



Afghanistan Independent Human Rights Commission



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

**Economic and Social Rights in Afghanistan
May 2006**

Economic and Social Rights in Afghanistan

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1. Introduction

The purpose of this report is to provide a preliminary assessment of the Government of the Islamic Republic of Afghanistan's protection of selected economic and social rights, based on Afghanistan's national and international human rights commitments.

The foundation of economic and social rights is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Afghanistan ratified in 1983.¹ This Covenant provides details of the scope and content of a State Party's legal obligations in relation to the economic, social and cultural rights of their populations.² Other international treaties to which Afghanistan is a party also protect economic and social rights, such as the Convention on the Elimination of All Forms of Discrimination Against Women and the International Covenant on Civil and Political Rights (Section 1.3 below).

This report presents an analysis of data collected through systematic monitoring of the human rights situation (Human Rights Field Monitoring), by the Afghanistan Independent Human Rights Commission (AIHRC) and the United Nations High Commissioner for Refugees in 29 provinces throughout Afghanistan. The basis of the analysis is information collected on key indicators for economic and social rights, from almost 8,000 interviews conducted between April and December 2005. Using this information, the Afghanistan Independent Human Rights Commission is able to draw some preliminary conclusions and make recommendations to the Government and International Community towards improving their protection and realization of economic and social rights in Afghanistan.

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

The main issues covered in this report are:

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

Each issue covered is detailed in a separate section which includes an explanation of the indicators used, presentation of data, conclusions drawn, and relevant government obligations. Examples of potential violations of each right have also been included. These have been identified by the Human Rights Field Monitoring teams during interviews and are the subject of further follow-up by AIHRC.

This introduction outlines the mandate and role of AIHRC in terms of monitoring human rights in Afghanistan. The sources of the Government's national and international commitments to economic and social rights, under the ICESCR (Section 1.3 below) and under the Millennium Development Goals (Section 1.4 below) are also described.

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

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

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Section 2 outlines the methodology used for collecting information. Section 3 provides an overview of the demographic composition of the interview sample.

1.1 The mandate of the Afghanistan Independent Human Rights Commission

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

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

- The promotion and protection of human rights (Article 5);
- Monitoring the implementation of the Constitution and other laws as well as Afghanistan's commitment to human rights (Article 21, 2);
- Monitoring the performance of State authorities and NGO's regarding the equal distribution of services and welfare (Article 21, 4).

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

The role of national human rights institutions in monitoring economic and social rights has been recognised by the United Nations Economic and Social Council, in particular in conducting research to assess the extent to which these rights are being realised, either within the country as whole or for specific vulnerable groups.³

The Round Table of National Human Rights Institutions Implementing Economic, Social and Cultural Rights has emphasized the role of national human rights institutions in ensuring that economic, social and cultural rights are enforced and protected, and to ensure that the Millennium Development Goals process is consistent with state obligations under international human rights instruments.⁴

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

Afghanistan is a party to the following main international human rights instruments:

- International Covenant on Economic, Social and Cultural Rights (ICESCR) – ratified April 1983;
- International Covenant on Civil and Political Rights (ICCPR) – ratified April 1983;
- Convention Against Torture and other Cruel Inhuman or Degrading Treatment (CAT) – ratified June 1987;
- International Convention on the Elimination of all forms of Racial Discrimination (CERD)- ratified August 1987;
- Convention on the Rights of the Child (CRC) – ratified April 1994;

³ CESCR General Comment No. 10 (1998): The role of national human rights institutions in the protection of economic, social and cultural rights.

⁴ Statement by the Round Table of National Human Rights Institutions Implementing Economic, Social and Cultural Rights, 29 November to 01 December 2005, New Delhi, India.

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- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography – ratified October 2002;
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – ratified March 2003;
- Optional Protocol on the involvement of Children in Armed Conflict – ratified September 2003.

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

Article Seven

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

Article Six

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Increasingly, economic and social rights are being protected in this way, through domestic legal systems: The Supreme Court of India has set an important example by recognizing that the right to life includes the right to food and shelter (People's Union case¹⁰) and the right to healthcare (Paschim Banga case¹¹). By doing so, India has shown that economic and social rights can be enforced through domestic courts, and that they are inseparable from, and vital components of civil and political rights.

The 2004 Constitution of Afghanistan contains some provisions relating to economic and social rights such as the right to health (Article 51) and the right to education (Article 43 and 44), which means that these rights are directly enforceable in national courts.

By ratifying human rights treaties, the Government of Afghanistan has agreed to submit regular reports to treaty bodies, thereby subjecting themselves to a form of external monitoring and

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

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

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

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

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

¹¹ Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996). Supreme Court of India. For an online case summary:

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

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accountability. This includes submission of reports to the United Nations Committee on Economic, Social and Cultural Rights which is mandated to make an assessment of the implementation of the provisions of the ICESCR in Afghanistan.

1.4 Human rights and the Millennium Development Goals

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

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

Afghanistan is in the process of developing an Afghan National Development Strategy which is based on Afghanistan’s commitments to achieving the Millennium Development Goals (MDGs) by the year 2020.

As is shown in this report and described in Afghanistan’s Millennium Goals Report 2005, there is a close correlation between the Government’s obligation to protect human rights and to achieve the Millennium Development Goal targets, since many of the objectives coincide. For example, this can be seen through the Government’s overlapping responsibility under the Convention on the rights of the Child to reduce child mortality (Article 24), which is also the fourth Millennium Development Goal. Therefore, in recommending actions for the Government to take in response to improving the protection of key economic and social rights, this report draws on the recommendations and targets for achieving the Millennium Development Goals, as detailed in the Afghanistan 2005 report.¹²

In terms of future monitoring of economic and social rights, it can be seen that some of the indicators that have been used in Human Rights Field Monitoring are the same indicators that are used to measure progress relative to achievement of Afghanistan’s Millennium Development Goal targets. Therefore the systematic gathering of information on these indicators is vital for measuring changes and improvements over the next years.

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

¹² Afghanistan’s Second MDG Report (September 2005): Vision 2020.

2. Human Rights Field Monitoring methodology

2.1 Interview methodology

From April to December 2005 Human Rights Field Monitoring missions were conducted in the provinces of Afghanistan.¹³

Human Rights Field monitoring teams conducted interviews with woman and men in villages throughout the districts covered. Interviews were based on the same questionnaire which was designed to facilitate an assessment of the human rights situation by using specific indicators relating to selected economic and social rights – these are explained in detail in each section, below.

A total of 7,929 interviews were conducted: 38.2% of interviews (3,032) were with women and 61.8% of interviews (4,897) were with men.

2.2 Limitations of the interview sample

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

- Districts in which missions were conducted were chosen on the basis of criteria which included the following: Areas with previously-identified protection or human rights problems; areas of high return and recent return; areas with groups of particular concern; and areas in which a particular crisis or potential crisis affecting human rights arose. This means that the choice of locations was not random, but focused on interviewing groups who may be more vulnerable or at risk than the general population.
- Within the districts and villages monitored, individual and group interviewees were selected with the aim of including members of all ethnic groups and members of the population who are potentially vulnerable (minorities, potentially disadvantaged individuals, including women-headed households and elderly; returnees and IDPs).
- Although interviews were conducted in 164 districts in 29 provinces across Afghanistan, some provinces such as Uruzgan were not able to be accessed for security reasons. In other provinces, only certain districts or villages could be accessed.
- As shown below (Section 2.3), over 85 % of interviews were conducted in rural areas, therefore the data in this report is predominantly representative of rural populations and does not capture the situation of those living in urban areas, which are often of a different nature.

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

- During human rights field monitoring, when questions were answered by individual interviewees they were for the most part responding on behalf of their family. There are very few questions asked in the interview that directly referred to individual status. Therefore, although women represent 38.2% of persons interviewed, where they are answering on behalf of their family there is no differentiation of male and female responses.

¹³ See Annex I for a detailed breakdown of interviews conducted in each province.

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

3. Demographic breakdown

3.1 Interviews with women and men

As stated above, out of 7,929 interviews, 38.2% were with women (3,032) and 61.8% were with men (4,897). In Hilmand province, interviews with women constituted more than half the total number of interviews. In some provinces in the South East it was not possible to recruit female Human Rights Monitors to conduct field missions. The lack of interviews with women in these areas had the impact of decreasing the national proportion of interviews with women.

3.2 Geographical areas covered

Human Rights Field Monitoring missions were conducted in 29 provinces across the country, although not all districts in these provinces were visited (interviews were conducted in 164 districts in total). **Annex I** gives a detailed breakdown of the numbers of interviews in each province.

Human Rights Field Monitoring was not conducted in Badakhshan and North East provinces. In 2006 there will be a Human Rights Field Monitoring team based in the Badakhshan AIHRC office.

3.3 Interviews in rural and urban environments

85.0% of the total number of interviews (6,742) were conducted with persons living in rural areas, 15.0% of the total number of interviews (1,187) were conducted with persons living in urban areas. It can therefore be seen that the focus of the Human Rights Field Monitoring was on the population living in rural areas.

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Interviews in ‘urban’ areas are counted as those with persons living in one of the five main cities of Afghanistan – Mazar, Hirat, Jalalabad, Kandahar and Kabul. Any interviews conducted with persons living outside these cities (its *nahiyas*) are counted as ‘rural’.

3.4 Ethnicity and religion

The group of persons interviewed was comprised of individuals from many ethnic groups in Afghanistan (Pashtun, Tajik, Hazara, Uzbek, Turkmen, Baloch, Pashayee, Arab, Hindu-Sikh, Nuristani). Interviewees were from Shia, Sunni and minority religions.

3.5 Returnees

74.7% of the total number of interviewees (5,922) were returnees:

- 54.2% of returnees (3,209) were from Pakistan);
- 34.0% of returnees (2,012) were from Iran;
- 11.1% of returnees (658) were returned Internally Displaced Persons (previously displaced within Afghanistan);
- 0.7% of returnees (43 persons) were from countries outside the region.

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

3.6 Internally Displaced Persons

9.0% of interviewees (716) were Internally Displaced Persons (IDPs - persons who are currently displaced from their place of origin within Afghanistan).

Interviewees were recorded as IDPs based on self-identification, which usually refers to those persons who are not currently living in their place of origin and do not consider themselves to be locally integrated.¹⁴

3.7 Vulnerability

20.4% of interviewees (1,614) were identified as falling into one of several categories of potentially vulnerable groups:

- 7.8% of interviewees (618) were elderly heads of household;
- 6.9% of interviewees (550) were women heads of household;
- 2.7% of interviewees (217) were disabled heads of household .

¹⁴ See UN Guiding Principles on Internal Displacement for definition of IDPs (Para. 2): http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html

4. The right to an adequate standard of living

Indicators:

- (1) Type of household income
- (2) Number of families in debt (and average amount)
- (3) Main reasons for current displacement
- (4) Main obstacles to the reintegration of returnees
- (5) Number of families in which children under 15 years are working
- (6) Priorities for the future

The right to an adequate standard of living is the central right in the ICESCR and is comprised of several component rights such as the right to adequate housing (Section 6); the right to water (Section 7); the right to health (Section 8); and the right to adequate food (freedom from hunger). This section focuses on the right to adequate food as a key aspect of the right to an adequate standard of living, which is linked to the Millennium Development Goal 1 - To eradicate extreme poverty and hunger. In addition, a number of factors from other rights assessed in this study can contribute to an understanding of the situation of the right to an adequate standard of living,, therefore these are also listed as indicators.

4.1 Family income

According to Afghanistan's 2005 Millennium Development Goal report,¹⁵ indicators for poverty are difficult to ascertain, particularly in Afghanistan where there is a lack of basic data. Therefore the level of household food insecurity is currently used as an indicator. Food insecurity and the right to adequate food are also intrinsically linked to levels of household income. During Human Rights Field Monitoring interviews, the two main indicators used were the type of household income and the level of indebtedness amongst the families interviewed.

As the below graphic shows (**Fig 4.1**), the main source of family income amongst interviewees who answered the question (7,847) was farm labour (31.8%), whilst the second main income source was unskilled daily wage labour (19.0%). According to those interviewed, 28.6% of families have no regular income source (unstable income).¹⁶

Only 13.5% of interviewees (1,065) have stable income, either through employment (9.1%) or self-employment (4.4%). 2.2% of interviewees relied on begging or charity for their household income.

¹⁵ Afghanistan's Second MDG Report (September 2005): Vision 2020, page 13.

¹⁶ During this survey, farm labour was not considered to be a stable source of income, due to the fact that income from farm labour is dependent on seasons and times of harvest.

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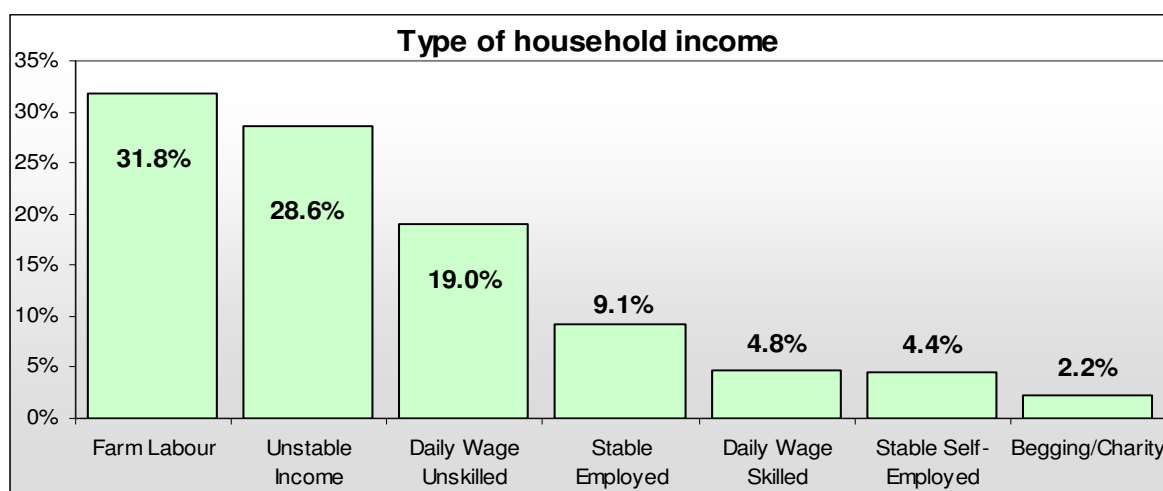


Fig. 4.1

4.2 Debt

63.5% of all interviewees (5,036) stated that their family was in debt. The average amount of debt owed by these families was approximately 57,750 Afs (equivalent to US\$ 1,155).¹⁷

According to Afghanistan's 2005 Millennium Development Goal Report,¹⁸ the average annual per capita income in Afghanistan is estimated to be below US\$ 200.

4.3 Current displacement (IDPs)

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

9.0% of all interviewees (716) are currently internally displaced (IDPs). Out of 702 IDPs who explained why they were displaced, over 70% gave reasons relating directly to the right to an adequate standard of living (lack of access to housing or land, lack of employment, and lack of access to water.) The main reasons given were lack of housing and employment.

20.9% of IDPs (147) are displaced for security reasons.

¹⁷ 50 Afs = 1 US\$ (aprox.).

¹⁸ Afghanistan's Second MDG Report (September 2005): Vision 2020, page 21.

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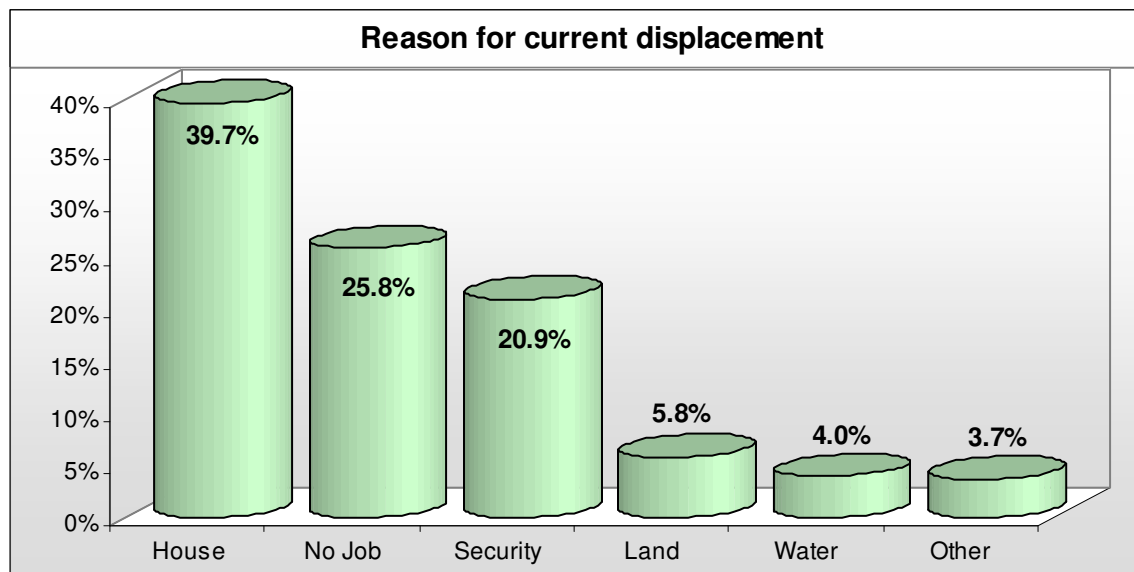


Fig. 4.2

4.4 Reintegration of returnees

Out of a total number of 5,922 returnees interviewed, 83.3% of returnees (4,931) said that they were happy that they had returned, whilst 16.7% of returnees (991) stated that they were unhappy that they had returned.

Out of 847 returnees who explained why they were unhappy (**Fig. 4.3**), over 90% gave reasons relating directly to the right to an adequate standard of living (lack of access to housing or land, lack of employment, and lack of access to water). The main reason given was lack of employment (48.4%) and housing (35.4%).

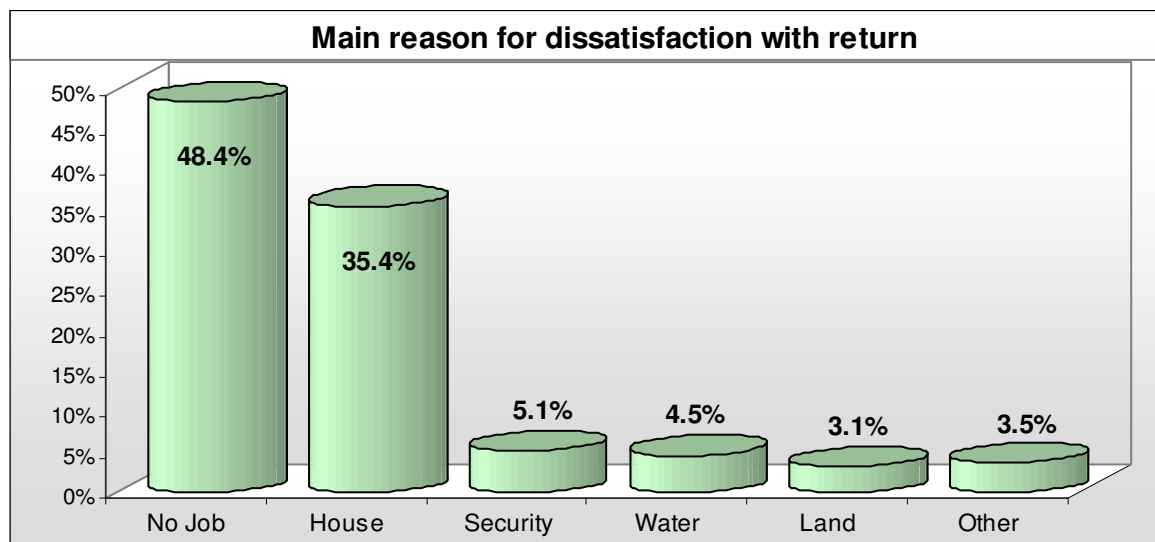


Fig. 4.3

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4.5 Conclusions

- As can be seen from the above results, which are consistent with the findings of the MDG report,¹⁹ the main source of income amongst interviewees was identified as farm labour (31.8%), with only 13.5 % of interviewees reporting a stable source of income.
- 63.5% of all interviewees stated that their household is in debt. The average amount of debt per family is US\$ 1,150, which is equivalent to 6 year's wages, if there is one wage-earner in the household.²⁰
- Among those interviewees who are currently internally displaced (9.0% of all interviewees are IDPs), a third are displaced because of lack of housing (39.7%) and a quarter because of a lack of job opportunities (25.8%).
- 16.7% of returnees are unhappy that they returned. The main reasons for their dissatisfaction correlate with the reasons why interviewees are displaced (above): nearly half because of lack of job opportunities (48.4%) and over a third because of lack of housing (35.4%).
- Child labour can also be linked to poverty and an adequate standard of living since it is understood that the more economically vulnerable a household is the higher the proportion of working children (under age 15), and the less likely it is that the household will be able to afford to educate their children. Section 5 shows that 48.8% of interviewees reported that at least one child in their family works and 19.4% of all interviewees said that most or all of the children in their family work.
- Poverty also is related to primary school attendance. Section 9 shows that out of those interviewees whose primary school-age children in their family are not attending school regularly, 14.5% gave the main reason that their family cannot afford it.
- Section 12 shows that interviewees list access to water (17.7%), job opportunities (17.6%), health care (15.8%) and housing (13.7% as their main priorities, above 'security' (4.0%) and 'justice' (3.4%).
- According to Afghanistan's 2005 Millennium Development Goal report,²¹ a total of 38% of rural households (or about 6 million rural Afghans) are estimated to face chronic or transient food shortages and therefore do not have access to adequate food on a constant basis.
- Many of the chronically food insecure households are female-headed, have disabled household members and large numbers of children, and live in remote rural areas with little or no access to irrigation, markets or other services.²²

4.6 Government obligations

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

¹⁹ The poor derive the majority of their income (45%–60%) from agriculture. (Afghanistan's Second MDG Report (September 2005): Vision 2020, page 22.)

²⁰ Annual per capita income estimate is US \$ 200. (Afghanistan's Second MDG Report (September 2005): Vision 2020.)

²¹ Afghanistan's Second MDG Report (September 2005): Vision 2020, page 23.

²² Afghanistan's Second MDG Report (September 2005): Vision 2020, page 21.

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The Committee on Economic, Social and Cultural Rights established that under the ICESCR: “Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.”²³

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

The responsibility of the Government under the ICESCR is consistent with the Millennium Development Goal 1 - to eradicate extreme poverty and hunger. Whilst baseline values for some indicators for measuring the achievement of this Goal are yet to be determined, it is clear from the data on the proportion of underweight children under 5 years of age (currently estimated to be 41%) that the Government has a long way to go in order to reduce this proportion to 15% by the year 2015.

The recommendation of Afghanistan’s 2005 Millennium Development Goal Report is that Government policies should target asset and employment creation for the most vulnerable in the rural areas. This will require micro-credit, education, and other policies.²⁴

Whilst eradication of poverty is linked to economic growth, the MDG Report recommendations also state that the Government must ensure that any economic growth increases the assets of the poor sufficiently for them to produce or purchase enough food and other basic goods to assure them food security and better nutrition:²⁵

“There is an immediate need to develop policies that will strengthen the capacity of the poor and the vulnerable to diversify their sources of income, making it possible for them to draw on a combination of farm and non-farm activities to move out of poverty and accumulate sustaining wealth.”²⁶

As well as the above recommendation to assist vulnerable groups to broaden their sources of income, it is important to that the Government protects existing income sources. In rural areas this is predominantly farm labour, therefore the Government has a responsibility to develop policies to protect the rights of tenant farmers, including against unlawful eviction by landlords and regulate a fairer division of the produce between tenant and landlord.²⁷

²³ CESCR General Comment no.12 (1999): The right to adequate food, Para.14.

²⁴ Afghanistan’s Second MDG Report (September 2005): Vision 2020, page 12.

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

²⁶ Afghanistan’s Second MDG Report (September 2005): Vision 2020, page 21.

²⁷ OHCHR Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies, Para. 97.

5. Child labour



Indicators:

- (1) Number of families in which children under 15 years are working
- (2) Proportion of children under 15 years in each family who are working
- (3) Number of families whose children are not attending primary school because they have to work

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

It is important to note that there is a distinction between a ‘child worker’ and a ‘child labourer’.²⁸ A child worker is broadly defined as a child who is ‘economically active’, meaning that the child is engaged in any work for pay, or unpaid work for the family. Child work in itself is not necessarily negative.

However, the negative aspects of child work are captured by using the definition of ‘child labourer’, which means that a child’s work is inconsistent with the principles of the Convention on the Rights of the Child (Article 32), protecting children from economic exploitation and from performing any work that would fall into one or more of the following categories:²⁹

²⁸ International Labour Organisation Report: Development of Indicators on Child Labour: <http://www.ilo.org/public/english/standards/ipec/simpoc/jensen/page4.htm>

²⁹ See ILO Convention 182 (1999) on the Worst Forms of Child Labour.

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

Therefore not all work that children undertake can be described as 'child labour'. Although these elements were not explored in detail in the 2005 Human Rights Field Monitoring, further in depth studies will be carried out in 2006.

5.1 Prevalence of child labour

48.8% of all interviewees (3,866) stated that at least one child under 15 years in their family is working.

Out of the total 3,814 interviewees who gave a response for how many children are working in their family (**Fig 5.1**), 59.6 of the interviewees (2,273) stated that less than half the children in their family are working (classified as 'some'); 37.2% of interviewees (1,420) said that 'most' of their children were working whilst 3.2% of interviewees (121) said that 'all' their children are working.

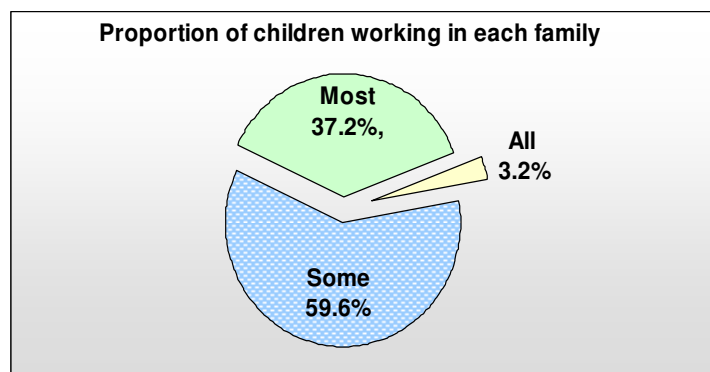


Fig 5.1

Examples of child labour:

In Farah province interviewees reported that children are working in opium fields.

In Karukh district of Hirat province and in Qala-i-Naw district of Badghis province, it was reported that children are working for more than 8 hours per day and are therefore not able to attend school.

In Nazian district of Nangarhar province it is reported that families have to send their children to work to earn money because of the low standard of living.

In Qalat district of Zabul province, two children under 14 in a family have to do construction work because of economic problems in their family.

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5.2 Conclusions

- Almost half of all interviewees (48.8%) have at least one working child in their family: 19.4 % of all interviewees said that most or all of the children in their family work.
- Although the interviews did not distinguish between children working in a family and ‘child labour’, the way that children’s work impacts on their right to education can be ascertained from Section 9; Out of those interviewees whose primary school-age children in their family are not attending school regularly, the main reason given for boys is that they have to work (36.6%), whilst it is the third main reason given for girls (12.1%).

5.3 Government obligations

The 2004 Constitution of Afghanistan prohibits forced labour for children (Article 49). The Convention on the Rights of the Child (CRC), which Afghanistan has ratified, sets out the right of the child to be protected from economic exploitation; and from any work that is likely:

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

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

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

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

Afghanistan is not a party to ILO conventions relating to child labour.

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



Indicators:

- (1) Main problems relating to tenure and housing conditions
- (2) Number of current disputes over property and main parties to the dispute
- (3) Number of families experiencing illegal taxation
- (4) Number of families with access to safe drinking water

6.1 House and land problems

The main indicators for the right to property and the right to adequate housing were the prevalence and type of problems experienced by interviewees, such as inability to pay the rent, overcrowding, occupation and disputes over ownership. These problems relate directly to issues relevant for assessment of the right to adequate housing; (*inter alia*) affordability, habitability and security of tenure.³⁰

46.5% of all interviewees (3,687) stated that they had some form of problem with their property whilst 53.5% of all interviewees (4,242) stated that they had no problems.

As can be seen from the graph below (**Fig. 6.1**), the main issues identified by those who stated they had problems (interviewees were able to list more than one problem) relate to the following aspects of the right to adequate housing:

³⁰ CESCR General Comment no 4 (1991): The right to adequate housing, para. 8.

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- **Habitability** – 40.6% of all interviewees (3,221): not enough space; damaged / destroyed or burnt;³¹
- **Security of tenure** – 10.1% of all interviewees (801): house / land occupied; multiple ownership claims; facing eviction; sold unauthorized; no documentation;
- **Affordability** – 9.9% of all interviewees (783): cannot pay the rent; have no house / land.³²

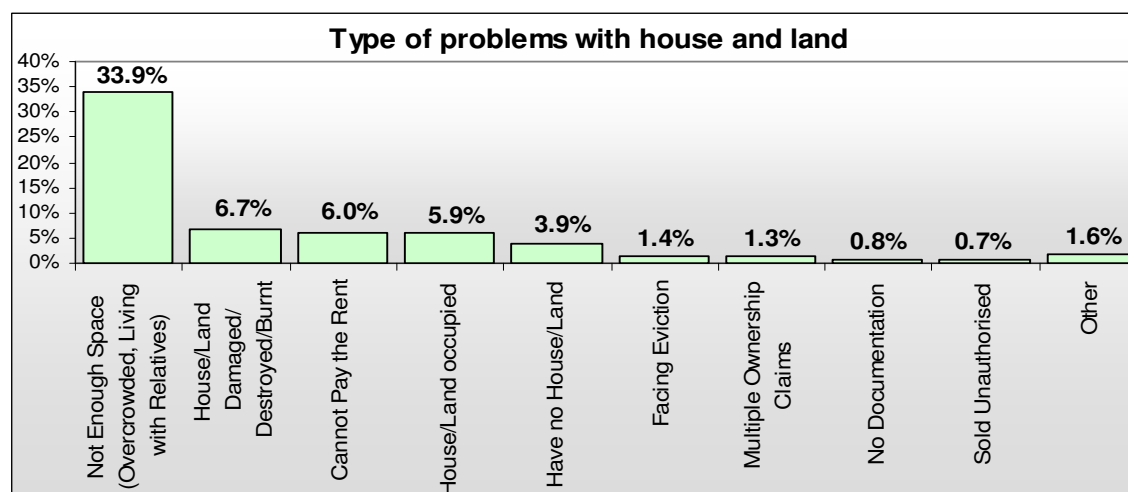


Fig 6.1

6.2 Persons involved in house / land disputes

Persons interviewed were from a range of groups including house and land-owners and families renting or squatting.

7.0% of all interviewees (558) said that they were in some form of dispute over their property. The main parties (**Fig. 6.2**) to the dispute are as follows:

- Unrelated person – 30.5% of interviewees (170);
- Family member – 27.8% of interviewees (155);
- Commander – 23.3% of interviewees (130);

³¹ Note that whilst the category of ‘damaged, destroyed or burnt’ includes both house and land, the majority of responses referred to housing.

³² Note that although the category is listed as ‘have no house or land’ the majority of responses referred to housing.

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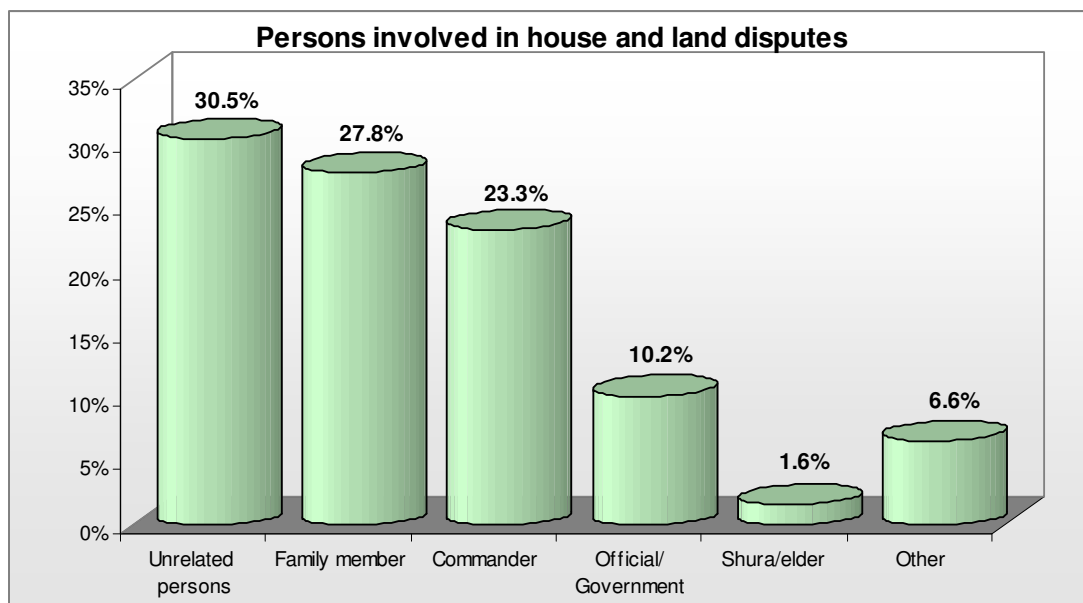


Fig. 6.2

Examples of potential violations of the right to property:

In Hisa district of Kapisa province a woman's land was occupied by her cousins who are members of a powerful political party in the area. The woman was threatened by them not to take the case to court.

In Ghorband district of Parwan province a widow reported that after her husband was killed by the Taliban she lives with her husband's family. Her father in law takes a portion of her harvest every year. The woman complained to the district governor, but no action has been taken yet. The woman and her children are beaten by her father-in-law and brother-in-law.

A local commander, together with the district governor, occupied the land of several families in Darzab district of Jawzjan province.

Four returnee families have their houses and land occupied by a local commander in Almar district of Faryab.

In Nangahar province a commander who has relations with government officials beat a man who refused to give his land to him and built a house on his land with the help of the police. The commander warned the man not to take his case to court otherwise his son would be kidnapped.

A government official confiscated 2 jeribs (4000 m²) of land in Taloqan district of Takhar province.

In Dand district of Kandahar province and Qalat district of Zabul province, interviewees reported that armed men are occupying their property. The police and courts do not solve the problem because of corruption.

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6.3 Illegal taxation

'Illegal tax' is defined as a financial contribution or moveable property which is demanded by government officials or illegal armed elements (commanders), over and above legitimate taxation, and which usually involves an element of coercion.

3.6% of all interviewees (287) stated that they had to pay illegal tax, the majority to commanders.

A total number of 432 persons (interviewees were able to list more than one consequence) gave answers relating to the consequences of failure to pay illegal tax, as follows:

- Beaten - 44.2% of interviewees (191);
- Detention / imprisonment – 28.2% of interviewees (122);
- Forced labour – 5.3% of interviewees (23).

Although interviewees were assured as to the confidentiality of information they shared, it can be considered that some interviewees were reluctant to report incidences of illegal taxation because of fear of reprisal.

Examples of illegal taxation:

People from Pashtoon Kot district in Faryab reported that they were severely beaten by local commanders when they refused to pay illegal tax to them.

Shopkeepers in Ashterlay district of Daikundi had to pay tax to officials ten times more than the due amount of money.

In Moqur district of Badghis province local authorities asked sheep-owners to provide them with 2 or 3 sheep per family. The villagers did not report this to the provincial authorities, because they were afraid of the district authorities.

In Chishti Sharif district of Hirat province, interviewees reported that they have to give winter wood or 100Afs per family each year to the local authority.

6.4 Conclusions

- Almost half the persons interviewed (46.5%) stated that they have some form of problem with their property (house and land).
- The main problems interviewees experience are the following key elements of the right to adequate housing: habitability, security of tenure and affordability. 33.9% of all interviewees stated that they were living in overcrowded housing.
- The level of disputes over property is related to security of tenure as an aspect of the right to adequate housing: 7.0% of all interviewees reported that they have a dispute over their property; a quarter of these report that the dispute is with a commander (23.3%) , whilst another quarter report that this is with a family member (27.8%).
- The availability of safe and healthy water is a key component of the right to adequate housing. As shown in Section 7, half of all interviewees (50.1%) do not use potable water in their household. A quarter of all interviewees (27.7%) stated that they use a water source which is also used by animals.

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- 3.6% of all interviewees said that they had to pay illegal tax, the majority to commanders. Among the interviewees who described the main consequence of the failure to pay illegal tax 44.2% reported that they would be beaten.

6.5 Government obligations

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

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

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

The ICCPR states that no one shall be subjected to arbitrary or unlawful interference with his, or her, privacy, family, home or correspondence (Article 17 (1)). The 2004 Constitution of Afghanistan recognises the right of every individual to the peaceful enjoyment of his or her property or possessions (Article 38 and 40). This provision therefore prohibits the practice of illegal taxation.

7. The right to water



Indicators:

- (1) Number of families who use a well as their source of drinking water
- (2) Number of families who have to walk more than one hour to collect water
- (3) Main problems relating to access to water
- (4) Type of disputes over water

Under the International Covenant on Economic, Social and Cultural Rights (Article 11) the right to water is essential to the right to an adequate standard of living and the right to health.³³ Safe drinking water is an intrinsic component of the right to water.

7.1 Water source

The indicators for the right to water focused on the main source of drinking water used by households and the walking distance to that water source. This relates directly to the quality and availability of drinking water.³⁴

It is assumed that water obtained from a non-well source cannot be described as potable and therefore indicates that the household does not have access to clean drinking water.

50.1% of interviewees (3,955) do not use a well as their source of drinking water.³⁵ This means that half of the interviewees do not use potable water for their household.

49.1% of interviewees (3,940) use a well as their main source of household drinking water.

7.2 Distance to water source

The walking distance to water source includes both well and non-well sources. Half of interviewees who answered the question (7,588) reported that they collect water from a source within 10 minutes walk of their house:

- Less than 10 minutes - 48.8% of interviewees (3,705);
- Under 1 hour – 41.6% of interviewees (3,151);
- More than 1 hour – 9.6% of interviewees (732).

7.3 Water problems

Interviewees were asked to describe their main problems in access to household water which relate directly to an assessment of the right to water, such as availability, quality, physical accessibility, and economic accessibility.³⁶

As can be seen from the graph below (**Fig. 7.1**), the main issues identified by those who stated they had problems (interviewees were able to list more than one problem) are the following aspects of the right to water:³⁷

³³ CESCR General Comment no 15 (2002): The right to water, Para 3.

³⁴ CESCR General Comment no 15 (2002): The right to water.

³⁵ Although the interview sample is 7,929 persons, the number of those who answered this question was 7,895 persons.

³⁶ CESCR General Comment no 15 (2002): The right to water.

³⁷ The different aspects of the right to water (availability, quality, accessibility etc.) are defined in CESCR General Comment no 15 (2002): The right to water.

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- **Availability** – 42.0% of all interviewees (3,335): not enough water; frequent disruption; hand pump not working;
- **Quality**
 - 32.7% of all interviewees (2,587): source shared with animals; unhealthy / salty water;
 - 50.1% of all interviewees (3,955) do not use potable water;
- **Physical accessibility**
 - 6.7% of all interviewees (530): queue more than 1 hour; security problems; distance too far;
 - 9.6% of interviewees (732) who indicated the walking distance to the water source reported that they have to walk more than one hour;
- **Economic accessibility** – 1.7% of all interviewees (135): cannot afford to pay for water.

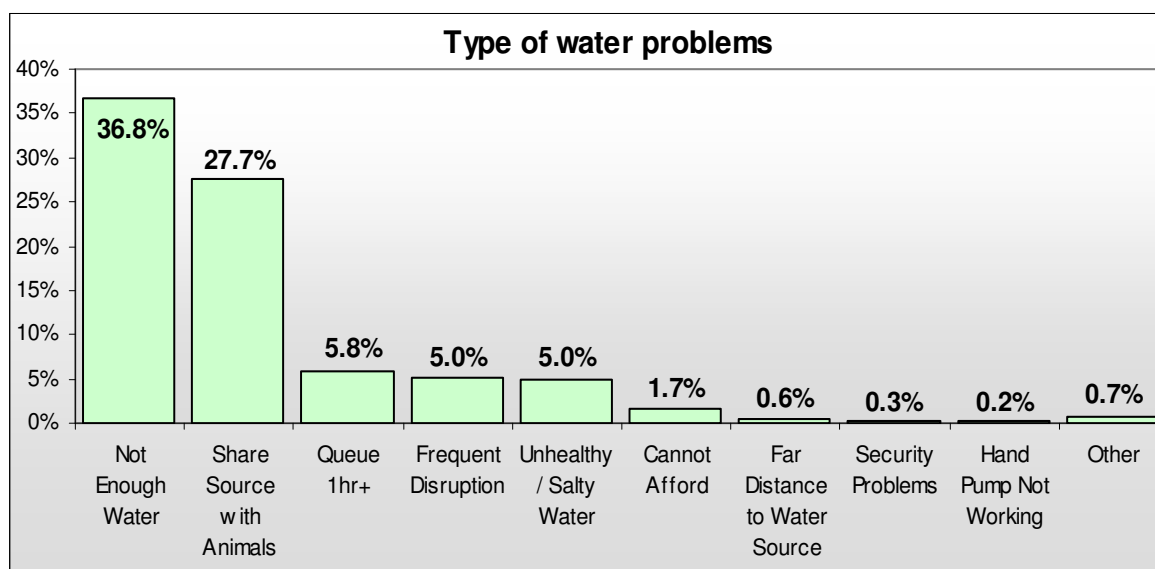


Fig. 7.1

7.4 Water disputes

6.3% of all interviewees (499) reported that they are currently engaged in a dispute over water. The main parties (**Fig. 7.2**) to the dispute are as follows:

- Another community - 46.7% of interviewees (233);
- Within the community – 44.3% of interviewees (221);
- Commander – 8.0% of interviewees (40).

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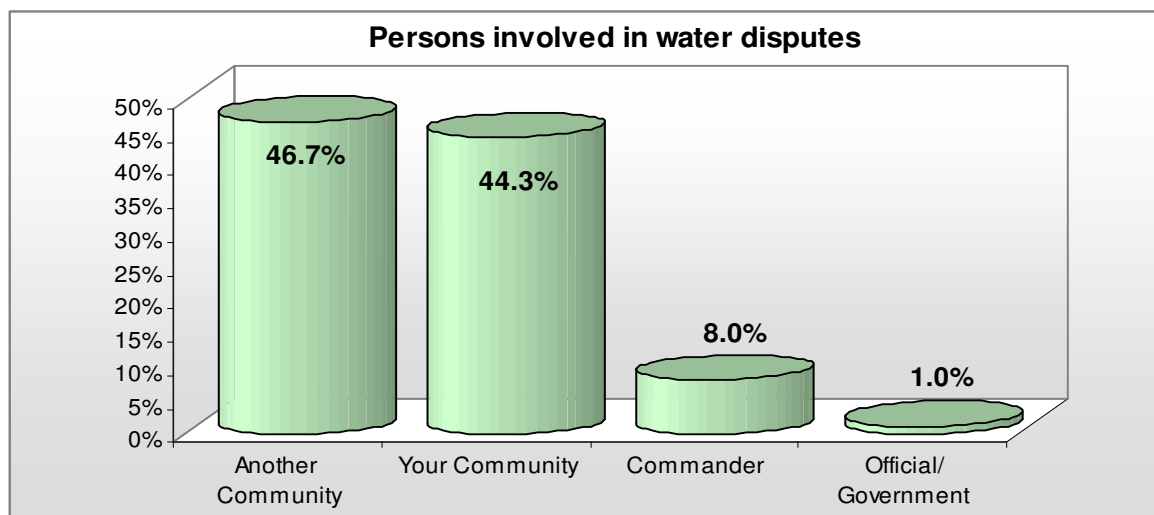


Fig 7.2

Examples of potential violations of the right to water:

In a village in Dand district of Kandahar province people use water from the stream for drinking water. This affects children and elderly members of the community and makes them ill.

In Batikot district of Nangahar province shallow wells have been provided by NGOs. However, because of the increased number of inhabitants, the needs of the whole community are not sufficiently covered. This means that some residents use stream/river water for drinking water which is located near their houses. This has reportedly caused water related diseases among the population, especially children.

In Bagram district of Kabul province, irrigation water has been diverted by a group from one village who do not allow the next village access to the water.

In Chamkani district of Pakiya province two persons reported that they are prevented from using a public well for drinking water because their place of origin is different from the rest of the village. Although they reported this to the local authorities, no action has yet been taken.

7.5 Conclusions

- The main problems interviewees experience are with the availability (42.0%) and quality (32.7%) of their drinking water:
- Half of all interviewees (50.1%) do not get their household water from a well, which means that the water cannot be described as safe for drinking purposes (potable).
- 9.6% of interviewees who indicated the walking distance to the water source have to walk for more than one hour. 41.6% of all interviewees had to walk more than 10 minutes to their nearest water source. The World Health Organisation sets the benchmark at under 15 minutes distance to each household's water source (30 minutes round trip).
- 27.7% of all interviewees use a water source which is also used by animals.

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- 6.3% of all interviewees are involved in a dispute over water; over half of these (46.7%) said this dispute is with another community.

7.6 Government obligations

According to General Comment 15 on the Right to Water, the Government has a minimum obligation to ensure that the quantity and quality of water available for each person should correspond to World Health Organization international guidelines.³⁸

Afghanistan's Millennium Development Target 13 is to halve, by 2020, the proportion of people without sustainable access to safe drinking water and sanitation. Currently the baseline value is estimated to be 77% of the population in Afghanistan without access to an 'improved water source'.³⁹

The Government has set a target of reducing the proportion of Afghans without sustainable access to an improved water source to 38.5% by the year 2020.⁴⁰

8. The right to health

Indicators:

- (1) Number of families for whom health care services are available**
- (2) Main reasons for not using health care services**
- (3) Number of families with access to safe drinking water**

8.1 Availability of health services

One of the indicators for the right to health is the availability of health services, i.e. whether the Government or private sources have provided medical services to interviewees. To some extent this response depends on a subjective assessment on the part of the interviewee, who, as can be seen in below Section 8.2, may describe health services as 'available', but at the same time state that they are too far away as a reason for not using them. Note that for the purposes of the questionnaire, 'health care services' were limited to clinics and hospitals.

75.4% of all interviewees (5,979) stated that health care facilities were available to them; 24.6% of all interviewees (1,950) stated that health care facilities were not available.

³⁸ See World Health Organisation Guidelines for Drinking Water Quality, 3rd Edition: http://www.who.int/water_sanitation_health/dwq/gdwq3/en/index.html

³⁹ The higher UNDP estimate for those without access to an 'improved water source' (77% of the population) than recorded through the Human Rights Field Monitoring (50.1%) can be attributed to the fact that the indicator used for this survey was access to a well, which includes both covered and uncovered wells. The UNDP 2005 Millennium Development Goal Report data does not include uncovered wells: According to UNDP, an 'improved' water source is one that is likely to provide 'safe' water, such as a household connection, borehole, public standpipe, protected dug well, protected spring, or through rainwater collection. However, this is not necessarily the case in Afghanistan. (Afghanistan's Second MDG Report (September 2005): Vision 2020, Footnote 89).

⁴⁰ Afghanistan's Second MDG Report (September 2005): Vision 2020, page 79.

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8.2 Reasons for not using health services

The reasons interviewees do not use health care services were identified and categorized in terms of the key elements of the right to health, such as: equal access, physical accessibility, economic accessibility, acceptability, quality and availability.⁴¹

Despite the fact that over 70% of interviewees stated that health care facilities were available (Section 8.1), 54.8% of all interviewees (4,343) reported that they do not use the existing facilities (Fig. 8.1).

The main interviewees gave for why they do not use health facilities are the following:

- **Physical accessibility** – 33.8% of all interviewees (2,683): difficult to get to;
- **Quality** – 10.0% of all interviewees (791): bad quality;
- **Economic accessibility** – 3.7% of all interviewees (290): inability to pay for services and medicines;
- **Acceptability** – 3.6% of all interviewees (287): no female staff;
- **Equal access** – 1.6% of all interviewees (125): discrimination;
- **Availability** – 24.6% of all interviewees (1,950): health facilities not available.

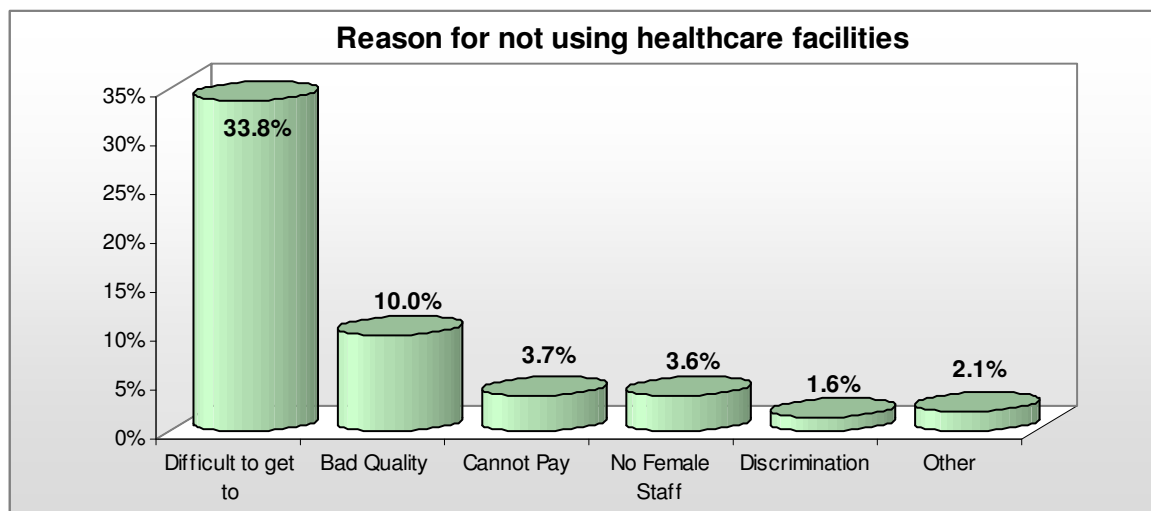


Fig 8.1

Examples of potential violations of the right to health:

In Enjil and Karukh districts of Hirat province interviewees reported that they have problems accessing the health clinic because it is located far from the villages and there are no female staff.

In Bakitkot district of Nangahar province a lack of health care facilities were reported – there is only one clinic run by an NGO. It is difficult for people from remote places to access the clinic. It was also observed that most of the inhabitants are very poor and can not afford the transportation

⁴¹ The different aspects of the right to health (availability, quality, accessibility, acceptability etc.) are defined in CESCR General Comment no.14 (2000): The right to the highest attainable standard of health.

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cost to transfer their patients to Ghanikhil hospital and / or Jalalabad hospital. The situation is even worse with regard to pregnant women. It was mentioned that at least 5 pregnant women die every year on their way to Ghanikhil or Jalalabad hospital to deliver.

In sub-districts 1, 2, and 3 of Kandahar city and Arghandab district of Kandahar province, people reported the lack of access to health care services because the fee for attending clinics is too high. A lack of government control over the condition and quality of the clinics was also reported.

8.3 Conclusions

- Although 75.4% of all interviewees state that health care services are ‘available’, 54.8% of all interviewees are not using these facilities.
- The main reason over half of all interviewees are not using health care services is because of problems with physical accessibility – a third of all interviewees (33.8%) said that existing facilities are too difficult to get to.
- Another main reason given for not using health care facilities is because of their quality - 10% of all interviewees consider them to be of poor quality.
- Half of all interviewees (50.1%) do not get their household water from a well, which means that the water cannot be described as safe for drinking purposes (potable).
- According to Afghanistan’s 2005 Millennium Development Goal Report, 60% of deaths amongst children under 5 years of age are preventable.⁴²
- Afghanistan’s 2005 Millennium Development Goal Report also documents that Afghanistan has one of the worlds’ highest maternal mortality ratios (1600 deaths per 100,000 live births). It is estimated that nearly 78% of maternal deaths can be prevented by increasing the proportion of births attended by skilled health personnel.⁴³

8.4 Government obligations

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

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

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

⁴² Most deaths among children under 5 years of age in Afghanistan result from infectious causes, with diarrhea, acute respiratory infections and vaccine-preventable illnesses accounting for nearly 60% of deaths. (Afghanistan’s Second MDG Report (September 2005): Vision 2020, page 46.

⁴³ Afghanistan’s Second MDG Report (September 2005): Vision 2020, page 55.

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

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

- The Millennium Development Goal Target 8 for Afghanistan is to reduce by 50% between 2003 and 2020, the under-5 mortality rate – the current baseline value is estimated to be 230 deaths of under-5 children per 1000 live births.
- The Millennium Development Goal Target 9 for Afghanistan is to reduce by 50%, between 2002 and 2020, the maternal mortality ratio – the current baseline value is estimated to be 1600 deaths per 100,000 live births.
- Under MDG 5: Improve Maternal Health, the Government has pledged to increase the number of births attended by skilled personnel in Afghanistan from 14.3% to 50% by 2020.

Achieving these targets will require significant investment in provision of health services which are available and accessible for women and children and prioritizing investment in health services in rural areas.

9. The right to education



Indicators

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

The indicators used in an assessment of the right to education relate to primary education (grades 1-6), as part of the core content of the right to education.

9.1 Availability of primary school education

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

84.8% of interviewees (6,723) stated that primary education facilities were available for their **girl** children; 91.9% of interviewees (7,286), stated that primary education facilities were available for their **boy** children.

The graph below (**Fig. 9.1**) shows which type of primary education was available. It can be seen that over 90% of education facilities are provided by Government and NGOs.

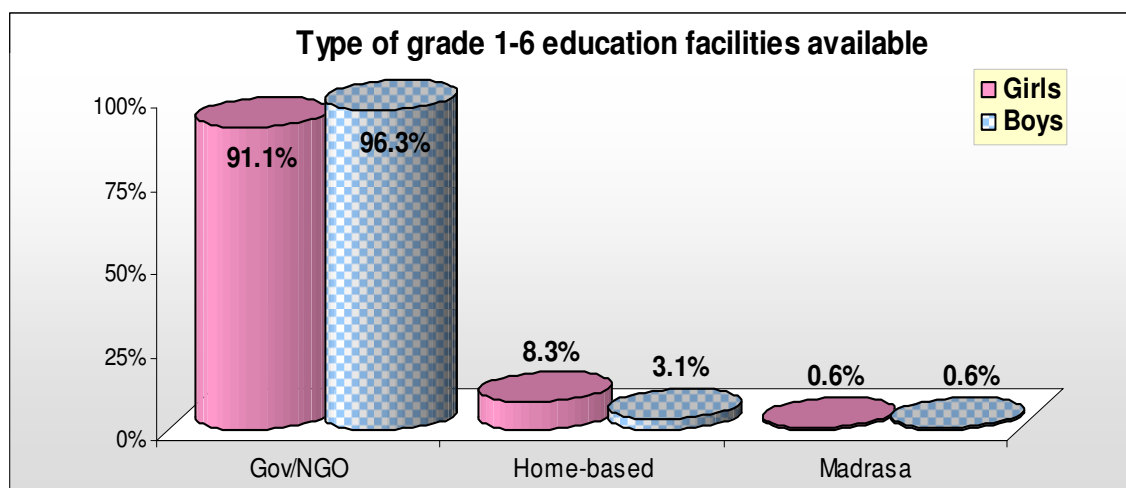


Fig. 9.1

9.2 Primary school attendance

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

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Despite the fact that over 90% of interviewees stated that education facilities were available (Section 9.1) only 56.3% of interviewees (4,467) said that all their primary school-age children are attending school regularly.

43.7% of families interviewed (3,462) reported that not all primary school-age children in their family are attending school regularly.

9.3 Reasons for not attending primary school

The main reasons why girls and boys do not attend primary school were identified during interviews and relate directly to the main aspects of the right to education, such as equal access, physical accessibility and economic accessibility.⁴⁴ Child labour and child marriage also influence primary school attendance.

Although 3,462 persons stated that their children were not attending school regularly, **2,888** persons explained why their boys and girls were not attending school regularly (**Fig. 9.2**). As shown in the graph below (**Fig. 9.2**) the main reason given by interviewees to explain why their school-age children were not attending primary school regularly differed in priority for girl's attendance and boy's attendance.⁴⁵

56.2% (1,624) gave reasons why their **girls** were not attending school regularly. The following main reasons were given (percentages are calculated from the number of interviewees who gave reasons for girls i.e. 1,624):

- **Physical accessibility** – 51.6% of interviewees (838): distance too far; worried about security;
- **Child labour** – 12.1% of interviewees (197): have to work;
- **Economic accessibility** – 10.1% of interviewees (164): too poor;
- **Child marriage** – 3.7% of interviewees (60): marriage.

43.8 % (1,264) gave reasons why their **boys** are not attending school regularly. The following main reasons were given (percentages are calculated from number of interviewees who gave reasons for boys i.e. 1,264):

- **Child labour** – 36.6% of interviewees (462): have to work;
- **Physical accessibility** – 32.5% of interviewees (411): distance too far; worried about security;
- **Economic accessibility** – 20.1% of interviewees (25): too poor.

⁴⁴ CESCR General Comment No 13 (1999): The right to education.

⁴⁵ The different aspects of the right to education (availability, physical accessibility etc.) are defined in CESCR General Comment No 13 (1999): The right to education.

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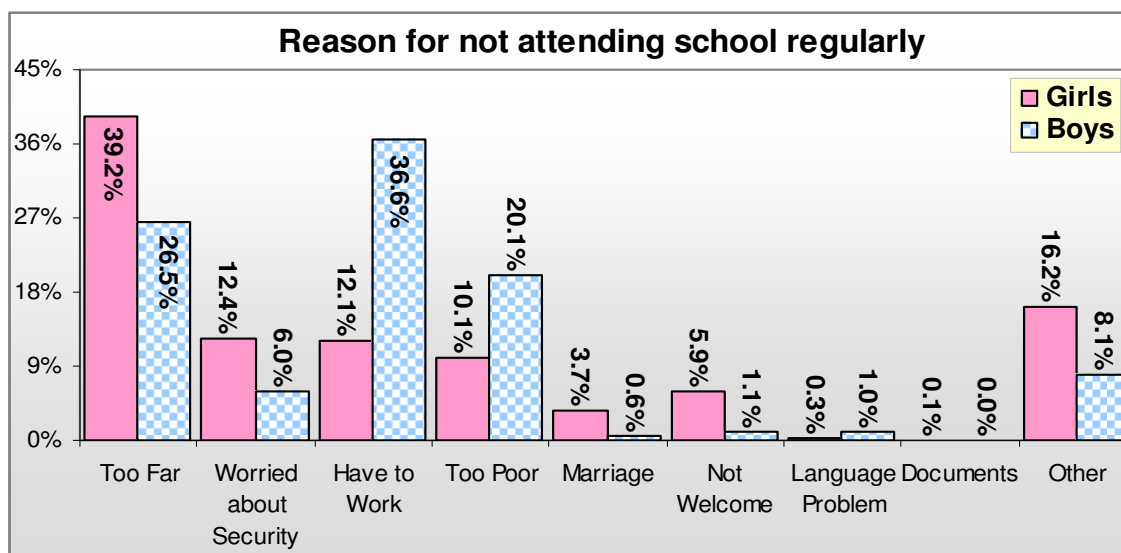


Fig. 9.2

9.4 Primary school completion rate

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

Out of the **6,252** interviewees who answered the question relating to which age their **girl** children leave school: 44.8% stated that this was before grade 6, compared to 55.2% who stated that this was after grade 6.

Out of the **6,725** interviewees who answered the question relating to which age their **boy** children leave school: 10.3% stated that this was before grade 6, compared to 89.7% who stated that this is after grade 6.

As shown in **Fig 9.3**, this means that 55.2% of girls who start primary school actually complete their primary education compared with 89.7% of boys who start primary school and finish their primary education.

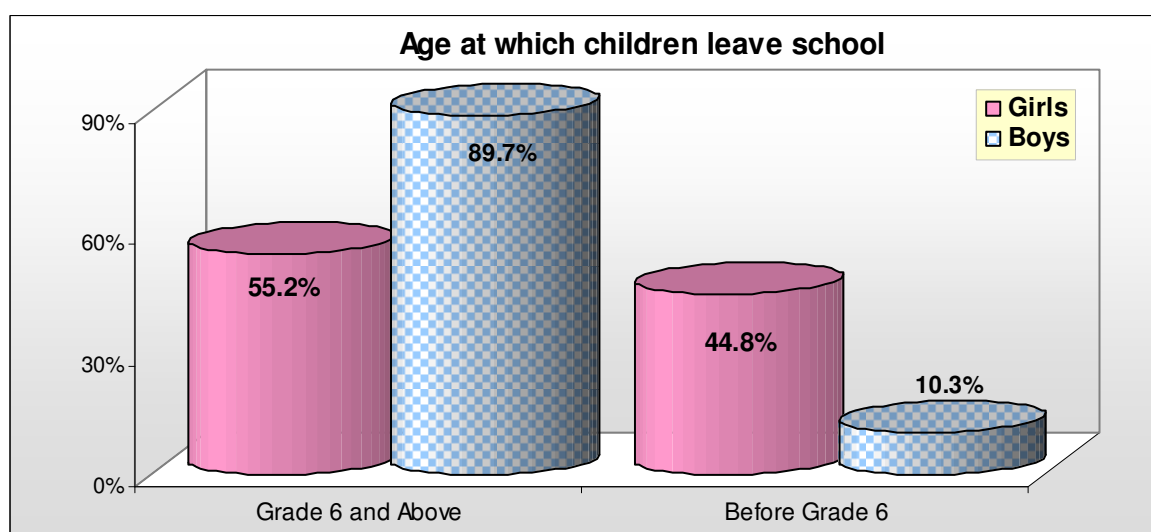


Fig. 9.3

Examples of potential violations of the right to education:

In Jabul Saraj District of Parwan province, some armed men supported by a local commander threatened girls not to go to school.

In Qarqin district of Jawzjan province there is no school for girls, but only a private school up to grade 2.

A school for girls in Karukh district was closed because the education department did not pay the salary to teachers.

In Qalat district of Zabul province interviewees reported that they do not send their children to school because of security fears (kidnapping and threats from armed men) and because the children have to work.

In Baktikot district of Nangahar province there are three main reasons why parents are not sending their children to primary and secondary school:

- Due to the extremely poor economic and living conditions of parents, children are obliged to work in or outside of the country to support their families.

- All girls of 12 years and above are not attending school at all as they may face security, gender based violence on their way to schools situated approximately 2 to 5 km to their villages. Parents are concerned about the safety of their girls as there is no single female teacher in the existing schools.

- A significant number of girls below 12 years are not attending school due to the lack of school uniform. Parents are so poor that they are not able to provide school uniforms to their children.

9.5 Conclusions

- There is a 6.9% difference in the availability of education facilities for boys and girls: 91.9% of interviewees stated that primary education is available for boys, compared with 84.8% for girls.
- Although interviewees reported a high level of availability of primary education, 43.7% of all interviewees said that their primary-school age children are not attending school regularly.
- There are different reasons for girls and boys' irregular attendance at school.
- The main factors preventing **girls** from attending primary school is a problem with physical accessibility (distance to school is too far or parents are worried about security) – over half of interviewees (51.6%) whose girl children do not attend school regularly, gave this reason.
- Other factors preventing **girls** from attending primary school are that the girl has to work (12.1%); poverty (10.1%); and child marriage (3.7%).
- The main factor preventing **boys** from attending primary school is that the boy has to work – 36.6% of interviewees whose boy children do not attend school regularly, gave this reason.

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- Other factors preventing **boys** from attending primary school are related to physical accessibility (32.5% - distance to school is too far or parents are worried about security); and poverty (20.1%).
- There is a significant discrepancy in completion of primary education between girls and boys: Just over half (55.2%) of girls who start primary school complete their primary education (up to Grade 6), whilst 89.7% of boys who start primary school complete Grade 6.

9.6 Government obligations

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

The Convention on the Rights of the Child emphasizes that the child's right to education is essential for all children (Article 28) and stresses the right must be achieved on the basis of equal opportunity, reflecting the fact that vast numbers of children suffer discrimination in access to education (particularly children in rural areas, girls, minorities and disabled children).

Under CEDAW, the Government has committed themselves to taking all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education (Article 10). The Committee on Economic, Social and Cultural Rights emphasizes the responsibility of the Government to take action to ensure the safety of children, particularly girls, on their way to and from school.⁴⁶

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

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

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

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

- The Millennium Development Goal Target 3 for Afghanistan is to ensure that, by 2020, children everywhere, boys and girls alike, will be able to complete a full course of primary education – the current baseline value is estimated at 54% of children enrolled in primary education and 45% of pupils who start primary education reach grade 5.

⁴⁶ CESCR General Comment No. 16 (2005): The equal right of men and women to the enjoyment of all economic, social and cultural rights, Para. 30.

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

This means that in order to have any chance of meeting this MDG target in Afghanistan, the Government will have to double the number of children enrolled in primary school, with a particular focus on girl's enrolment: 5 girls need to be enrolled in primary education for every 3 boys.⁴⁷ In order to achieve this, the Government will have to directly address the conditions / reasons why girls are kept out of school.

10. The right to participate in development



Indicators:

- (1) Number of families who had been excluded from participation in development projects
- (2) Main reasons for exclusion from participation in development projects

One of the main aspects of the right to participation (aside from the right of political participation) is the right to participate in community development. There are several aspects of the right to participation in development, such as the right to participate in planning and implementation of development strategies.

⁴⁷ Afghanistan's Second MDG Report (September 2005): Vision 2020, page 34.

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10.1 Exclusion from development projects

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

12.9% of all interviewees (1,023) stated that they had been excluded from development projects – mainly those relating to house and land.

The graph below (**Fig. 10.1**) provides a detailed breakdown of the reasons interviewees considered that they had been excluded (interviewees were able to indicate more than one type of development project that they were excluded from).⁴⁸

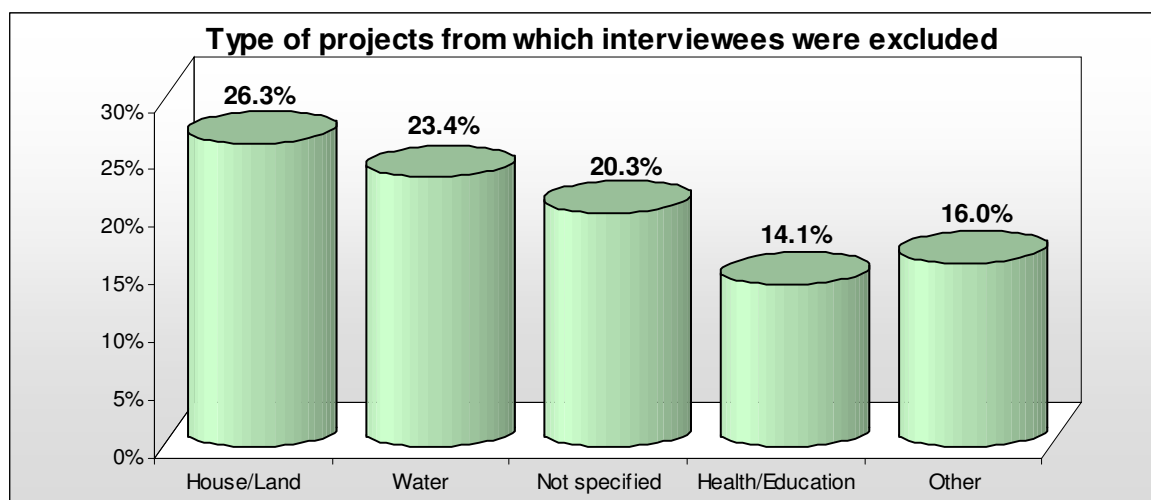


Fig. 10.1

10.2 Reasons for exclusion

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

The main reason why interviewees considered that they had been excluded from development projects were poverty (36.6%) and ethnicity (18.9%).⁴⁹

From these results it can be seen that economic reasons were considered to be the main determinant of why interviewees could not get assistance to solve their problems – 40.1% gave the reason either because of poverty or refusal / inability to pay a bribe.

⁴⁸ Whilst 1,023 persons said that they had been excluded from development projects, the question relating to types of development projects was a multiple-choice answer.

⁴⁹ Whilst 1,023 persons said that they had been excluded from development projects 858 persons gave reasons why.

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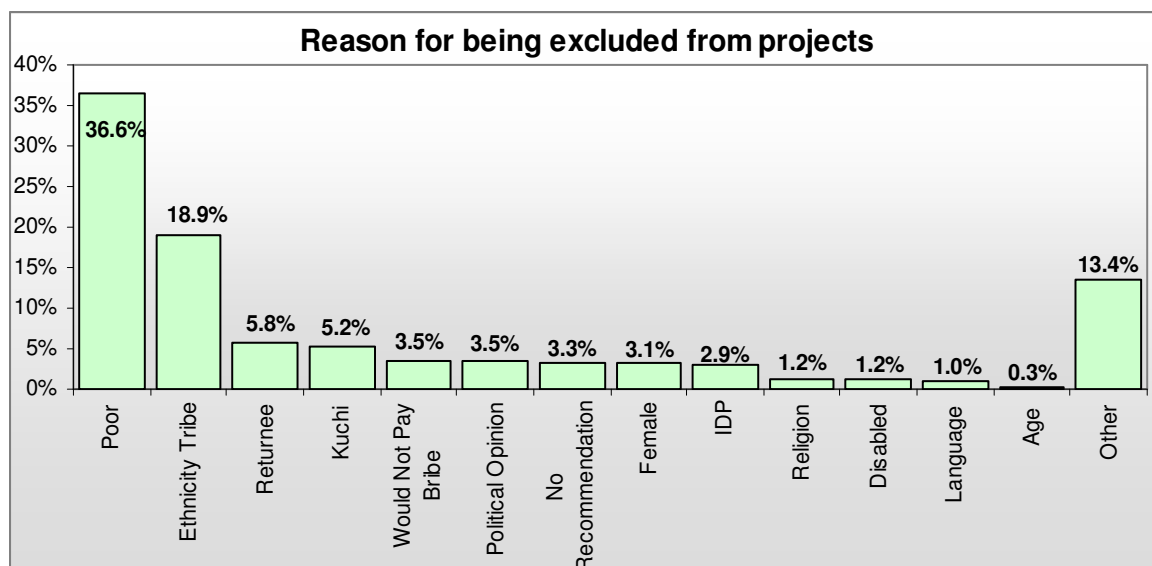


Fig. 10.2

10.3 Conclusions

- 12.9% of all interviewees reported that they had been excluded from development projects.
- The main reasons interviewees considered that they had been excluded from development projects related to economic reasons – 40.1% of interviewees who were excluded said this was because they were too poor (36.6%) or they did not pay a bribe (3.5%).
- 18.9% of interviewees who were excluded from development projects considered their ethnicity to be the main factor.
- More research is necessary to determine exactly why ‘poverty’ (36.6%) featured so strongly as a reason for lack of participation in development projects, not least because the majority of programmes such as NSP are oriented towards including the most vulnerable members of society.
- Equally, the reasons why so many interviewees considered ethnicity to be the main factor in their exclusion should also be further researched.

10.4 Government obligations

Although the right to participation is outlined as a civil and political right in the ICCPR (Article 25) the right to participation in development has been included in this analysis because it is integral to ensuring equality of opportunity in access to basic resources, education, health services, food, housing, employment and the fair distribution of income.⁵⁰

Therefore all community members should be able to participate in development: the emphasis in the ICESCR on the needs of vulnerable and marginalized groups means that the Government has a particular responsibility to ensuring inclusion of the poorest sectors of society.

⁵⁰ UN Declaration on the Right to Development (1986), General Assembly Resolution 41 / 128, Article 8.

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*The participation of Afghan women as full and equal partners with men is essential for the reconstruction and development of their country.*⁵¹

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

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

11. Right to an effective remedy

Indicators

- (1) Number of families who are in a dispute over property or water
- (2) Types of problems that families tried to solve
- (3) Number of families who approached customary justice mechanisms
- (4) Number of families who approached formal justice mechanisms
- (5) Persons / institutions that did not assist with solving problems
- (6) Reasons interviewees considered that they were not assisted to solve their problems

11.1 Type of problems families tried to resolve

From Section 6 it can be seen that 7.0% of the total number of interviewees (558) reported that they were in a dispute over property (house and land), whilst in Section 7 it can be seen that 6.3% of the total number of interviewees (499) reported that they were in a dispute over water. Additional ‘problems’ that interviewees experienced in relation to property and water were also described in Section 6 and Section 7.

The types of problems that interviewees stated they had tried to resolve (3,200) through either traditional or formal justice mechanisms were reported as follows:⁵²

- Property - 47.5% of interviewees (1,519), of whom 24.2% indicated ‘land’ and 23.3% indicated ‘house’;
- Water - 34.7% of interviewees (1,110);
- Security – 7.9% of interviewees (255);
- Other – 9.9% of interviewees (316).

⁵¹ Committee on Elimination of Discrimination Against Women: Miscellaneous Statement – Afghanistan A/57/38 (part I) (2002) Para. 4519.

⁵² Interviewees were able to list more than one problem that they had tried to resolve.

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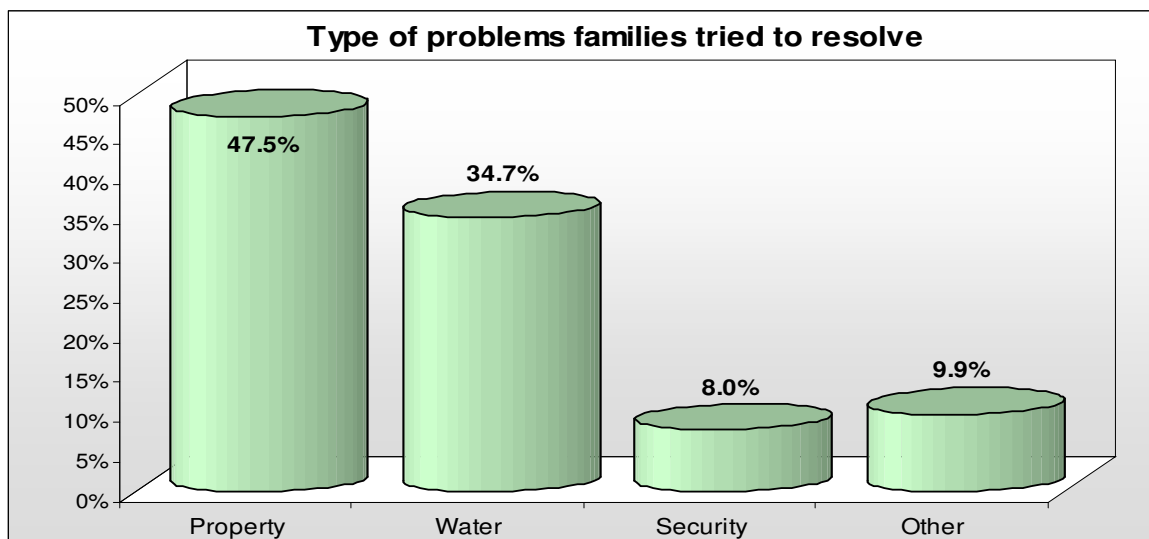


Fig 11.1

11.2 Mechanisms for solving problems

It is important to note that interviewees were asked to explain how they tried to resolve their 'problems', which is more inclusive than focusing only on resolution of disputes. By identifying the different persons / institutions that interviewees approached for help it is possible to analyse whether there is more reliance on customary justice mechanisms or whether interviewees used formal justice avenues to solve their problems.

Interviewees (4,492) reported that they attempted to resolve their problems in a range of ways (Fig.11.2 and Fig. 11.3), through customary mechanisms (*shuras*, elders, mullah) and formal mechanisms (government / local authorities, court, and police):⁵³

- Customary justice mechanisms (mullah, *shuras*, elders) - 54.8% of interviewees (2,462)
- Formal justice mechanisms (government, court, police) - 38.4% of interviewees (1,724)

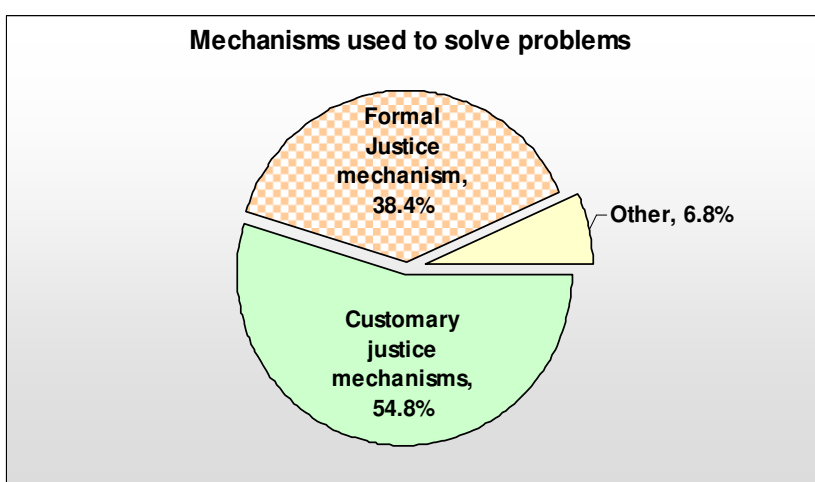


Fig 11.2

⁵³ Interviewees were able to list more than one person / institution that they approached for help.

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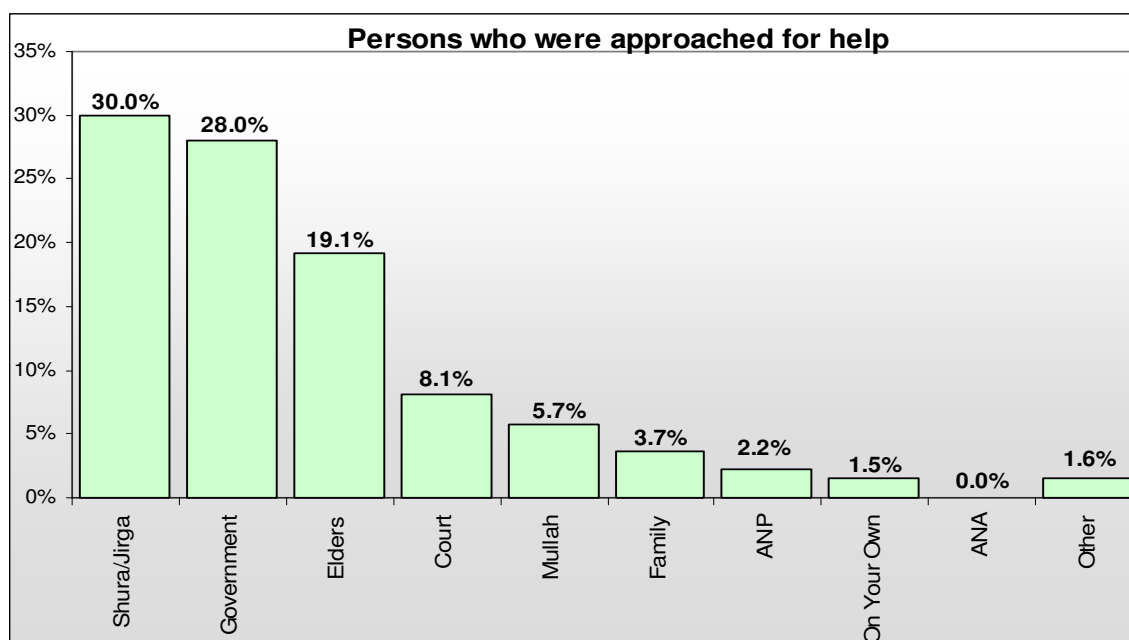


Fig 11.3

11.3 Persons who failed to assist to solve problems

Those persons / institutions that interviewees had approached to resolve their problems were assessed in terms of whether they had failed to help solve the problem. There are limitations in the use of data on whether interviewees had been assisted to resolve their problems as an indicator, since in some cases the person or institution consulted may not have the mandate or the ability to resolve a particular problem. This should be taken into account when comparing the responses, which are however still useful in terms of identifying interviewees' level of confidence and reliance on either formal or customary justice mechanisms.

Out of the range of persons / institutions which interviewees approached to help solve their problems (1,332), the government / local authorities were the main institution identified as not being able to provide assistance 57.9% (771 interviewees).⁵⁴

When interviewees' responses are categorized in terms of formal and customary justice mechanisms there is a significant difference in which mechanism **most often failed to provide assistance (Fig 11.4)**:

- Formal justice mechanisms (government / local authorities, court, police) - 67.9% of interviewees (904)
- Customary justice mechanisms (*shuras*, elders, mullah) - 26.6% of interviewees (355)

⁵⁴ Interviewees were able to list more than one person / institution which did not provide assistance.

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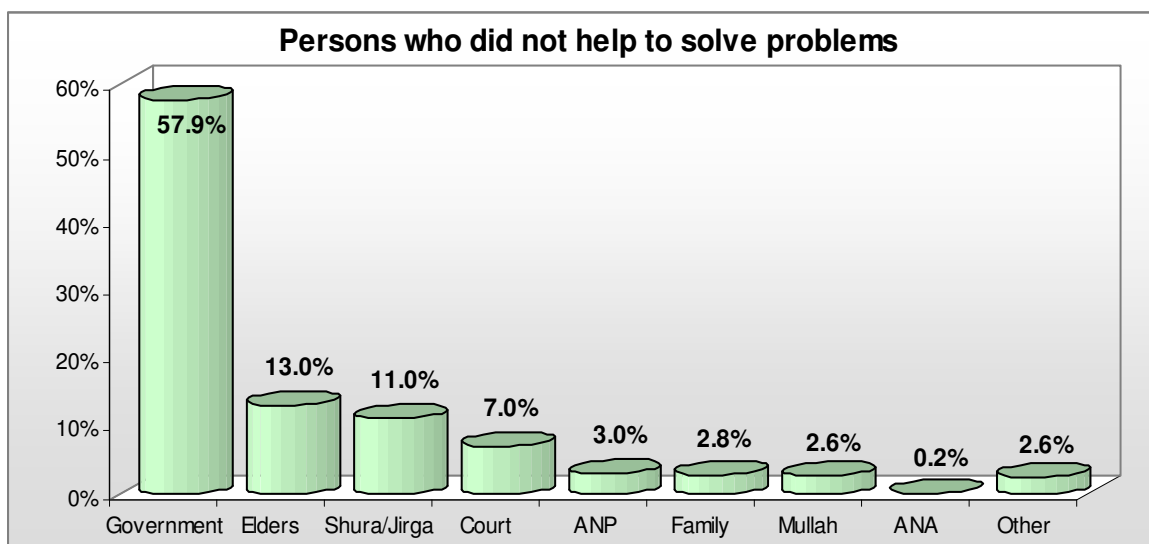


Fig 11.4

It is significant that according to Section 11.3, formal justice mechanisms were consulted less frequently than customary mechanisms, but even so, when they were consulted they were identified as failing to provide assistance more often.

Furthermore, despite the fact that interviewees consulted *shuras* (30.0%) and local government (28.0%) on an almost equal basis (**Fig. 11.3** above) it can be seen from **Fig 11.4** that over half of interviewees (57.9%) reported that the government / local authorities had not helped them, whereas only 11.0% of interviewees stated that the *shura* had failed to provide assistance.

11.4 Reasons for failure to provide assistance

764 interviewees gave reasons why they had been refused help with solving their problems (**Fig. 11.5**). The main reasons considered by interviewees as to why they had not been given help were:

- Poverty / Would not pay bribe – 50.9% of interviewees (389);
- Ethnicity – 16.2% of interviewees (124);
- Returnee - 7.1% of interviewees (54).

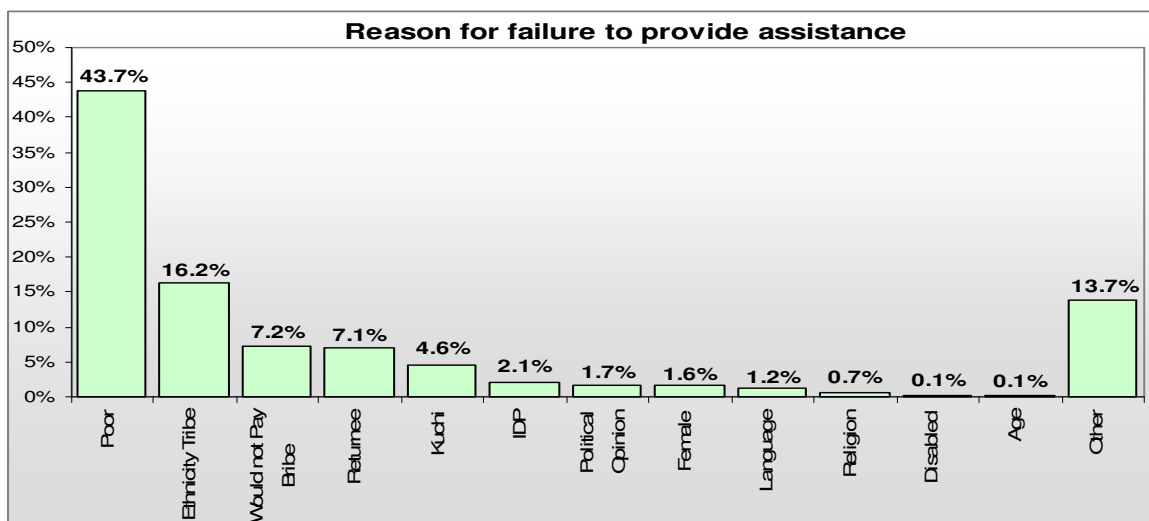


Fig 11.5

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From these results it can be seen that economic reasons were considered to be the main determinant of why interviewees could not get assistance to solve their problems – 50.9% of interviewees (389) gave the reason either because of poverty or refusal to pay a bribe.

Examples of potential violations of the right to an effective remedy:

In Darzab district of Jawzjan province, an interviewee's shop was taken over by a local commander, who, despite a High Court decision in favour of the claimant, remains in possession of the shop.

In Shahrstan district it was reported that in 2002 a commander seized irrigation water of six families. The commander is still utilizing the water. Although the families have taken the case to Daikundi court the problem has not been solved yet; the interviewee believes that this is because the commander has a great influence at the provincial and district level.

In Lal-wa-Sarjangle district of Ghor province an interviewee reported that his land was occupied by a government official. In early 2005 the provincial court decided in his favour. However the land is still occupied since the district officials can not enforce the decision made by provincial court.

11.5 Conclusions

- 7.0% of interviewees currently have a dispute over their property, whilst 6.3% of interviewees have a dispute over water.
- 47.5% of interviewees who tried to solve their problems through either formal or traditional justice mechanisms had tried to solve problems relating to property.
- Over half (54.8%) of interviewees who tried to solve their problems approached traditional / customary justice mechanisms (*shuras*, elders and / or mullah), compared with 38.4% of interviewees who approached the formal justice mechanisms (government, court and / or police).
- Interviewees (67.9%) identified formal justice mechanisms as most often failing to provide assistance.
- Although an equal proportion of interviewees consulted with *shuras* (30.0%) as with government (28.0%) to resolve their problems, over half of interviewees (57.9%) who tried to resolve problems reported that government had failed to help them, compared with only 13.0% who stated that local *shura* had failed to help them.
- The main reasons interviewees considered that they were not given assistance to solve their problems (either by formal or customary justice mechanisms) related to economic factors – 50.9% of interviewees who had not been given assistance stated that this was because of poverty (43.7%) or failure to pay a bribe (7.2%).
- Ethnicity (16.2%) was the second main reason interviewees considered they had not been given assistance either by formal or customary justice mechanisms.
- It is necessary to conduct further research into why factors such as poverty and ethnicity featured so highly as reasons why interviewees felt that they had no access to an effective remedy.

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11.6 Government obligations

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

The United Nations Economic and Social Council has stated that the central obligation in relation to the ICESCR is for States parties to give effect to the rights contained in the Covenant. This means that the provisions of the Covenant must be recognized in appropriate ways within the domestic legal order, and that appropriate means of redress or remedy must be available to an individual or group whose human rights have been violated (see Section 1.3).⁵⁵

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

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

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

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

Under CEDAW the Government has made a commitment to ensure that the right to an effective remedy is equally available for women:

Article 15 (2)

“States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.”

This is also recognized in the Constitution of Afghanistan (Article 22).

According to Afghanistan’s Millennium Development Goal, Target 7 is to Reduce Gender Disparity in Access to Justice by 50% by 2015 and completely by 2020. In order to achieve this target, the Government will have to adopt, review and amend legislation that protects the property and inheritance rights of women.

⁵⁵ CESCR General Comment No 9 (1998): The domestic application of the covenant.

12. Priorities for the future



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

Interviewees were also asked whether they feel positive about the future.

12.1 Priorities for the future

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

- **Water/Sanitation**
- **Job opportunities**
- **Medical care**
- **Housing**
- **Education**

A wish for improved security accounted for only 4.0% of the total answers. 3.0% of the answers (category of 'other') related to issues such as road repair, irrigation water and literacy courses for women.

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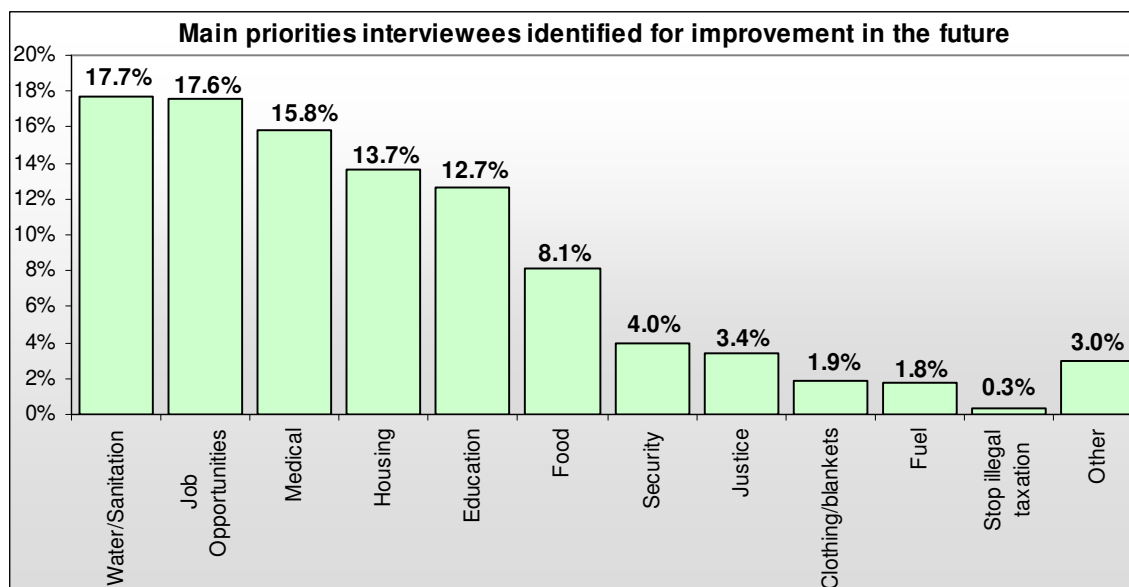


Fig 12.1

From the narrative statements that interviewees gave relating to their hopes for the future, a selection of which have been included below, it can be seen that improvements in education for women and women's rights featured strongly as well as concerns over disarmament of illegal armed groups and commanders. Improvement related to economic situation for those in poverty was also requested.

12.2 Perspective for the future

83.4% of interviewees (6,610) feel positive about the future whilst 16.6% (1,319) do not feel positive.

Hopes for the future – stated during Human Rights Field Monitoring interviews:

- *We wish to have a peaceful future.*
- *I would like to have food for my son, who has been affected by malnutrition.*
- *I wish to have support and help for widows.*
- *I wish and hope to survive poverty.*
- *I hope to take back my land.*
- *I hope in the future I could read and write, if we get this opportunity.*
- *My best hope is to educate all my children (boys and girls) and to request from the Afghan government to provide this facility for all of us.*
- *I wish my daughters could continue their education because in our village people do not allow their daughters to go to school.*
- *I am a teacher in a girl's school and my hope is that all Afghan girls could continue their education without any problems.*
- *I wish my father would allow me to continue my education.*

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- *Complete disarmament of armed elements and removing of all ex-commanders from official positions.*
- *Disarmament of local commanders and warlords.*
- *Lasting security, complete DDR and justice in the country.*
- *Having security and a developed country.*
- *I hope that the men will think about women's rights and allow them to work.*
- *I hope that I will have the same right that my husband has at home, and he treat me like a human and not like a woman, because women have no rights.*

12.3 Conclusions

- It is significant that over 80% of interviewees listed economic and social rights as their main priorities for improvement in the future.
- Water and sanitation (17.7%), job opportunities (17.6%), medical facilities (15.8%), housing (13.7), education (12.7%) and food (8.1%) were all given a higher priority than security (4.0%) and justice (3.4%).
- The priorities given by interviewees correspond with the main problems and issues highlighted throughout other sections of this report.
- Over 80% of interviewees said that they are positive about the future.

13. Conclusions

“The equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of States parties.”⁵⁶

13.1 Minimum core obligations under the ICESCR

The Government of Afghanistan faces major challenges in its compliance with the standards set under the International Covenant on Economic Social and Cultural Rights.

The UN Committee on Economic, Social and Cultural Rights points out that Governments which have ratified the ICESCR have a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights contained in the Covenant, for all persons equally:⁵⁷

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

The findings of Human Rights Field Monitoring, as set out in Sections 4-12, show that the Government has not yet met their minimum core obligations to economic and social rights under the ICESCR, as summarized below:

13.2 Essential food

- Only 13.5 % of interviewees report that their household has a stable source of income;
- According to Afghanistan’s 2005 Millennium Development Goal report,⁵⁸ a total of 38% of rural households (about 6 million rural Afghans) are estimated to face chronic or transient food shortages and therefore do not have access to adequate food on a constant basis;
- Many of the chronically food insecure households are female-headed, have disabled household members and large numbers of children, and live in remote rural areas with little or no access to irrigation, markets or other services.⁵⁹

13.3 Essential primary healthcare

- Although 75.4 of all interviewees state that health care facilities are available, 54.8% of them are not using healthcare facilities;
- The main reason over half of interviewees are not using health care services is because of problems with physical accessibility – 33.8% all interviewees said that existing health care facilities are too difficult to get to;

⁵⁶ CESCR General Comment No. 3 (1990): The nature of States parties obligations.

⁵⁷ CESCR General Comment No. 3 (1990): The nature of States parties obligations Para. 10.

⁵⁸ Afghanistan’s Second MDG Report (September 2005): Vision 2020, page 23.

⁵⁹ Afghanistan’s Second MDG Report (September 2005): Vision 2020, page 21.

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- According to Afghanistan's 2005 Millennium Development Goal Report, 60% of deaths amongst children under 5 years of age in Afghanistan are preventable;⁶⁰
- Afghanistan's 2005 Millennium Development Goal Report documents that Afghanistan has one of the worlds' highest maternal mortality ratios (1600 deaths per 100,000 live births). It is estimated that nearly 78% of maternal deaths can be prevented by increasing the proportion of births attended by skilled health personnel.⁶¹

13.4 Housing

- 40.6% of all interviewees experience problems with habitability of their housing; 10.1% of all interviewees report that they do not have secure tenure (which includes property occupation and multiple ownership claims); 9.9% of interviewees stated that they cannot pay the rent or that they have no house or land.
- Of the 9.0% of all interviewees who are currently internally displaced (IDPs), more than a third (39.7%) are displaced because of lack of housing.

13.5 Basic education

- 43.7% of all interviewees said that their primary-school age children are not attending school regularly.
- The main factor preventing girls from attending primary school is physical accessibility (distance to school is too far or parents are worried about security) – 51.6% of interviewees whose girl children do not attend school regularly gave this reason. Other reasons why girls do not attend primary school are that the girl has to work (12.1%), poverty (10.1%) and child marriage (3.7%).
- The main factor preventing boys from attending primary school is that the boy has to work – 36.6% of interviewees whose boy children do not attend school regularly, gave this reason. Other factors preventing boys from attending primary school are related to physical accessibility (32.5%) and poverty (20.1%).
- There is a significant discrepancy in completion of primary education between girls and boys: only 55.2% of girls who start primary school complete their primary education (up to Grade 6), whilst 89.7% of boys who start primary school complete Grade 6.

13.6 Access to water

- 50.1% of all interviewees do not get their household water from a well, which means that they are using unsafe drinking water.
- 9.6% of all interviewees have to walk for more than one hour to collect water. 41.6% of all interviewees had to walk more than 10 minutes to their nearest water source.⁶²
- 27.7% of all interviewees use a water source which is also used by animals.

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

⁶¹ Afghanistan's Second MDG Report (September 2005): Vision 2020, page 55.

⁶² The World Health Organisation sets the benchmark at under 15 minutes distance to each household's water source.

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13.7 Poverty

The UN Committee on Economic, Social and Cultural Rights emphasizes that poverty itself constitutes a denial of human rights.⁶³ The findings in this report show the close relationship between poverty and the denial of, or lack of access to economic and social rights, including the right to participation and the right to an effective remedy:

- 48.8% of all interviewees reported that at least one child under 15 years in their family works and 19.4% of all interviewees said that most or all of the children in their family work.
- 14.5% of interviewees whose primary school-age children, both boys and girls, are not attending school regularly said that the main reason is because their family cannot afford it.
- 12.9% of interviewees reported that they had been excluded from development projects: 40.1% of interviewees who were excluded consider that this is primarily for economic reasons (either they were too poor or they did not pay a bribe).
- The main reason interviewees considered that they were not given assistance to solve their problems (either by formal or customary justice mechanisms) is also related to economic factors – 50.9% of interviewees who had not been given assistance stated that this was because of poverty (43.7%) or failure to pay a bribe (7.2%).

There is a close correlation between the Government's minimum core obligations under the ICESCR and the Government's commitments under the Millennium Development Goals, since many of the objectives coincide. Although the Millennium Development Goal commitments are an important step forward, there is a long way to go before the MDG Targets are realized, particularly in with regards to achieving universal primary education, access to affordable and quality health care and safe drinking water.

13.8 Obligations to respect and protect

As described in Section 1.3, the Government's obligations are to *respect, protect and fulfill* the human rights contained in the treaties they have ratified:

The obligation to *respect* requires the Government not to interfere directly or indirectly with the enjoyment of each right, which means that the Government should not violate any of the rights in the ICESCR. As shown in the examples of potential violations of economic and social rights in Sections 1-11, in some cases the Government has failed to respect human rights, for example through occupation of private property by government officials, or potentially, failure to provide salaries to teachers in girl's schools.

The obligation to *protect* requires the Government to take measures that prevent third parties from interfering with each right. This means that the Government should protect against violations by non-state actors such as commanders and other private individuals. As shown in Sections 1-11, interviewees report that commanders are primarily responsible in many of the examples of potential human rights violations, such as property occupation, illegal taxation and prevention of girls from attending school. Commanders are also involved as parties to disputes over property and water.

⁶³ U.N. Doc. E/C.12/2001/10, *Poverty and the International Covenant on Economic, Social and Cultural Rights*, 4 May 2001, § 8.

13.9 The obligation fulfill – enforcement of economic and social rights

The obligation to *fulfill* requires States parties to take steps to ensure that in practice, men and women enjoy their economic, social and cultural rights on an equal basis: According to the UN Committee on Economic, Social and Cultural Rights, the legally binding international human rights standards contained in the ICESCR should operate directly and immediately within the domestic legal system of each State party, **which means that individuals should be able to seek enforcement of their economic and social rights in national courts and tribunals.**⁶⁴

However, as shown in Section 11, interviewees report a lack of access to an effective remedy for violations of economic and social rights (particularly the right to adequate housing and property), from either formal justice mechanisms or traditional dispute resolution processes:

54.8% of interviewees who tried to solve their problems approached traditional / customary justice mechanisms (shuras; elders and mullah); compared with 38.4% who attempted to resolve the problem with the help of formal justice mechanisms (government, court and police). Furthermore, interviewees identified formal justice mechanisms as most often failing (67.9%) to provide assistance. This shows an overall lack of accessibility, or confidence in formal justice.

The examples of potential violations of the right to an effective remedy in Section 11 also highlight the fact that where commanders are responsible for human rights abuses, such as property occupation, the government is unable or unwilling to take action to remedy the situation: 84.7% of interviewees stated that commanders were the most powerful person in their area, compared with only 5.0% who stated that either the Afghan National Police or the Afghan National Army were the most powerful. This shows that despite disarmament, illegal armed elements constitute a major challenge to the enforcement of economic and social rights.

13.10 Monitoring economic and social rights

In 2003 the Committee on Economic Social and Cultural Rights issued Concluding Observations on the implementation of the ICESCR in Afghanistan.⁶⁵ The Committee highlighted the following issues which were of particular concern after the initial report, and asked the Government of Afghanistan to give more information on these aspects in their next treaty report (*inter alia*):

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

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

⁶⁴ CESCR General Comment No 9 (1998): The domestic application of the covenant, Para. 4.

⁶⁵ CESCR Afghanistan Concluding Observations adopted up to December 31, 2003: CESCR E/1992/23 (Arts 1-15).

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However, in future, attention should be focused on the situation of particular vulnerable groups in order to assess the particular problems that the Government faces in securing their economic and social rights. The right to an effective remedy for violations of economic and social rights is also a key area for further research in order to improve the enforcement of the rights contained within the ICESCR.

14. Recommendations

14.1 Recommendations to the Government of Afghanistan

The findings of this report exhibit that the Government of Afghanistan is in violation of its legal obligations under international human rights law, in particular of its immediate obligations under the International Covenant on Economic, Social and Cultural Rights to which it is a State party.

General recommendations

- The Government should acknowledge that the human rights obligations in the international treaties to which Afghanistan is a State party are an applicable legal framework for its National Development Strategy and that the strategy must not be in violation of these obligations.
- The Government needs to explicitly recognize that the National Development Strategy is a step towards the full realization of rights recognized in international human rights instruments. Taking into account the findings of this report, the National Development Strategy (ANDS), should as a priority target the fulfillment of Afghanistan's core minimum obligations under the International Covenant on Economic, Social and Cultural Rights, as detailed below:

The right to an adequate standard of living

- The Government should ensure that poverty is recognized as the non-fulfillment of rights in the ANDS. It is insufficient to define poverty on the basis of a single quantitative indicator. A thorough understanding of the nature of poverty and who the poor in Afghanistan are, should precede the finalization of any development strategy. The findings of this study must be considered for a more qualitative definition of poverty and should guide the development of indicators in order to accurately monitor the impact of the ANDS on the poor and marginalized.

Child labour

- Having ratified the Convention on the Rights of the Child in 1994, the Government has the following minimum responsibilities:
 - The Government should set a minimum age for employment, not less than 15 years, in legislation.
 - The Government should develop legislation for regulation of the hours and conditions of employment in line with international standards.
 - The Government should set penalties or other sanctions to enforce minimum age of employment, and regulation of the hours and conditions of employment of children aged 15 to 18 years.

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- The Government should initiate procedures for ratification of the following relevant International Labour Organisation instruments in order to further define and increase protection of children against harmful work and forced labour:
 - ILO Worst Forms of Child Labour Convention, No. 182, 1999
 - ILO Minimum Age Convention, No. 138, 1973
 - ILO Forced Labour Convention, No. 29, 1930
- Since child labour is intrinsically linked to household poverty, the Commission recommends that the reduction of numbers of children engaged in harmful work should be considered as a key benchmark for the National Development Strategy in the Social Protection Sector.

The right to adequate housing and the right to property

Since the findings of the report indicate that security of tenure was one of the main problems identified under the right to adequate housing, the Commission's recommendations are in line with, and update the key recommendations of the Special Rapporteur on Adequate Housing, following his visit to Afghanistan in 2003.⁶⁶

- The Government of Afghanistan should take necessary and effective measures for the full implementation of the moratorium on all cases of forced eviction from houses and places that are included in the governmental and non-governmental planned areas.
- According to the findings of this report, half of the cases referred to formal and informal justice mechanisms were related to property. The Government should therefore develop and implement a national strategy for the ultimate resolution of conflicts over housing and land.

The Commission supports the benchmark set out in the ANDS to initiate a land registration process and to establish a fair system for the settlement of land disputes.⁶⁷ However, given the current lack of capacity and resources, setting up a system in a short time frame could reinforce inequality over land and housing, particularly in areas where there are distinct local power structures.

- The Commission therefore strongly recommends that any such system is designed to uphold the rights of potentially vulnerable groups such as economically disadvantaged, women, returnees, internally displaced persons, nomads and minorities. Specific disaggregated indicators for vulnerable groups should be incorporated into the monitoring of this benchmark in the National Development Strategy.
- The Government should build the capacity of the judiciary (including the Special Property Disputes Resolution Court) to address complaints received from the provinces, increase women's access to the Court and put an end to judicial corruption in this body.

⁶⁶ The full report and recommendations from the Special Rapporteur's visit to Afghanistan in August 2003 ([E/CN.4/2004/48/Add.2](http://www.unhcr.org/refugees/48/48/Add.2)) can be found at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/3e519fe3b3b9d779c1256e67004c42a8?Opendocument>

⁶⁷ According to the Afghanistan Compact (January 2006) High Level Benchmarks, No. 2.8, Governance, Rule of Law and Human Rights: A process for registration of land in all administrative units and the registration of titles will be started for all major urban areas by end 2006 and all other areas by end 2008. A fair system for settlement of land disputes will be in place by end 2007. Registration for rural land will be under way by end 2007.

The right to water

- The report exhibits that a majority of interviewees do not have access to safe drinking water. In the National Development Strategy the Government should make reference to international guidelines on quality and accessibility of water⁶⁸ in order to define indicators and monitor progress, and it should prioritize access to safe drinking water in both rural and urban areas.
- The Commission urges the Government to take all necessary steps for consultation with relevant institutions in the drafting of the new legislation on water, with a view to ensuring that the law incorporates a rights-based approach to water regulation.

The right to health

- The Commission is encouraged by the objective in the ANDS to extend the basic package of health services to at least 90% of the population by 2010.⁶⁹ However, in line with the findings of this report which indicate that the main obstacle is not the availability of health care facilities but an inability to access existing health facilities, the Commission urges the Government and international development partners to focus their efforts on tackling obstacles preventing access to health facilities, rather than simply increasing the number of clinics.
- Initial benchmarks in the ANDS Monitoring Matrix indicate that there will be an emphasis on increasing community access to health care, including outreach work by trained health workers. The Commission recommends that this should be maintained in the ANDS and further developed. In particular this would address some of the obstacles preventing rural women from using existing health facilities, and enable access for vulnerable groups such as the elderly, disabled, children, minorities, migrant labourers and remote rural communities.
- The specific links between the right to safe drinking water and under-5 child mortality, as well as other key aspects of public health, are not recognized in the ANDS. Indicators on access to safe water should be developed and included in the Health Sector of the National Development Strategy.
- The Government should prioritise reproductive (pre-natal and post-natal) and child health care, according to their obligations under international treaties to which Afghanistan is a party. Afghan women should have universal access to reproductive health care.
- The Ministry of Public Health should establish proper monitoring mechanisms to control the quality of health services provided by health institutions and should ensure effective access for persons with disabilities.

The right to education

- The report highlights that the main obstacle to girls' primary education is a lack of accessibility. The Commission recommends urgent Government action to properly

⁶⁸See for example World Health Organisation Guidelines for Drinking Water Quality, 3rd Edition: http://www.who.int/water_sanitation_health/dwq/gdwq3/en/index.html

⁶⁹ According to the Afghanistan Compact (January 2006) High Level Benchmarks, No. 5.1, Health: By end-2010, in line with Afghanistan's MDGs, the Basic Package of Health Services will be extended to cover at least 90% of the population; maternal mortality will be reduced by 15%; and full immunization for infants under-5 for vaccine-preventable diseases will be achieved and their mortality rates reduced by 20%.

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address physical accessibility, security concerns and negative cultural stereotypes, which prevent girls from enrolling in and completing primary education.

- The Commission is concerned that within the ANDS benchmark for Education,⁷⁰ the objective to increase net enrolment of girls and boys in primary school is not sufficient for the achievement of Afghanistan's MDG 2 and MDG 3.⁷¹

The current ANDS benchmark does little more than maintain existing gender disparity in primary school enrolment and therefore is in contradiction with the Government's commitments under the Millennium Development Goals and falls short of international human rights obligations, which advocate for positive discrimination to achieve equal access to primary education.

- The findings of this report highlight a significant disparity in the completion of primary school education by girls and boys. It is therefore vital that a reduction in drop-out rates for girls is incorporated as a benchmark in the National Development Strategy and specific gender-disaggregated indicators are used for monitoring.
- The Government should pay particular attention to improving the quality of educational services and capacity-building of teachers through designing comprehensive schemes for teacher training. The Commission therefore supports initial discussions to incorporate teacher competency criteria and an increase in the number of women teachers as benchmarks in the ANDS.

The right to participate in development

- The Government should ensure that the consultation mechanism under the National Development Strategy leads to the full reflection of the priorities of the people of Afghanistan. Specifically, the consultation mechanism must be designed in such a way that the poor and marginalized groups are at the centre of the process and are fully empowered and enabled to participate.

The right to an effective remedy

- The Government needs to acknowledge that discrimination, in particular on the basis of socio-economic status, is a major obstacle in people's access to justice. Indicators for monitoring access to justice in the relevant national programs must be disaggregated to fully reflect progress for the marginalized and for groups of concern, in particular the poor, but also women and minorities.
- The report exhibits a very low level of trust in the functioning of Government institutions, in particular formal justice institutions, to solve disputes over access to key resources, such as land, housing and water. The Government needs to pay as much attention to qualifications, integrity and professional conduct of Government officials, including the judiciary, as to the physical rehabilitation of infrastructure. The institutional reform process must be enhanced through a vetting mechanism in order to secure popular trust and confidence in government institutions.

⁷⁰ According to the Afghanistan Compact (January 2006) High Level Benchmarks, No. 4.1 Education: By end-2010: in line with Afghanistan's MDG's, net enrolment in primary school for girls and boys will be at least 60% and 70% respectively. Under the IANDS current baseline values for girls enrolment is set at 43% and for boys at 58%.

⁷¹ MDG 2: Achieve Universal Primary Education by 2020; MDG 3: eliminate gender disparity in all levels of education no later than 2020. Currently the Afghanistan Compact benchmark proposes an increase in enrolment by 17% for girls and 12% for boys by 2010. In order to meet the MDG Targets the Government should target an enrolment of 5 girls for every 3 boys.

14.2 Recommendations to civil society

- The National Development Strategy foresees the establishment of a monitoring body by the Government of Afghanistan. For the purposes of accountability and transparency in the implementation of the ANDS, key civil society actors should undertake a complementary monitoring process for the benchmarks and indicators on economic and social rights, as detailed in this report.

14.3 Recommendations to the International Community

- The international community, particularly the United Nations, should provide the necessary financial and technical assistance to enable the Government of Afghanistan to meet its obligations under the International Covenant on Economic, Social and Cultural Rights, in particular its obligations to immediately fulfill the core minimum levels of rights in the Covenant.
- The international community, specifically the United Nations, has an important role in monitoring the implementation of the National Development Strategy and ensuring that it is in full compliance with the Government's immediate and progressive obligations under the International Covenant on Economic, Social and Cultural rights, and that it secures the right to equal enjoyment of economic and social rights of all citizens.
- The international community through its role in the consultative / advisory groups and the Joint Coordination and Monitoring Body must make sure that the Afghanistan Compact and National Development Strategy incorporate a rights-based approach. The international community must advocate for the collection of data that adequately reflects progress and impact for the most marginalized members of society, in particular for women, children, the poor, minorities and the disabled, in order to make the realization of human rights a reality for all.