea, acute respiratory infections, and vaccine-preventable diseases account for around 60% of mortality cases.

<sup>128</sup> MoPH 1387 (2008/09) report, <http://www.moph.gov.af/en/report.php?id=9>

HRFM data indicates that over 62% of women gave birth to their children without the support of professionally trained health personnel. Of 18 cases recorded by the AIHRC regarding violations of the right to health, 6 cases—roughly one-third—are related to women’s health. One should note that addressing women’s health without considering traditions and customs that deprive them of access to health services will not yield an effective result. Traditional practices and harmful customs are the main reasons why women are deprived of accessing health services, while 40% of basic health facilities lack female staff members<sup>129</sup>.

Interviews with 6,675 children as part of HRFM indicate that 16.9% of these children do not use hospitals, clinics, and other health facilities when they fall ill. The most significant reasons were long distance (43.9%), lack of medicine (13.2%), lack of women personnel (3.7%), and expensive services (8.8%)<sup>130</sup>. This is while pursuant to the Afghanistan Compact, primary healthcare should cover 90% of Afghanistan’s population by 2010, all under-five children should be vaccinated, and child mortality rate should drop by 20%.

Reduction in child and maternal mortality rate is an indicator of improvement in the delivery of health services. The majority of interviewees said that there was no doctor or birth attendant available to assist the delivery of their last child. HRFM found out that 50% of interviewees were assisted by their relatives and friends during the delivery of their last child. Around 15.4% of interviewees said doctors or nurses assisted the delivery of their last child, 14% said that traditional birth attendants or educated birth attendants assisted the delivery of their last child, 14% said that traditional birth attendants or educated birth attendants assisted the delivery of their last child. Similarly, 9.1% of interviewees stated that there was no one to help them when their last child was being born. The following figure presents the details.



<sup>129</sup> I-ANDS, Chapter 6, Gender Equality, Issues and Constraints, p4

<sup>130</sup> AIHRC, 1387 (2008/09) Report on the Situation of Human Rights

According to the annual report of MoPH, in the year 1387 (2008/09), there was an increase of around 5% in the number of trained birth attendants, who offered about 31% of birth-related services.<sup>131</sup> This figure is comparatively different from HRFM findings, for HRFM data shows that only 14% of interviewees were assisted by trained birth attendants during the delivery of their last child.

MoPH has considered two standards—distance and population—for building hospitals and clinics, which are rational and logical. But practice shows that the standard of distance has, to some extent, not been considered for the construction of health centres, because HRFM data indicates that about 50% of those who do not use state- or NGO-run health centres gave physical accessibility as the reason. To some degree, the Ministry has been successful in the construction of health centres. Of 312 planned clinics, 291 have been built and in addition, 54 mobile clinics have been established in 1387 (2008/09)<sup>132</sup>. Vaccination campaigns have also yielded successes, despite growing insecurity. Approximately four nationwide campaigns were launched to eradicate polio with each campaign targeting 7.5 million under-five children. Additionally, vitamin A capsule vaccination was launched targeting 6.8 million children aged between six months and five years. It is noteworthy that this programme was relatively implemented in insecure areas like Kandahar and Helmand<sup>133</sup>.

Growing insecurity has limited the delivery of health services. According to the Third Report on Economic and Social Rights covering the period from March 2007 to early 2008, health workers have been targeted by government opposition in southern and southeastern areas, as a result of which the government closed down around 36 health centres only in the first three months of 2008, depriving about 360,000 people of health services<sup>134</sup>. It is difficult to study whether this state of affairs has continued, because there is a lack of accurate information as a result of rising insecurity in 1387 (2008/09); but we can undoubtedly say that security situation has not improved and more health centres may have been shut down.

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<sup>131</sup> Annual report, MoPH, pp13 and 14

<sup>132</sup> MoPH, government's report to people, 1387 (2008/09), pp215

<sup>133</sup> Ibid

<sup>134</sup> AIHRC, Third Report on Economic and Social Rights, p43

## The Right to Education



It is obvious that education is the foundation for a society's bright future. Education is an unalienable right of human beings, especially children. Every child, girl and boy, has the right to education, according to Islam, national legislation, and international instruments. Children have a right to fair and equal access to education without any distinction on the basis of race, ethnicity, religion, language, geographical origin, social status, and so forth. Equality of educational opportunity is a society's basic requirement. The right to education has been enshrined in the ICESCR, which, under Article 13, stipulates that States parties recognize the right of everyone to education and that "primary education should be compulsory and available free for all"<sup>135</sup>. Article 28 of CRC stresses that States parties have a duty to provide compulsory and free primary education and equal access to secondary and high education for all children, and they should ensure that "school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention".

The Afghan Constitution requires that free education up to the undergraduate level will be provided by state-run educational institutions for all Afghans. It also obliges the Afghan government to develop balanced education throughout the country, to design and implement effective programmes to provide compulsory secondary education, and to ensure education in mother tongue languages wherever these tongues are spoken.

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<sup>135</sup> Full text of Article 13 of the ICESCR is available in the annex to the present research report.

Article 44 of the Afghan Constitution stipulates that, “The state shall devise and implement effective programmes to create and foster balanced education for women, improve education of nomads as well as eliminate illiteracy in the country”. Article 3 of Education Law further requires that, “The nationals of the Islamic Republic of Afghanistan shall have an equal right to education without any forms of discrimination”.

Afghanistan’s MDG 3 clarifies that education should be equally provided for all boys and girls and that they should complete primary education by 2020. Additionally, ANDS and the Afghanistan Compact have set significant benchmarks for the Afghan government to achieve universal primary education. According to the ANDS education benchmark: “By 20 March 2011: in line with Afghanistan’s MDGs, net enrolment in primary school for girls and boys will be at least 60% and 75% respectively; a new curriculum will be operational in all secondary schools; female teachers will be increased by 50%; 70% of Afghanistan’s teachers will have passed a competency test; and a system for assessing learning achievement such as a national testing system for students will be in place”.

### **Availability and Accessibility**

The Afghan government and donor countries regard increased number of schoolchildren as one of their most significant achievements. According to the MoE, around 832,000 children were added to the number of first-grade students enrolled in 1387 (2008/09), increasing the total number of public education students from 5.7m to 6.2m, 35.5% of which are girls. Despite these achievements, 46% of children (5,300,000 children) still lack access to education. This constitutes around 7% of all children not enrolled in schools throughout the world, which is a very high percentage given Afghanistan’s population<sup>136</sup>. Although the government has put the number of schools at approximately 11,000, 44% of these, including recently planned schools, still lack functional buildings<sup>137</sup>. Additionally, thousands of villages still lack easy access to schools<sup>138</sup>. Disproportionate school levels are a difficulty facing students who finish primary and secondary schools. There is no educational continuity in many parts of the country, meaning that the number of high schools is not proportionate to that of secondary ones and in turn the number of secondary schools is not proportionate to that of primary ones in many provinces. This causes many children to leave their studies unfinished against their will<sup>139</sup>.

According to HRFM, 94.2% of interviewees stated that education was available for their families up to the sixth grade and around 5% said that such education was not available, and 0.7% did not reply. The absolute majority of schools are run by the government or NGOs. A small number of girls and boys study in private schools or at home. Around 99.5% of boys and 91.4% of boys go to state- or NGO-run schools. Besides, 0.3% of

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<sup>136</sup> MoE, government’s report to people, 1387 (2008/09), p167

<sup>137</sup> Ibid, p168

<sup>138</sup> Current situation of education, MoE, [http://www.moe.gov.af/di/strategic\\_plans.htm](http://www.moe.gov.af/di/strategic_plans.htm)

<sup>139</sup> AIHRC, report on the situation of human rights in Afghanistan, 1387 (2008/09), p27

boys and 2.4% of girls study in a home setting and 5.7% of girls said there were no schools available for them.

Growing insecurity is a factor deterring children’s right to education. In 1387 (2008/09), a number of schools were burned by government opposition in different provinces and some were closed down in the wake of security threats. According to the MoE’s section of the government’s report to people, over 481 schools were closed down by 1387 (2008/09) and as a result, about 300,000 children were left out of school<sup>140</sup>. It should also be mentioned that about 170 schools were reopened in 1387 (2008/09) and as a result, 102,000 children went back to school; but the fact that 481 schools are still closed is gravely worrisome. One incident of insecurity was witnessed in Kandahar city in which a group of men threw acid on schoolgirls, not only reducing the number of students in schools in this province, but also terrifying and terrorising people in other provinces.

*“In Lal o Sarjungal district of Ghor province, there are schools in only one out of 48 villages (Qala Shahr village). Due to lack of space and facilities in this school, village authorities select by lot only one or two children from every village through and admit them to the school”.*

### Dropout and Attendance

Although there has been considerable progress made in the education sector during the past five years, boys’ enrolment in primary school is almost twice that of girls and boys’ enrolment in secondary school is three to four times that of girls. Gender is observed only in primary education in urban areas, but fewer girls than boys enrol in primary and secondary schools in rural areas. Beyond primary education, boys’ enrolment is even ten times that of girls<sup>141</sup>.

HRFM data indicates that only 66% of schoolboys and 54.3% of schoolgirls regularly attend school, while about half of girls and one-thirds of boys do not regularly attend school. In other words, 60.2% of students (girl and boy) maintain regular school attendance. Besides, 8.7% of boys and 8.5% of girls sometimes go to school and 1.1% of boys and 1.7% of girls seldom go to school. In addition, 16.5% of boys never go to school, 35.4% of interviewees did not comment on their girls going to school, and about 7.7% did not comment on their boys going to school.

Interviewees who said their first- to sixth-grade children go to school	Boys		Girls		All boys and girls	%
	Interviewees	%	Interviewees	%		
<b>Regularly</b>	7,968	66.0%	6,558	54.3%	14,526	60.2%
<b>Sometimes</b>	1,053	8.7%	1,028	8.5%	2,081	8.6%

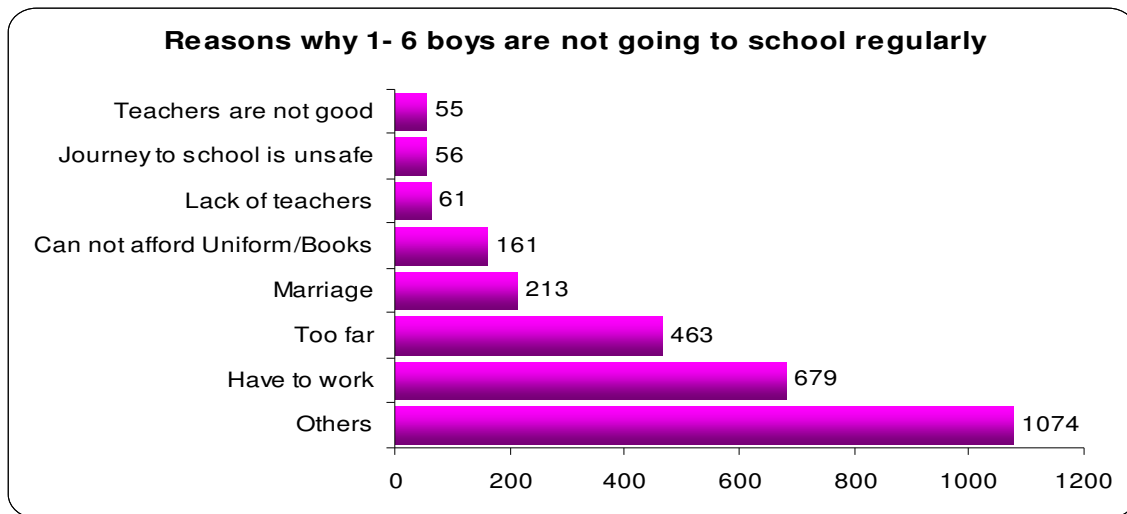
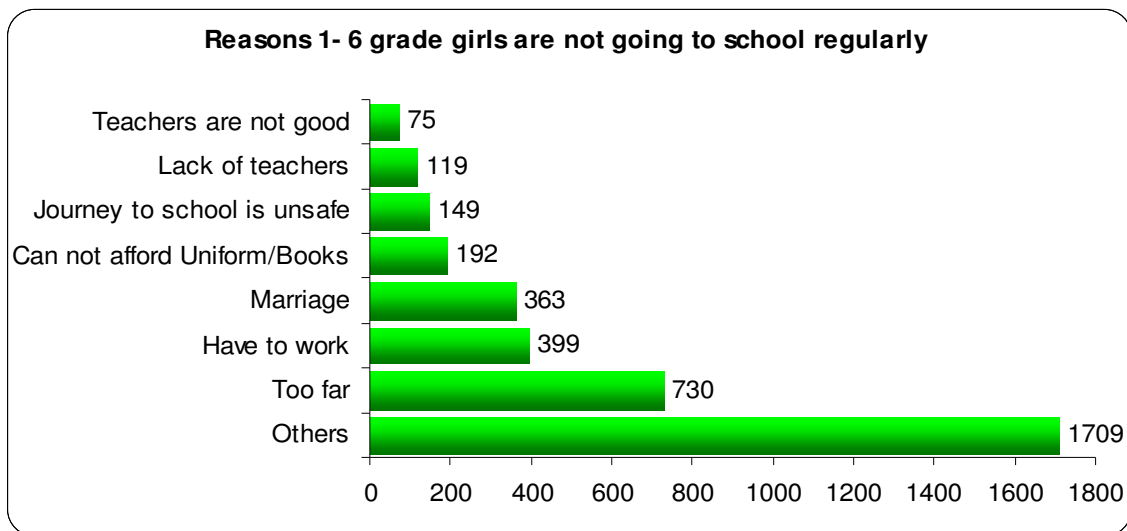
<sup>140</sup> MoE, government’s report to people, 1387 (2008/09), p168

<sup>141</sup> Education Sector Strategy, Policy Framework and Goals, Equity (2008-2013)



<b>Seldom</b>	130	1.1%	208	1.7%	338	1.4%
<b>Never</b>	1,994	16.5%	0	0.0%	1,994	8.3%
<b>Unanswered</b>	929	7.7%	4,280	35.4%	5,209	21.6%

Reasons for student irregular school attendance include poor quality of education, inadequate schools, distance, labour, and marriage. Labour and school distance were the first and second most significant reasons for student irregular school attendance. 23% of boys and 1.0.1% of girls do not regularly attend school because of child labour and 15.7% of boys and 18.4% of girls do not maintain regular school attendance due to long distances between home and school. These figures indicate that more boys do not regularly attend school because of child labour and more girls do not regularly attend school because of long distance. Long distance is more significant for rural boys and girls. The following figure presents the details of why first- to sixth-grade students do not regularly attend school.



According to the foregoing, child labour, long distances between home and school, and insecurity are the reasons why girls and boys do not go to school. The data shows that insecurity has affected girls' education more than that of boys. HRFM data shows that of all 38.5% of working children, 24% of them constitute the primary income sources of their families. It means that more boys than girls cannot go to school because of child labour. And more girls than boys do not go to school due to marriage and inadequate female teachers.

The number of girls in secondary schools significantly drops. According to a MoE report in 1387 (2008/09), 79,000 students graduated from twelfth grade with girls constituting a mere 26%. AIHRC findings are similar and indicate that 70.9% of girls drop out at sixth grade or above. There is a lower rate of dropout below sixth grade. Around 18.6% of boys and 29.1% of girls drop out before completing sixth grade.

There are no specific reasons why the number of girls drops in high school, but it seems that underage marriage is a main factor. In addition to the lack of girls' high schools, inadequate number of female teachers, household chores, long distances, insecurity, and unacceptable traditions are other reasons why the number of girls decreases in secondary and high schools. According to HRFM data, local people have cooperated in building two secondary schools for boys in Pasaband district of Ghor province, while there is no girls' school because of people's gender bias and government inaction. Moreover, efforts have not been taken to encourage girls' education.

### **Admission to Education: Gender and Minority Issues**

Approximately 60% of school-age girls are out of school.<sup>142</sup> This is due to the fact that there are less educational opportunities for girls than for boys and it is difficult for parents to allow their girls to walk a long distance to reach school. Other factors limiting girls' access to school include inadequacy or lack of female teacher in some areas. Some families do not allow their girls to study in boys' schools or in schools whose teachers are men or to walk a long, sometimes through insecure areas to reach schools. Some families prevent their girls from going to school for fear of harassment or rape in school or on the way to school. According to a MoE report in 1387 (2008/09), of all 158,000 teachers, only 28% are women. The majority of female teachers work in cities.

Gender is not the only, single factor obstructing the education of children, but disability too leads to the humiliation of and discrimination against children in schools. Presently, there is only one school within the government framework for the visually impaired, which is supported and managed by the MoE and it provides education for 150 visually impaired persons. Over 3,900 children with disabilities are educated informally by NGOs. According to HRFM, 2.6% of girls and 0.6% of boys have never had access to schooling and they cited disability as the reason. It is, hence, understood that Afghanistan

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<sup>142</sup> MoE, government's report to people, 1387 (2008/09), p168

has extremely limited educational facilities for children with disabilities and most of these children are therefore deprived of education<sup>143</sup>.

According to the National Education Strategic Plan, 6.6% of Kuchi boys and 1.8% of Kuchi girls go to school on an average basis. These children are likely to spend their time in school when they reside at warm areas in winter<sup>144</sup>. However, the National Education Strategic Plan aims to provide specially arranged formal education to at least 35% of Kuchi children by 1389 (2010/11)<sup>145</sup>. According to the MoE, there are currently around 70 schools for Kuchi children which lack professional teachers and other basic equipment. The Education Sector Strategy states that, “Schools for children with special needs are woefully lacking while those for Kuchi children are inadequate”. The Afghan Constitution, nevertheless, has required the state to design and implement effective programmes for improving Kuchi education<sup>146</sup>.

*“During interviews by human rights field monitors from Badakhshan provincial office with the residents of a village in Badakhshan province, three girls said that there was only one secondary school in the village. After completion of ninth grade, schoolboys have to walk approximately four hours to reach Shekarlab high school to continue their studies and schoolgirls are unable to ensure their educational continuity because there is no high school in the village and that the existing high school is very distant from the village they live in. So they can’t study beyond grade nine”.*

Afghan Hindu and Sikh children are among those with the least access to education. The MoE built a special primary school for Hindu and Sikh children in Ghazni province in 1387 (2008/09), which has a capacity of around 100 students at a time. The school curriculum is relevant to Hindu and Sikh traditions and religious values. Parts of the textbooks are in Hindi, and were prepared by Hindus and Sikhs themselves, according to their representative in Ghazni province. Other parts of the textbooks are in Dari, which was made available to students by the MoE<sup>147</sup>.

There is another primary school for Hindu and Sikh children in Jalalabad city, which became operational following an agreement reached between Save the Children-Sweden and the provincial Department of Education<sup>148</sup>. According to the school authority, “This school has no specific building; some students study in *daramsal* (Sikh place of worship) and some others study in a private house. Religious studies are offered in their language and the rest in Pashto”. The school authority also noted that there is no recreational and sport space in this school and students are harassed on their way to school, therefore requiring parents to accompany their children on their way to and from school. The other problem these children face is the lack of secondary and high schools. Once they

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<sup>143</sup> Children’s fair access to education in Afghanistan, children with disabilities, 1387 (2008/09), an AIHRC research

<sup>144</sup> Ibid, the section on Kuchis

<sup>145</sup> Ibid

<sup>146</sup> Ibid

<sup>147</sup> [http://www.bbc.co.uk/persian/afghanistan/story/2007/06/printable/070618\\_k-ram-hindus-school.shtml](http://www.bbc.co.uk/persian/afghanistan/story/2007/06/printable/070618_k-ram-hindus-school.shtml)

<sup>148</sup> Children’s fair access to education in Afghanistan, Hindus, 1387 (2008/09), an AIHRC research

graduate from primary school, there are no further educational opportunities available to them<sup>149</sup>.

Upon the request of Hindu and Sikh residents in Helmand province, the provincial Department of Education opened a special school for these children<sup>150</sup> despite the fact that the National Strategic Plan of Education (1385 (2006/07)-1389 (2010/11)) is silent about the education of Hindu and Sikh children. Presently there is no official policy in the government framework for the education of Afghan Hindu and Sikh children, while Article 43 of the Afghan Constitution has provided all Afghan nationals, Hindus and Sikhs included, with the right to free universal education.<sup>151</sup>

Gender imbalance and discrimination against minorities are still the main challenges to the right to education for all Afghan people, despite the rise in the number of students and schools and increased school enrolment levels.

The Afghan government's commitments and obligations under the Afghanistan Compact, MDGs, and ANDS as well as the approaching deadline for the implementation of such commitments and obligations indicate that the Afghan government has not been able to fulfil its commitments regarding the right to education and it will be very difficult for the government to fully adhere to its commitments in the limited time remaining.

Flexibility within the educational system is a key element of the right to education. The educational system should be so flexible that it can become compatible with societal requirements and respond to students' needs according to their culture and community. Afghanistan has its idiosyncratic culture and different regions have different customs and traditions. The Afghan educational system should also be regulated according to Afghan culture and needs. Schools are generally scattered and concentrated in urban areas. Most students have to walk to the greatest population concentration in order to reach their schools. In some areas, students have to walk over two hours to get to their schools—this is more common in villages. It is often unsafe and difficult to traverse this distance due to unfavourable weather, difficult-to-pass roads, and insecurity.

Poor quality of teaching is another key challenge facing the Afghan educational system. The MoE has so far printed and distributed around 61 million textbooks for public education and has arranged about 342 other subjects for primary and secondary education<sup>152</sup>. Educators are of the opinion that these textbooks have a poor quality, both physically and thematically. Additionally, most teachers are not professional. The MoE has claimed that ten undergraduate-level mentors were, for the first time, assigned to every district in 1387 (2008/09), and that around 50,000 teachers were trained on teaching methodology in 196 districts, and that similar training will be provided in the remaining districts in 1388 (2009/10).<sup>153</sup>

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<sup>149</sup> Ibid

<sup>150</sup> [http://www.wakht.com/latest\\_news/007227.php](http://www.wakht.com/latest_news/007227.php)

<sup>151</sup> Children's fair access to education in Afghanistan, Hindus, 1387 (2008/09), an AIHRC research

<sup>152</sup> MoE, government's report to people, 1387 (2008/09), p168

<sup>153</sup> Ibid

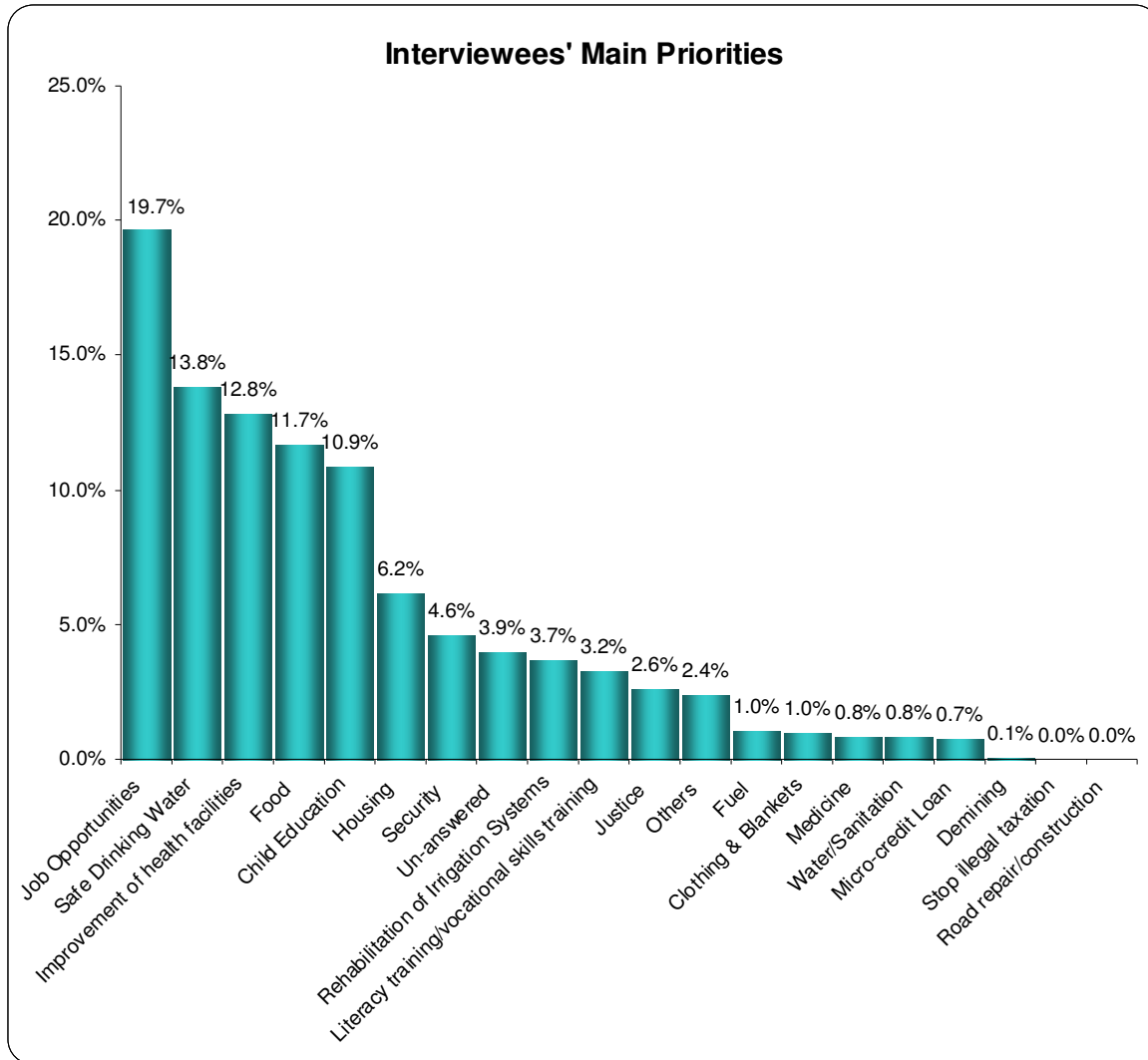
While the number of teachers has increased at the national level, it is teachers' merit and ability that play a vital role in improving the situation of education. Experienced and professional teachers will raise the quality of education as well as students' interest in and enthusiasm about education. Under the Afghanistan Compact, the government has a commitment to ensure that 70% of Afghanistan's teachers have passed a competency test by March 20, 2011. Though the government claims around 10,000 professional teachers have been employed across the country based on their merit in 1386 (2007/08), professional norms and standards are yet to be respected in schools in many parts of the country, because there are no teachers at all.

The MoE regards the lack of a budget and inadequate allocation as the main challenges in ensuring the right to education. The lack of a budget is the reason why school construction plans are not implemented and as a result, a significant number of schools do not have usable buildings. Teacher salary scales are also a problem affecting the quality of teaching. A serious controversy was raised in 1387 (2008/09) on non-payment or lack of teachers' salaries, which prompted teachers in some schools to go on strike. In addition to regular salaries, regional bonuses of 8,000 to 10,000 Afghanis are paid to teachers in 18 provinces where there is a lack of professional teachers. There has been a raise in teacher salary scale compared to that in last years, but the current rate is still insufficient given rising prices of food and other essential commodities in the market.

## **Main Priorities**

Gathering information on people's priorities is very helpful. The Afghan government and international donors should develop a better understanding of people's priorities in order to ensure effective implementation of their development and reconstruction programmes. HRFM findings indicate that employment creation, potable water, and health enhancement are respectively the main priorities for the interviewed families. These are followed by food and education. 19.7%, 13.8%, 12.8%, 11.7%, and 10.9% of interviewees cited employment creation, potable water, health enhancement, food, and education as their main priorities respectively.

Interviewees have prioritised their daily needs over such themes as security, justice, and reconstruction which is an indicator of how people are grappling with severe poverty. For many people, employment is the most important priority since unemployment and low income levels have adversely affected them and they are afraid of hunger and the consequences of the poor economic situation. Key priorities such as potable water, health improvement, and food are directly linked with their day-to-day lives. It is therefore necessary for the government of Afghanistan to prioritise employment creation and enhancement of people's living standard and take serious measures to achieve these goals.



The interviewees prioritised a better standard of living followed by security and justice. Of all interviewees, 4.6%, 2.6%, 3.2%, and 3.7% have respectively regarded security, justice, literacy or vocational training, and shelter as their families' main priorities. It is therefore possible to understand people's primary demands. While people are worried about their daily living and struggle against hunger and death, they place a greater priority upon livelihood options and job openings. After better standard of living and education, people need security and justice. Security is directly related to peaceful life and existence. It is clear that people's most primary demand is survival and freedom from poverty and illiteracy.

## Recommendations

Under the Afghan Constitution, ICESCR, ANDS and Afghanistan's MDGs, the Government should take a number of steps to realise the Covenant's obligations. The AIHRC presents the following recommendations to the Government, encompassing the implementation and reform of laws and policies, provision of basic social services, development of protection mechanisms and the realisation of specific socio-economic rights.

## General Recommendations

### Implementation of Laws and Policies

1. The Government should strengthen coordination and employ the necessary resources to ensure the implementation of economic and social rights contained in national laws, policies and strategies including ANDS.

### Legal Amendments

2. The State should amend and reform laws that are in contravention with the Afghan Constitution and international legal standards.
3. The State should amend the Family Law in order to ensure consistency in the marriageable age for boys and girls.
4. Marriage registration offices and family courts should be established in all Afghanistan's provinces and districts in order to protect families, prevent forced marriages and child marriages, and safeguard the integrity of marriage.
5. The Persons with Disabilities Law and the International Convention on the Rights of Persons with Disabilities should be ratified by the Afghan Government and approved by the National Assembly.

### Provision of Basic Social Services

6. The Government and international donors should consider the needs and priorities of the Afghan society and undertake increased efforts to maximum use of international assistance in order to bring about aid effectiveness.
7. The Government should increase its capacity and competency in order to effectively spend international aid and assistance through governmental institutions.
8. The Government should take the necessary measures to ensure reform and capacity building of institutions responsible for the provision of basis services.
9. The Government should take necessary and effective measures to eradicate corruption in governmental institutions and non-governmental organisations.
10. In order to ensure that development is based on a participatory principle, the Government should solicit the help of local *shuras* and *jirgas* to implement

- development and reconstruction projects, and ensure these local communities are better utilised for development purposes.
11. The Government should ensure access to birth registration centres for all Afghans and further regulate national ID issuance offices in order to prevent inaccuracies and irregularities.
  12. The Government should create employment opportunities and increase agricultural productivity by building water dams and by providing irrigation for more lands.
  13. The Government should, in cooperation with UNHCR, provide effective mechanisms for the voluntary and dignified repatriation of Afghan refugees from neighbouring countries. Repatriation policy should be so regulated that it permits returnees and IDPs to settle outside their original places of residence.

### **Development of Protection Mechanisms**

14. Effective programmes should be designed and implemented to ensure gender equality and women's access to all socio-economic services.
15. The government should develop better programmes to raise awareness on sexual harassment, traffic in person, and forced labour.
16. A long-term strategy should be adopted to address food insecurity. This strategy can include reconstruction programmes, rural infrastructure, investment in rural development, and food assistance for vulnerable persons.
17. The Government should adopt a rights-based and equal approach towards all vulnerable people and refrain from applying any form of discrimination.

### **Specific Recommendations**

#### **The Right to Work**

18. The Government should develop a clear-cut policy to stave off unemployment and create job opportunities. This policy should include the development of infrastructure, domestic resources, and a production-focused private sector.
19. To protect migrant workers, the Government should explore effective avenues to have their work recognised and strengthen bilateral ties with the government of Iran.
20. The Government should adopt a comprehensive strategy to prevent child labour and to protect children subjected to labour
21. Women's right to property should be protected and the Government should design and implement awareness-raising programmes to ensure that women's rights to work and remuneration are respected.
22. The Government should enhance people's living standard by creating jobs and providing livelihood options. Creating job opportunities should be at the top of Afghanistan's economic policy in order to reflect the public priority given to this area.



23. Vocational training should be provided by the MoLSAMD in order to further develop the skills of persons employed in informal economy.
24. Employment of women in governmental and non-governmental institutions should be prioritised in order to strengthen the working capacity of female employees, increase their employment rate and strengthen their economic situation.

### **The Right to Social Security**

25. Within an inclusive social security framework, the Government should identify and register all people entitled to social protection, including persons with disabilities, women- and children-headed families, children at risk, IDPs, older persons, and families with more than eight children, and a specific, practical mechanism should be designed and implemented in the framework of ANDS to assist such people.
26. The Government should provide protection for older persons who are unsupported and without adequate financial means and governmental institutions and appropriate accommodations should be built to ensure that older persons are able to fully enjoy their rights.
27. The Government should conduct awareness-raising programmes in order to inform women employees and employers about the right to maternity leave.

### **The Right to Marriage and Found a Family**

28. Marriage registration and usage of marriage certificates should be nationalised and made compulsory through the establishment of accessible registration offices.
29. Police should pay special attention to cases of domestic violence that lead to killings. Rigorous implementation of the Law on the Elimination of Violence against Women is required.
30. To protect the rights of women, harmful traditional and customary practices should be combated through large-scale media awareness-raising programmes, and local awareness-raising instruments should be used which in order to reach persons living in rural areas.
31. MoWA and civil society should work in cooperation with media and religious scholars to raise public awareness about the destructive outcomes of forced marriages, *bad* marriages, and *badal* marriages.
32. The Government should establish centres to counsel girls and women who are subjected to family violence and suppression who have run away from their homes to escape such violence and suppression.

### **The Right to an Adequate Standard of Living**

33. The Government should expedite the judicial reform process so that the justice system is trusted by the public and is able to resolve disputes, including disputes over property.

34. The Government should take special measures to stave off the housing crisis by implementing housing projects and formalising and strengthening the existing informal settlements.
35. The Government should undertake increased efforts to ensure security of tenure for returnees and IDPs and attention should be paid to the infrastructure construction of refugee settlement sites (potable water, electricity, roads, health services and schools).
36. The Government should design such a long-term strategy to address poverty and food insecurity based on Afghanistan's priorities.
37. In order to strengthen economic infrastructure and rural development as part of the overall economic development process, the Government should ensure people's access to safe potable water, fund water supply projects, and build the capacity of relevant authorities in this regard.

### **The Right to the Highest Attainable Standard of Health**

38. More local health personnel should be trained so as to respond to the health needs of vulnerable persons and rural communities, including by providing pre- and post-natal health care, both for mother and child. It is necessary to provide women with incentives so that more women are trained as doctors, nurses, and midwives.
39. The Government should adopt a balanced approach in considering distance and population density as the criteria for the construction of health centres.
40. The Government should increase its funding of health projects and pay special attention to the quality of medicine and health services and the capacity of health personnel.
41. The Ministry of Public Health (MoPH) should increase its health control and audit programmes in order to prevent the importation of low-quality medicine and non-standardised equipment.
42. The Government should conduct awareness-raising programmes on family planning to prevent unwanted births and provide necessary services in this respect.
43. The AIHRC urges all parties to the Afghan conflict to respect international humanitarian law (IHL) and protect all health personnel and locations, such as hospitals, clinics and health centres.

### **The Right to Education**

44. Educational services should be provided for disadvantaged and poor children by extending local education, especially for girls. It is necessary to pay special attention to the quality of education by developing an appropriate curriculum and teaching methods.
45. The Government should pay serious attention to educational development and take special measures to encourage increased girls' school enrolment. Training

- female teachers for secondary and high schools can be an effective solution in this regard.
46. The Government and its international partners should ensure a greater budgetary allocation for education.
  47. The majority of Afghan people are illiterate and more campaigns and longer-term programmes are needed to eradicate illiteracy in the country. To this end, the MoE should develop close collaboration with NGOs.
  48. The number of professional teachers and teacher training institutes should be increased in order to raise the quality of education. Private schools should also be reinforced and quality control programmes should be considered to monitor these schools.
  49. The MoE should increase the number of high schools proportionately with that of secondary schools, because many students are unable to ensure the continuity of their education because there are not enough high schools.
  50. The AIHRC strongly urges all parties to the Afghan conflict to respect IHL by not targeting schools and other public places and not obstructing children's access to education.