

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	925
Land:	Afghanistan
Kilde:	Afghan Independent Human Rights Commission (AIHRC)
Titel:	Assessing the Extent of the Implementation of the Convention on the Elimination of All Forms of Racial Discrimination in Afghanistan 2018
Udgivet:	25. marts 2019
Optaget på baggrundsmaterialet:	8. maj 2019



**Assessing the Extent of the Implementation
of the Convention on the Elimination
of All Forms of Racial Discrimination
in Afghanistan**

2018





6 June 2002

Report Description

Title: Research Assessing the Extent of the Implementation of the Convention on the Elimination of All Forms of Racial Discrimination in Afghanistan

Publisher: Afghanistan Independent Human Rights Commission (AIHRC)

Publish Date: 1397

Address: Kabul, District 6, Faiz Mohammad Kateb Road (between MRRD and Higher Audit Office), AIHRC Headquarters

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Research

**Assessing the extent of Implementation of the International Convention
on the Elimination of All Forms of Racial Discrimination in Afghanistan
2018**

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Message from Dr. Sima Samar, Chairperson of the AIHRC

The AIHRC, based on Article 58 of the Constitution, has always been working to monitor the human rights situation in the country, and publish its findings through specific reports. In addition, the AIHRC has been trying to conduct separate and specific research on the most important human rights issues at the national level, and, in addition to assessing the situation and finding the challenges, it has also made specific recommendations to the government and international community aiming at address the relevant existing challenges.

This time, the AIHRC, recognizing the importance of the issue of racial discrimination in the country as well as the challenges combating this unpleasant national phenomenon and its consequences, as well as given the responsibility of the Government of Afghanistan towards the implementation of Convention on the Elimination of All Forms of Racial Discrimination, in addition to encouraging the government to report to the UN on the extent of implementation of the Convention on the Elimination of All Forms of Racial Discrimination, undertook a new effort to produce this report entitled “Research Assessing the extend of Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in Afghanistan”, which is now completed and published as a result of the hard works of our colleagues in Regional, Provincial and Central Offices of the AIHRC.

I acknowledge that racial discrimination in Afghanistan is one of the most important challenges to social life and, along with other factors, it is the root of many of the current problems, including insecurity and war in Afghanistan; therefore, working in the area of non-discrimination and finding challenges and providing useful recommendations to address the existing problem are one of the most important steps that must be taken to reach a safe and non-discriminatory society.

To complete this study, which took nearly four months, the AIHRC’s staff traveled to various provinces and districts of the country, accepting many risks and difficulties, collecting the information needed for this study through focus group meetings and interviews with the people of the country; Therefore, I appreciate the attempts of all of them, and I wish further success for them. I also thank the security and defense organs of the country who have always been involved in ensuring the security of the AIHRC’s colleagues in the provinces and districts of the country.

I would express my thanks and gratitude to Afghan people, especially those who contributed to the AIHRC in the information collection process, and I wish that from now on, none of our countrymen would face any racial discrimination in the country, and that all the people of Afghanistan would live in peace, security and prosperity.

Dr. Sima Samar

Chairperson of the AIHRC



Summary of the report

Racial discrimination in Afghanistan, with regard to the diversity of ethnic groups, religions and languages in the country, is one of the serious concerns for the national stability and security, and has always evoked questions in the minds of Afghan citizens regarding the approaches and programs conducted by the government, and has caused violations of rights and fundamental freedoms of Afghan citizens.

The AIHRC, with due regard to its legal responsibilities in the area of protection, promotion and monitoring of human rights situation, aiming at finding the challenges and relevant problems, as well as given the citizens' access to their basic rights and freedoms in equal condition and free from discrimination, has launched this study in order to assess the human rights situation and find out the problems and challenges in this area, and put forward specific recommendations to the government and international community to address the challenges, and to assess the extent to which the International Convention on the Elimination of All Forms of Racial Discrimination is implemented in Afghanistan.

Afghanistan signed the Convention on the Elimination of All Forms of Racial Discrimination on July 06, 1983, and ratified and officially acceded to it on March 5, 2003.

The Afghan government could provide only a preliminary report to the Committee on the Prohibition of All Forms of Racial Discrimination in 1984. However, the Committee expressed concern in its 1997 report to the United Nations General Assembly on Afghanistan that it had not submitted a report, and insisted that the submission of the report of the Government of Afghanistan to the committee, in accordance with Article 9 of the Convention is very important¹. AIHRC, in accordance with paragraph 15 and 17 of Article 21 of the AIHRC's Law has advised the Afghan government to implement its human rights obligations in this regard, by sending several official letters to the government, emphasizing the importance of the issue to submit a report to the Committee on the Prohibition of All Forms of Discrimination. Thankfully, the letters have been considered by the Government of Afghanistan this year, and the government has taken action to prepare a report on the extent of the implementation of the said Convention in Afghanistan.

Methodology

This research is conducted by analytical and descriptive method, and the required information is obtained through questionnaires, group discussions (focus group sessions), interviews and library studies.

The sampling population of this study was 3,498 people, including 2,061 men (58.9%) and 1,405 women (40.2%) in field research, and 333 people, including 103 (30.9%) women and 230 (69.1%) men in group discussions. Field research has been carried out in 29 provinces² where residents of 34 provinces have contributed and completed questionnaires. Focus group meetings were held in 14 provinces³ with the participation of senior government officials, members of civil society, human rights activists, experts, media representatives, ethnic and tribal elders, racism victims, and students from universities and schools.

Demography of Afghanistan

According to the latest statistics from the Central Statistics Bureau in 1397, the population of Afghanistan amounts to 31,575,018 people,⁴ who come from different ethnic groups and speak different languages.

The demographic studies in Afghanistan is influenced by the individual and collective trends of the researchers, and a credible result has not been obtained yet, and statistics published so far have always been contradictory and have been objected by some experts, and the statistics of small ethnic minorities of Sikhs, Hindus and Jats or Jogis recorded in some sources of data are not officially approved. The statistics show that there are currently about 10,000 Sikhs and Hindus⁵ and about 13,000 Jogi living in Afghanistan. All three of the ethnic groups have Indian roots.⁶

AIHRC's studies have shown that in addition to followers of the holy religion of Islam, there are also a number of followers of Hindu, Christian and Baha'i religions in Afghanistan. But there are no credible statistics on the number or quantity

1. Annual report of the Committee on the Elimination of all forms of Racial Discrimination to the United Nations Assembly, September 26, 1997 Page 13 https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=AFG&Lang=EN

2. Uruzgan, Badghis, Bamyan, Badakhshan, Baghlan, Balkh, Parwan, Paktia, Panjshir, Takhar, Khost, Daikundi, Zabul, Samangan, Ghazni, Ghor, Faryab, Farah, Kandahar, Kabul, Kapisa, Kunduz, Kunar, Laghman, Nangarhar, Nimroz, Herat, Helmand and Maidan Wardak.

3. Uruzgan, Balkh, Bamyan, Badakhshan, Daikundi, Ghor, Faryab, Kandahar, Kabul, Kunduz, Paktia, Nangarhar, Herat and Helmand

4. Central Statistics Bureau of Afghanistan, Estimation of the Population of the Country in 1397. Page 2

5. <https://da.azadiradio.com/a/29628594.html>

6. Center of Islamic Encyclopedia, Islamic Encyclopedia, Vol. 17, Article No. 6451, p. 8-9. Downloadable Links <http://lib.eshia.ir/23022/17/6451>

of the followers of other religions in Afghanistan.

The US State Department's 2013 report states that the total number of adherents of Sunni religions totaling 80% of the total population of the country (the population of Afghanistan was estimated to be 31.1 million in 2013). Shia followers, including Shia Ismailis accounts for about 19% the country's population and followers of other religions, such as Hindu, Christian, and Baha'i, make up less than 1% of the country's population.¹

Researchers also confirm that there are more than 30 languages in Afghanistan². But there are still no credible statistics on the percentage of the population that speak these languages, and no significant research has been done on this issue.

Basis of Legal Protection of Equality and Non-Discrimination

Racial discrimination is prohibited by international laws and regulations, and subject to international instruments it is also prohibited in the national laws.

The United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, and the Declaration of the Rights of Individuals Belonging to National, Ethnic, Religious, or Linguistic Minorities are the most important international instruments on the prohibition of racial discrimination.

Racial discrimination is also prohibited in the Afghan National Legislation, in addition to the Afghan Constitution, the Afghan Labor Code, Afghan Civil Servants Act, the Afghan Administrative Procedure Act, the Afghan Education Act, Draft law on Non-Discrimination and Criminal Code, the Law on the Prohibition of Torture recently been approved, have enshrined numerous articles supporting the process combating racial discrimination.

Supportive structures

AIHRC, the Human Rights Protection Unit in the structure of the Ministry of Justice and the Executive Committee for Sustainable Development goals are among the most important steps that the Afghan government has so far taken towards the protection of human rights, including prohibition of discrimination.

Content Analyze of Information Obtained from Focus Group Meetings

Analysis of the information from the focus group meetings' discussions has shown that despite the good work that the Afghan government has done in the area of legislation and non-discrimination, there are still serious challenges in this regard, including legal challenges and practical challenges faced by citizens' access to their basic rights and freedoms.

Studies in this research have revealed that there are some national laws that are in conflict with the principle of equality and the prohibition of discrimination. Like Articles 62, 130 and 131 of the Constitution and Article 2 of the Afghan Penal Code.

Also, the focus group meetings results have found challenges faced by citizens' equal rights and fundamental freedoms. These problems, which are considered to be racial discrimination, include the various grounds and opportunities that have been assessed as follows:

1. Discrimination in the Distribution of ID Cards

Studies of this research have shown that, despite the fact that Jogi ethnic group have been born in Afghanistan for several generations, but contrary to Article 9 of the Afghan Citizenship Act, they have not yet been able to receive citizenship certificates and benefits from the related privileges.

2. Discrimination in employment and work environment

Focus group meetings' participants complained about the existence of discrimination in the employment process and in the work environment, and emphasized on the need for attention to this issue.

The analysis of focus group meetings in the 14 provinces³ showed that participants complained about the existence of

1. <https://photos.state.gov/libraries/afghanistan/941877/Reports/AFGHANISTAN-IRF13.pdf>

2. http://www.bbc.com/persian/afghanistan/2010/02/100221_k02-afghan-local-languages

3. Uruzgan, Bamyan, Badakhshan, Daikundi, Faryab, Ghor, Badakhshan, Kunduz, Kabul, Nangarhar, Paktia, Kandahar, Herat and Helmand.

discrimination, especially in the recruiting process in public administrations, and confirmed that they were faced with a variety of discriminatory attitudes showed by some people.

3. Discrimination in Development and Infrastructure programs

According to Focus group participants, the Afghan government has so far not been able to obtain the people's confidence regarding their national development plans. They believe that the government development programs are discriminatory and contrary to the principles of balanced development, and the national budgets are made and approved under a non-transparent process based on ethnic, religious, linguistic and other high-level government officials' desire and trends, without considering the needs and requirements and peoples' participation.

The study has shown that until now, except one case concerning the former Deputy Head of the Oversight and Evaluation of the President Office who was recently been sentenced to two years suspended imprisonment in the month of Dalw, no other case of racial discrimination by the government officials has been tried in the courts so far. According to the study, the Afghan people have not been sensitive to this issue and have not yet seriously filed a complaint with the judiciary.

Analysis of Statistical Data

In the data analysis section, 3,498 people were interviewed and the questionnaires were completed. The results of this section indicate that an average of 25.4% of interviewees confirmed the existence of racial discrimination in Afghanistan, saying that they had been faced with it one or more times because of their ethnic, religious, or linguistic attachment, being discriminated against and insulted.

73.1% said they had not been discriminated against and have not been insulted. The remaining 1.5% did not respond to this question and remained silent.

Racial Discrimination Based on Ethnic Affiliation

Field studies of this research found out that of 3,498 interviewees, 1,093 people, making up 31.2%, had been discriminated against because of their dependence on a particular ethnic group, but 2,392 people, making up 68.4%, said that they had so far not been discriminated against for their dependence to a particular ethnic group, and the remaining 13 (0.4%) did not answer this question.

Among those who responded to this question and confirmed discrimination against themselves, 412 (37.6%) of them said that the perpetrators had been ordinary people, and 114 (10.4%) of them said that the perpetrators had been an employee of the nongovernmental organizations. In the end, 567 people (51.9%) confirmed being discriminated and offended by government officials because of their ethnic affiliation.

Also, of those who were discriminated against and insulted by government officials because of their ethnic affiliations, 209 (36.9%) of them confirmed that the perpetrators had been low-ranking government officials and 358 (63.1%) of them said that the perpetrators had been from among the high-ranking government.

Racial Discrimination Based on Religious Affiliation

The statistics showed that among the 3,498 interviewees, 596 (17.0%) of them responded positively and confirmed that they had been victims of discrimination because of their religious affiliation. 2,810 people (80.3%) answered this question negatively, and 92 people (2.6%) did not respond at all.

Among those who responded positively to this question and who were victims of discrimination based on their dependence on a specific sect or religion, 302 people (50.7%) introduced the perpetrators of discrimination as ordinary people, and said that they had been discriminated against and insulted in the workplace and in the community. 64 people (10.7%) said that the perpetrators had been staff of NGOs, 230 people (38.6%) said that government officials had been the perpetrators of discrimination.

The study also found out that of 230 government officials who had been the perpetrators of discrimination and insult based on religious affiliations of the citizens, 77 (33.5%) of them had been low ranking officials, and 153 (66.5%) of them had been from among the high-ranking government officials

Racial Discrimination Based on Linguistic Dependencies

The finding of this study showed that out of 3,498 interviewees, 975 of them (27.9%) were discriminated against, because of speaking in a specific language. 2,468 (70.6%) responded negatively to this question and 55 others 1.6% did not

answer this question.

Regarding perpetrators' occupation who discriminated based on citizens' language affiliation, interviewees confirmed that 406 people (41.6%) who discriminated based on language had been ordinary people and 105 (10.8%) had been employees of NGOs and 464 (47.6%) of them had been from government officials.

The study also revealed that among the 464 government agents who discriminated based on affiliation of the citizens, 143 (30.8%) of them had been from among low-ranking and 321 (69.2%) other had been from senior government officials.

The Consequences of Racial Discrimination in Afghanistan

The results of the study indicate that the implementation of the government's commitments in this area is still a serious challenge in some cases, and a number of citizens have complained of their human rights violations as a result of racial discrimination.

Violation of the Right to Vote in Elections

The study found that 229 (6.5%) of the interviewees said they were deprived of their rights to participate in the election due to ethnic, religious or linguistic affiliations.

These people claimed that they had been victims of racial discrimination during the election and were deprived of their rights to participate in the election by powerful people who wanted to defeat their electoral opponents. Some have also stated that they did not want to participate in the election because they had to vote for someone who was not approved by them. In addition, in accordance with Article 62 of the Constitution, followers of other religions cannot be the candidate of presidential post.

Among the interviewees, 3,227 people, representing 92.3% of all interviewees, confirmed that they had not encountered any problems so far, and 42 people, 1.2% did not answer this question.

It should be noted that the information of this inquiry was collected before the parliamentary elections of 1397, so the problems in this election are not included in this research.

Violation of the Right to Work and Related Rights

Out of the interviewees 1,491 of them making up 42.6% of the sampling population, confirmed that they had been eligible to work in the offices, and the rest 2007 (57.4%) of them had not been eligible to be recruited in the government departments and are not included in this part of the research, so this part of the questions is answered by those who have been qualified and eligible of working in the government organs.

Discrimination in Employment

The first question in this section relates to discrimination in employment, of which 122 people 8.2% claimed to have been subjected to racial discrimination in recruitment processes. 1,360 people (91.0%) responded negatively to this question. The remaining 9 people, 0.6%, did not answer this question.

Dismissal of staff Based on Racial Discrimination

207 interviewees (13.9%) said they were dismissed of the office based on discrimination. 1,224 people (82.0%) answered this question as negative, and 60 people (4.0%) did not answer this question at all.

Racial Discrimination in the Employees' Promotion

275 people, representing 18.4% of the total number of interviewees, confirmed that they had been deprived of the right to promotions based on ethnic, religious, or linguistic affiliations. 1,146 people, 77.0%, rejected the existence of discrimination in the offices in connection to promotion, and the remaining 70 people, 4.7%, did not answer this question.

Deprivation of Staff from Financial Privileges based on Racial Discrimination

360 people, 24.1% of all job-qualified interviewees said that they had been denied financial privileges based on racial discrimination. 1,067, 71.6% of the respondents answered negatively, while the remaining 64 people (4.3%) did not answer this question.

Violation of the Right to Justice Based on Racial Discrimination

۲۷۲ people, 7.8% of all interviewees, confirmed that they had been faced with discrimination by officials of the judiciary organs, but 3,180 people's, 90.9%, answers were negative to this question. The remaining 46 people, 1.3%, did not answer this question.

Violation of the Right to Property and Trade based on Racial Discrimination

The study found out that 289 (8.2%) of interviewees said that they had been discriminated against in the area of property rights and business in recent years. According to these people, there had been cases where powerful individuals had illegally seized or usurped their property without their consent. 3,164 people (90.5%) denied the existence of racial discrimination in the area of property ownership and trade, while the remaining 45 people (1.3%) did not answer this question.

Violation of the Right to Access to Health Services Based on Racial Discrimination

401 people (11.5%) complained about the existence of discrimination in the area of access to the right to health, but 3,056 (87.4%) rejected the existence of racial discrimination in the access to the right to health, and the remaining 41 (1.2%) did not answer this question.

Violation of the Right to Education and Higher Education Based on Racial Discrimination

407 people, (11.6%) of all interviewees, stated that they had been discriminated against by the employees and officials of relevant departments in connection to the right to education and higher education. 3,057 (87.4%) rejected discrimination in this regard, and 34 people (0.1%) did not answer this question.

Violation of the Right to Attend Cultural and Religious Gatherings

369 people (10.5%), said their right to freedom of participation in religious circles and events has been restricted. 3,083 people (88.1%) rejected the existence of the discrimination in this regard, and 46 of them, (1.3%), did not answer this question.

Provoking Discord

Studies in this research have shown that among the 3,498 interviewees, 1544 people (44.1%), have confirmed that they knew someone or those who provoke racial discrimination through public circles, media, and internet pages. 1,887 people (53.9%) said that they did not know such persons, and 67 people (1.9%) did not answer this question.

In detail of this discussion, when interviewees were asked about the tools used by the perpetrators to provoke discord and disunity, the respondents' answers showed the followings:

380 people (24.6%) said that the perpetrators had used general media. 703 people (45.5%) said that the perpetrators had instigated racial discrimination through internet networks, and 461 people (29.9%) said that the perpetrators used public circles to provoke disunity.

Advocacy

In the first section of the statistical analysis of the data, the study showed that out of 3,498 people, 1,093 of them (31.2%) had confirmed that they had been victims of racial discrimination. Of those, 317 people, (29.0%) claimed to have filed a complaint after they felt they were discriminated against, but all of them said that they did not refer to justice and judicial institutions, but to higher authorities and individuals of the same office.

According to this figure, it is found out that the 776 people (71.0%), who were victims of racial discrimination did not file any complaints after being discriminated against.

Handling of Complaints

Among those who filed a complaint with the authorities after being discriminated against, 103 (32.5%) of them said that their complaints had been reported and handled, but 214 (67.5%) confirmed that they had filed a complaint, but their complaint had not been heard and addressed.

Chapter One Generalities and Concepts

Introduction

AIHRC's mandate

Research's objectives

Concepts

Introduction:

Ethnic, religious, and linguistic discrimination is one of the terrible realities of our society throughout history, which is the root of many national problems and challenges, including war and insecurity.

The history of slavery has also its root in racial discrimination that a different look at human beings has caused some people be placed in a different position than others in the society, because of their racial, ethnic, religious, or linguistic attachment.

Racial discrimination or an unequal look at human beings based on their racial, ethnic, religious, and linguistic affiliations has caused the structures of power and their institutions to launch bloody wars and kill millions of human beings or deprive them of their basic rights and freedoms.

Discrimination in Afghanistan with regard to ethnic, religious and linguistic diversity has been one of the serious concerns for the national stability and security that are raising questions about government approaches and programs in this regard. An approach that causes increasing doubts about the commitments and beliefs of the government towards the basic human rights and fundamental freedoms of citizens and, moreover, is becoming more and more ample by the instigation and attitudes of some evil-minded people.

The AIHRC, with due regard to its legal responsibilities in monitoring the human rights situation, aiming at meeting the relevant challenges and problems, as well as given the questions regarding the citizens' access to their basic rights and freedoms free from discrimination, and in equal and inclusive conditions, has launched this research to assess the situation, find out the challenges in this area and put forward specific recommendations to the government and the international community, and address the challenges and assess the extent to which the Convention on the Elimination of All Forms of Discrimination is implemented by the Afghan government.

Indicators of attention in this research are divided into three categories:

One: Structural Indicators, in which the actions and achievements of the Afghan government in the area of legislation and creation of supportive structures against racial discrimination have been assessed.

Two: Operational Indicators, in which the functions and activities of the Government of Afghanistan have been studied in the area of non-discrimination, including cultural development, in recent years, and the process of legal and judicial consideration of cases of racial discrimination has been considered

Three: Indicators of Outcome, in which the results of the government's legal and structural measures, including legislation and the establishment of supportive institutions, as well as the functions and activities of the government in the area of non-discrimination, have been assessed. The analysis of the statistical data and in general the assessment of the situation and the results achieved thereof is the main

target of this indicator.

This research is one of the most fundamental research of its kind in recent decades at the national level, which is directly linked to the first part of the Convention on the Elimination of All Forms of Racial Discrimination, and is prepared in accordance with the provisions of Article 9 of this Convention, to ensure that all actions and achievements of the Afghan government, as a country who has acceded to it, concerning the implementation of this Convention is fully reported

This research, in addition to identifying the strong points of the process of combating racial discrimination in Afghanistan, by conducting serious assessment of the situation through the questionnaire, focus group sessions (group discussion), and library studies, has provided clear evidence of the challenges and problems of the process at the national level, and based on these findings it has also presented specific recommendations to the Afghan government, which we hope will be seriously considered by officials of the government and non-government authorities and institutions.

Commission's Mandate

According to Article 58 of the Constitution and the provisions of Articles 5 and 21 of the Law of the AIHRC, the AIHRC is competent to monitor the situation of human rights throughout the country, by launching scientific investigations and making report on the challenges and problems in the area of human rights. This time, the AIHRC decided to launch a research entitled "Assessing the Implementation of the Convention on the Elimination of All Forms of Racial Discrimination in Afghanistan", in addition to discovering the challenges and problems encountered by the Afghan citizens in this area, put forward effective recommendations and solutions to the government and international community to address the related challenges and problems encountered.

Afghanistan is a country with a population comprising of different ethnic groups with different religious beliefs and languages. The political system in this country, especially in the last half-century, has been less stable due to wars and prolonged conflicts and violence. Actually in most cases these ethnic, religious, and linguistic differences have been the root causes of conflicts in the country. In this country, the management of development programs has been influenced by the will of the ruling powers who have had different approaches towards ethnic groups and populations outside the power. In spite of the many efforts made and necessary legal basis like Constitution and other laws established to eliminate racial discrimination in the country, racial discrimination continues to be one of the important issues that is always focused by the media and political critics.

Afghanistan signed the Convention on the Elimination of All Forms of Racial Discrimination on July 06, 1983,¹ and ratified it on March 5, 2003², and has officially acceded to it.

In accordance with the provisions of Article 9 of the CERD, Member States are required to report to the Committee on the Elimination of Discrimination, in the first instance, one year after the date of the Convention's entry into force, and in subsequent periods every two years.³

The Afghan government has provided only one preliminary report to the CERD in 1984, however, the Committee expressed concern in its 1997 report to the United Nations General Assembly on Afghanistan that it had not submitted a report, and insisted that the submission of the report of the Government of Afghanistan to the Committee, in accordance with Article 9 of the Convention is very important. During recent years, the AIHRC,⁴ while emphasizing the importance of the issue at various meetings, called on the government to work on the provision of and reporting to the CERD. Fortunately, this year, the government responded positively to this need and prepared a national report on the extent to which the Convention on the Elimination of All Forms of Discrimination in Afghanistan has been implemented.

Research Purposes

The purposes of this study, with regard to the points underlined by the Convention on the Elimination of All Forms of Racial Discrimination, include:

- 1- Assessing of the situation and analysis of the structural, legal capacities of the mechanism fighting racial discrimination at the national level;
- 2- Finding out problems and challenges faced by the process of combating racial discrimination at the national level;

1. https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=EN (Adapted on 30/01/2019)

2. <http://moj.gov.af/fa/page/1693> (Adapted on 30/01/2019)

3. United Nations General Assembly, Convention on the Elimination of All Forms of Racial Discrimination (1965) Article 9

4. Annual report of the Committee for the Elimination of All Racial Discrimination to the United Nations General Assembly, September 26, 1997 Page 13

https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=AFG&Lang=EN

- 3- Creating a concrete belief carry out an effective struggle aiming at elimination of racial discrimination, development of equality and the consolidation of national unity as a human rights pattern;
- 4- Promoting public awareness about the consequences and destructive effects of racial discrimination;
- 5- Provide effective recommendations to the Afghan government and the international community to address the challenges of the fight against racial discrimination in Afghanistan;
- 6- Encouraging the Government of Afghanistan to implement Article 6 of the Constitution on equality and non-discrimination, in particular racial discrimination, and the preparation and implementation of effective programs for balanced development at the national level.

Concepts

Racial discrimination is conceptually a mental and ethical issue that is understandable in people's social relationships and transactions. This means that racial discrimination does not have a biological or genetic concept, and it has not been proven that human beings have been differentiated by individual characteristics such as skin color, ethnic or relative affiliations, religious beliefs and language differences , or enjoy a certain weakness or ability.¹

Definition

According to the definition of racial discrimination in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965), "racial discrimination" mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. "²

Concerning the definition of racial discrimination by the Convention and also based on the provisions of the first paragraph of this Convention, which reads as follows: "all member states have pledged themselves to take joint and separate action, in co-operation with the

organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms

for all, without distinction as to race, sex, language or religion, considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, color or national origin³ "It can be concluded that racial discrimination prohibited four types, including distinction, prohibition, restriction and privileges based on racial, ethnic, religious affiliations.

A: Distinction

Distinction means separating and dividing.⁴ Discrimination occurs when a group of people are treated differently on the basis of race, color, ethnicity, nationality, religion, or language in the enjoyment of their basic rights and freedoms, therefore, distinction between people in their access to public services, political, social, cultural and other opportunities is racial discrimination.

B: Prohibition

Establishing conditions in which a group of people are prohibited from accessing their basic rights and freedoms by the state or government agents due to race, color or ethnic, national, or religious affiliation and are placed in an unequal situation with other residents of a country.

C: Limitation

Creating restrictions for a specific group of people to deny their access to their basic rights and freedoms is an example of racial discrimination taking place on the basis of race and color, or ethnicity, nationality, religion, or certain language.

1. Stanford Encyclopaedia of Philosophy

2. United Nations General Assembly, Convention on the Elimination of All Forms of Racial Discrimination, Article 1, adopted on December 21, 1965

3. ibid

4. <https://www.vajehyab.com/moein/%D8%AA%D9%85%D8%A7%DB%8C%D8%B2>

In the issue of the restrictions, the purpose is to create conditions in which certain group of people cannot access equal opportunities and conditions as others, e.g. their enjoyment of an equal opportunities is restricted.

D: Preference

The main purpose of preference is providing better opportunities and conditions to a number of people based on their race, color, ethnicity, nationality, religion, or specific language to have access to their basic rights and freedoms. For example, creating a special school, a special university or a special hospital for a specific group of people belonging to a specific ethnic group or religion, or language, and depriving others from the right to enter these centers.

For this reason, racial discrimination can be any kind of behavior that as a results of which individuals become deprived of their access to their basic rights and freedoms, based on racial or ethnic, religious, or language dependencies.

Second Chapter Methodology

Research methodology

Sample population personal information

Focus group meetings participants

Research methodology

Given the security challenges in Afghanistan, access to the information needed for this study has been difficult and in some cases risky. A trip to all provinces and districts of the country to obtain information on racial discrimination, is very challenging and needs a long time and secure conditions.

In spite of these problems, the AIHRC colleagues made their efforts to travel to provinces and districts as much as possible, by undertaking serious problems and serious risks to collect the information required for this research.

Field studies' finding shows that the AIHRC's colleagues traveled to 29 provinces to complete the questionnaires. However, among the individuals interviewed in 29 provinces there were residents of all 34 provinces of the country. Therefore, the sampling populations of this research include residents of all 34 provinces of the country. In addition to field study, holding of 14 focus group meetings to get experts' opinions and views of human rights activists and civil society agents, was another step that was taken by our colleagues in 14 provinces despite serious security problems.

A: Analysis of Concepts

The analysis of the concepts of racial discrimination and its prohibition on the national level has taken place by referring to international documents and national laws that have been made through library studies. In this section of the study, all international laws and regulations regarding non-discrimination have been reviewed and information on theoretical foundations and historical background has been gathered and analyzed in accordance with content analysis method.

B. Identifying variables

The identification of variables in this research was based on library studies that includes race, ethnicity, religion, language, and individuals, including ordinary people and government officials (independent variables) and discrimination (dependent variable) and its outcomes in the field of human rights such as political rights, rights related to work and employment, health, education, and other economic, social and cultural rights.

C: Collect data and information

The data and information required for this research were collected according to international standards by interview, group discussion (focus group) and questionnaires. During the collection of information, 10 interviews with experts were conducted, 14 sessions of focus group were held and 3,498 questionnaires were completed.

D: Focus group

Focus group sessions (group discussion) are one of the most important means of collecting information for the research. Each of these meetings has been participated by 15-25 civil society and human rights activists, scholars, government officials and media representatives, and victims of discrimination. All focus group meetings in this study conducted within 14 meetings participated by 333 people.

E: Sampling population

The sampling population of this study, according to the Morgan table and with regard to the number of population of the country (31,757,018 people¹) is 14 people out of every 100,000 people, reaching a total of 4,445 people. However, due to security challenges, the AIHRC has not been able to travel to a number of provinces and districts of the country to complete the questionnaires. Therefore, all questionnaires and 3,498 interviews were completed in 29 provinces.

F: Categorizing and Analyzing Information

Analysis of data and information of the interviews with experts and focus group meetings has been done using content analysis method. However, the analysis of information obtained through questionnaires was done by statistical analysis method, which was first categorized by SPSS software.

G: Implementation stages

This research is conducted in accordance with the international standards and principles of the research methodology. Its first stage began with the determining of the report title and description of its necessity in the AIHRC's 1397 Action Plan, and determining of the required budget, and after preparing the research plan and finalizing the interview questions, group discussions and questionnaires, required guidelines were also provided and were taught to all colleagues through specific training programs. The data gathering started from the field (field research) from the beginning of the month of Assad in 1397 and was completed by the end of the month of Aqrab of the same year. Upon completion of this stage, the information obtained was categorized by SPSS software and analyzed statistically with the text of the research. Also information from focus group sessions were used after content analysis. The text was reviewed by the Coordinators group and the Legal Advisor of the AIHRC, and was published after being approved by the Chairperson of the AIHRC, the Executive Director and the Commissioners of the AIHRC.

Provinces covered

In the analysis of provinces (geographic regions) covered by this research two issues were important:

The first issue was the provinces where the staff of the AIHRC personally attended and conducted interviews with certain people and completed questionnaires in 29 provinces, including the provinces of Uruzgan, Badghis, Bamyan, Badakhshan, Baghlan Balkh, Parwan, Paktia, Panjshir, Takhar, Khost, Daikundi, Zabul, Samangan, Ghazni, Ghor, Faryab, Farah, Kandahar, Kabul, Kapisa, Kunduz, Kunar, Laghman, Nangarhar, Nimroz, Herat, Helmand and Maidan Wardak.²



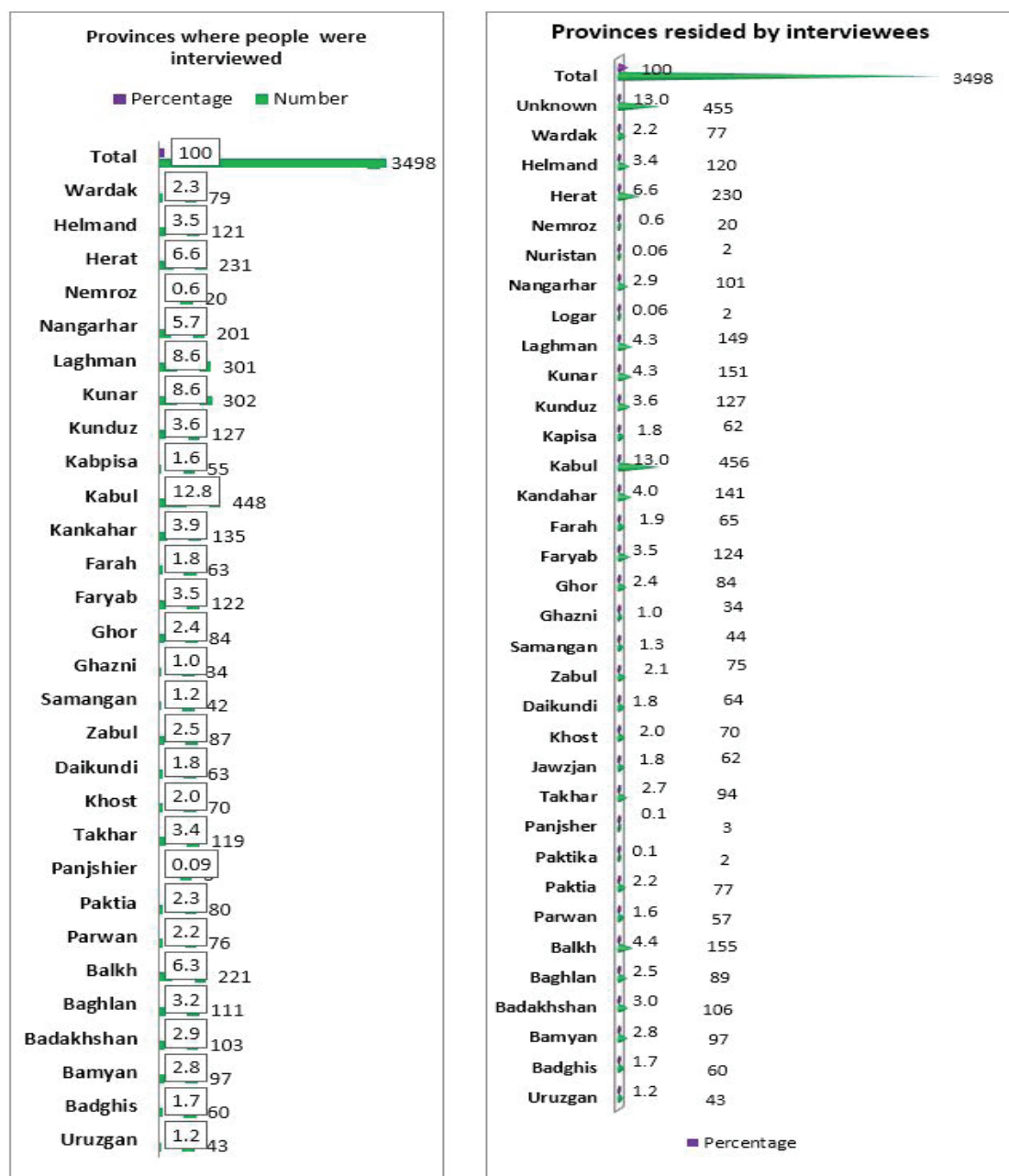
The second issue was the individuals interviewed in this study in all 34 provinces of the country such as: Provinces of Paktika, Nuristan, Sarip-

1. According to the statistics published by the Central Statistics Office in 1397,

2. According to the first classification, the total number of interviewees reaching 3498 people was interviewed in 29 provinces, including the following:

In Uruzgan province, 43 people were interviewed, accounting for 1.2% of the total number of interviewees. Thus, in Badghis province, with 60 (1.7%) in Bamyan province, 97 (2.8%) were in Badakhshan province with 103 (2.9%) in Baghlan province with 111 (3.2%) in Balkh Province with 221 people (6.3%) in Parwan province with 76 (2.2%) in Paktia province with 80 (2.3%) in Panjshir province with 3 (0.1%) in Takhar province with 119 (3.4%) in Khost province with 70 (2.0%) in Daikundi province with 63 (1.8%) in Zabul province with 87 (2.5%) in Samangan province with 42 People (1.2%) in Ghazni province with 34 (1.0%) in Ghor province with 84 (2.4%) in Faryab province with 122 (3.5%) in Farah province (63) 1.8% in Kandahar province with 135 people (3.9%) in Kabul province with 448 (12.8%) in Kapisa province with 55 (1.6%) in Kunduz province with 127 (3.6%) in Kunar province with 302 (8. 6%) in Laghman province with 301 cases (8.6%) in Nangarhar province with 201 cases (5.7%) in Nimroz province with 20 cases (0.6%) in Herat province with 231 cases (6.6%) In Helmand province with 121 (3.5%) and in Maidan Wardak Province interviews with 79 (2.3%) were interviewed and the questionnaire was completed.

ul, Jawzjan, and Logar provinces are the provinces where AIHRC staff failed to travel to these provinces at the time of conducting field studies due to insecurity and threats. But there were people from these provinces in other provinces who interviewed the commission's colleagues.¹



1. On the basis of the second category, the total number of interviewees reached 3498, interviewed by 43 people from Uruzgan province, accounting for 1.2% of the total number of interviewees. Thus, from Badghis province with 60 (1.7%) from Bamyan province with 97 (2.8%) from Badakhshan province with 106 (2.8%) from Baghlan province with 89 (2.5%) Balkh Province with 155 people (4.4%) from Parwan province with 57 (1.7%) from Paktia province with 77 (2.2%) from Paktika province with 2 persons (0.1%) from Panjshir province Of the three (0.1%) of Takhar provinces, 97 (2.7%) of Jawzjan province with 62 (1.8%) were from Khost province with 70 (2.0%) from Daikundi province with 64 People (1.8%) from Zabul province with 76 (2.1%) from Samangan province with 44 (1.3%) from Ghazni province with 34 (1.0%) from Ghor province with 84 (2.4%) from Faryab province with 124 people (3. %) From Farah province with 65 (1.9%) from Kandahar province with 141 (4.0 %) from Kabul province with 456 (13.0%) from Kapisa province with 62 (1.8%) From Kunduz province with 127 (3.6%) from Kunar province with 151 (4.3%) from Laghman province with 149 (4.3%) from Logar province with 2 (0.1%) from Nangarhar province, with 101 people (2.9%) from Nuristan province with 2 (0.1%) from Nimroz province with 20 (0.6%) from Herat with 230 (6.6%) from Helmand province 120 people (3.4%) were interviewed from Maidan Wardak province with 77 people (2.2%) and the questionnaire was completed. 455 people (13.0%) no longer talked about their place of residence. So the location of this unknown number is inserted.

Sampling Population Personal Information

The personal information of the interviewees or the sampling population in field research is important in terms of the role it plays in the accuracy of the report, and is considered as the index of public trust to the information given, because in addition to specifying how many or what percentage of interviewees are men, and women, or in terms of age at which age group they are, it also makes it clear who the interviewees are and what level of literacy or higher education they have and in what position they are in terms of employment. Each of this information, in addition to representing the inclusiveness of the sampling population, ensure the accuracy of the information. For example, the level of literacy or educational level of the interviewees as a variable plays a very important role in the importance of this study because there is no doubt that educated people with a higher education have a better understanding of the situation and are more familiar with the concepts of racial discrimination. Therefore, the information that comes from them, besides the information provided by illiterate people, play a complementary role and ultimately contributes to greater trust in the results of the research.

A: Gender

The sampling population of this research, as mentioned in previous discussions, were 3,498 people, of whom 2,061 (58.9%) were male, 1,405 (40.2%), female, and the identity of 32 people (0.9%) is recorded as unknown. Although gender discrimination is not an example of racial discrimination, but the views of the sampling population, men and women regarding racial discrimination indicate inclusiveness of this research, so it looks to be important in this regard.

B: Age

The interviewees are divided into three groups based on their ages. The first age group was between the ages of 12 and 18. The number of that age group was 489, representing 14.0% of the total number of interviewees. The second age group was included the age of 19 to the age of 39. These people amounted to 2,412 people (69.0%) of the interviewees. The third age group included those who were over 40 years of age. The number of people in this age group reached 573 people (16.4%) of the total number of interviewees, and in the end, the remaining 24 people (0.7%) were not included in the questionnaires and were registered as unknown.

The importance of age of the interviewees in this research is critical, because, individuals, included in the interviews as a fundamental variable, could provide researchers with real and useful information based on their perceptions and experiences of social realities. Therefore, given the fact that the number of individuals included in the second and third age groups have better, accurate and reliable information representing 85.4% of the total interviewees, it is acknowledged that the results obtained from this research are more reliable and trustworthy.

C: Civic Status

According to the data 1996 (59%) of the respondents were married, 1,391 (39.8%) of them were single and 87 (2.5%) were widow or divorced. The civil status of the remaining 24 people, which represents 0.7%, is unknown.

D: Physical status

Identifying the physical state of the interviewees is very essential because it is important to know what number of interviewees come from among the people with disabilities, because people with disability, given their specific status, people with disabilities as defined in the provisions of the international and national laws and regulations, especially Article 5 of the Law on the Rights and Privileges of Persons with Disabilities, need special support, and the probability of their human rights violations is also greater in case of discriminatory attitudes. For this reason, the AIHRC has placed particular emphasis on the inclusion of persons with disabilities in the sampling population, with regard to the quantity and proportion of PWDs among the general population, and has included them in the list of interviewees.

The findings of this research shows that out of 3,498 interviewees, 100 (2.9%) of the total sampling population were among people with disabilities. Thus, 3,344 people, which make up 95.6% of all interviewees, were non-disabled, and information about the physical status of 54 people, which makes up 1.5% of the interviewees, has been recorded as unknown.

E: Occupation

Recognition of job and unemployment status of the interviewees, with regard to discriminatory treatment by the authorities in this regard, are also of particular importance in the research, because the experiences of sampling population as an essential variable in this area bear important information and enhances access to the realities of the society.

The results of this study showed that 577 people (16.5%) of all interviewees have been unemployed. 500 people (14.3%), have had a free job, 1,119 people (32.0%) have been government employees and 992 people (28.4%) have been university students and 244 people (7.0%) have been school students, and finally the remaining 66 people (9%) were registered as unknown.

F: Level of Education

As mentioned earlier, the level of education of sampling population is an important indicator for ensuring credibility of the information obtained from field research. In addition to the fact that the presence of people with different level of education, including educated and those who are not well-educated, can be effective in supporting the principle of inclusiveness of sampling population.

The data obtained from this study showed that out of the people included in sampling population (3,498 people), 78 people (2.2%) have had a degree above bachelor's and 1,648 people (47.1%) have had bachelor's degree and 739 people (21.1%) have been baccalaureates and 518 people (14.8%) have been below baccalaureates. 445 people (12.7%) have been illiterate. Finally, the level of education of 70 people (0.2%) have been recorded as unknown.

G. Place of residence (village / city)

One of the very inclusive indicators of scientific research or survey that the statistical population of which is the total population of a country, is the presence of residents of the city and village in the sampling population. In this research, attempts have been made to make interviews with the residents of the city and villages according to the necessity and standards of the research method and make them included in the sampling population. AIHRC has always tried to consider, in all its field studies, the proportion of sampling population to the total population according to the international standards of research methodology.

Recorded data from the sampling population's place of residence has shown that 2,300 people (65.8%) of all interviewees were residents of the city. The remaining 1,198 people (44.2%) live in villages.

Interviewees' personal information table				
Number	Sex	Number	Percentage	Total
(1)	Male	2061	58.9%	3498 people
	Female	1405	40.2%	
	Unknown	32	0.9%	
Number	Age	Number	Percentage	Total
(2)	From 12 to completion of 18 years of age	489	14.0%	3498 people
	19 to 39 years of age	2412	69.0%	
	Forty years old	573	16.4%	
	Unknown	24	0.7%	
Number	Marital Status	Number	Percentage	Total
(3)	Married	1996	57.1%	3498 people
	Single	1391	39.8%	
	Widow or divorced	87	2.5%	
	Unknown	24	0.7%	
Number	Physical Status	Number	Percentage	Total
(4)	People with disabilities	100	2.9%	3498 people
	healthy people	3344	95.6%	
	Unknown	54	1.5%	
Number	Job	Number	Percentage	Total
(5)	Unemployed	577	16.5%	3498 people
	Has a free job	500	14.3%	
	Officials of government and nongovernmental organs	1119	32.0%	
	Student	244	7.0%	
	University student	992	28.4%	
	Unknown	66	1.9%	
Number	Education Level	Number	Percentage	Total
(6)	Higher than bachelor's degree	78	2.2%	3498 people
	Bachelor	1648	47.1%	
	Bachelorette	739	21.1%	
	Below Bachelorette	518	14.8%	
	Illiterate	445	12.7%	
	Unknown	70	2.0%	
Number	Place of Residence	Number	Percentage	Total
(7)	City	2300	65.8%	3498 people
	Village	1198	44.2%	
	Unknown	0	0%	

Participants of Focus Group

Focus group is one of the examples of group discussions and is one of the most reliable tools for collecting the information required for a study. The APF¹ Guideline is also considered one of the most important tools for collecting national research information.

In focus group meetings, this research focused on specific questions with the participation of 333 human rights activists, civil society, media representatives, officials and representatives of government organs and private institutions, members of the House of Representatives and Provincial Councils, members of the Ulema Council, scholars and victims of discrimination and inequality have been discussed and exchanged views. Participants' views and experiences have been highlighted in the discussions about the process of combating racial discrimination and various narratives of racial discrimination at the national level, particularly discrimination in government departments.

Out of the participants in the focus group meetings, 103 people (30.9%) were women and 230 (69.1%) other men, who attended 14 meetings in Uruzgan, Balkh, Bamiyan, Badakhshan, Daikundi, Ghor, Faryab, Kandahar, Kabul, Kunduz, Paktia, Nangarhar, Herat and Helmand provinces. Focus group meetings, each of which was attended by 15 to 37 people were held for one day in 14 provinces. The meetings took more than a month, the first meeting of which was held in Sunbula 13, 1397, and the last session was held in 28 of the month of Mezan, 1397.

The challenges to the research and the lessons learned

Given the security situation in Afghanistan and the lack of capacity and data collection conditions, especially from remote areas and villages, in addition to technical challenges, the process of research faced various challenges and problems.

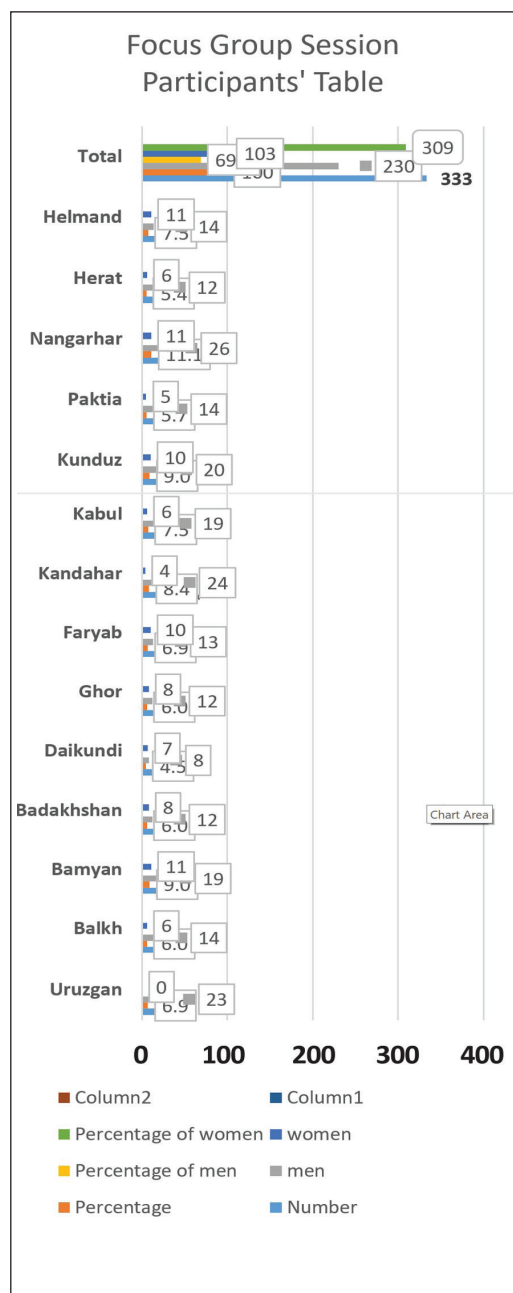
1. Security Challenge

Security challenge has been one of the most important challenges to this research. The AIHRC's colleagues had to travel to the provinces and areas with serious security problems to collect the data needed for this research. In spite of all the efforts made in this area, however, it was not possible to travel to five provinces of Paktika, Nuristan, Sar-i-Pul, Jawzjan, and Logar to provide the necessary information from these provinces.

During field surveys, AIHRC's colleagues faced with people who did not want to interview or complete a questionnaire because of fear of anti-government armed forces. These people have clearly argued that some of the anti-government armed groups in the cities and villages were pursuing people and punished them if they could find them having connections with government officials. For this reason, these people were not willing to interview, so in many cases the data collection process had encountered the problem.

2. The cultural challenge

Given the rule of traditional culture, especially in remote areas and villages of the country, interviews with women, which make up half of the population of the country, have been problematic. In some areas, families did not allow women to interview even with our female colleagues. Therefore, the AIHRC's colleagues had to knock up many doors to obtain the necessary information from the women and girls in the villages of the country.



1. APF is a regional network of national human rights institutions of 25 Asian countries of the Pacific. For more information, visit the Internet at: <http://www.asiapacificforum.net/members/>

3. Structural Challenge

Recent changes and developments in the country, especially in the area of people-government relationship, have increased the gap between the people and the government and have reduced public confidence in national programs.

Therefore, many people, especially in the villages of the country do not want to cooperate with such kind of plans honestly.

But with all the problems mentioned above, the implementation of this research has been successfully carried out as a result of the efforts of the colleagues of the AIHRC and the direct and effective oversight of the Executive Directorate. The required information was collected based on the principles and standards of the international research methodology.

During this research, the AIHRC found that collecting information from the provinces of the country, especially rural and remote villages, in the stage of selecting sampling population, is a very complex and specialized process requiring necessary precision and recognition in this regard. Therefore, we decided to send at least one of the colleagues of the research unit, who had seen the required training method, to provinces to cooperate with the colleagues in gathering information in field research and holding focus group meetings in regional and provincial offices.

The presence of a member of the human rights research and study unit in the composition of the information gathering group as well as in the focus group meeting helped the conduction of this research to be based on the principles and standards of the research methodology and be faced with less technical challenges.



Chapter 3

Afghanistan Demography

Tribes Living in Afghanistan

Religions in Afghanistan

Common languages in Afghanistan

Demography of Afghanistan

According to the latest statistics published by the Central Statistics Bureau in 1397, the population of Afghanistan amounts to 31,575,018 people,¹ who are coming from different ethnic groups and speaking different languages.

Ethnic, religious, and linguistic diversity in Afghanistan, in addition to being one of the attractive features of this land, and has been a fascinating symbol of national solidarity and co-operation throughout history, has also been one of the important factor and causes of racial discrimination in the country.

A: Tribes living in Afghanistan

Demographic studies in Afghanistan, influenced by the individual and collective trends of researchers, have not yet reached a credible result, and statistics published regarding the percentage of different ethnic groups in the country have always been contradictory and objected. In 2012, the Afghan Academy of Sciences, by reviewing the “Encyclopedia of Ariana”, published statistics on the percentages of ethnic groups in Afghanistan that was officially rejected by the Central Statistics Office of the country. At the same time, the head of the central statistics office confirmed that no formal work has been done on statistics and percentage of different ethnic groups in Afghanistan.²

Only regarding the small ethnic groups of Sikhs, Hindus and Jats (Indian sect)³ some unofficial statistics was published in some media outlets in Afghanistan showing that there are currently around 10,000 (ten thousand) Sikhs and Hindus,⁴ and about 13,000 (thirteen thousand) Jogi living in Afghanistan, that have the Indian indigenous root.⁵

The US Department of State’s 2013 report on “International of Religious Freedom “ in the Afghanistan section shows that at that time there were only 30 Hindu families and 685 Sikh families, with 4,500 members in Afghanistan.⁶

The Afghan Tribes, by Mulla Feiz Mohammad Kateb (1308), is one of the important sources of demography in Afghanistan, including the Pashtun, Tajik, Hazaras, Uzbeks, Turkmen, Baluch, Sadat, Aimak, Arabs, Qizilbash, Kiani, Joghtai, Digan Hindu, Swati, Shalmani, Tierahi, Kashmiri, Kurdorika,

1 - Central Statistics Bureau of Afghanistan, Estimation of the Population in 1397. Page 2

2 http://www.bbc.com/persian/afghanistan/2012/06/120611_k02-afghan-ethnicity-figures

3 Mullah Faiz Mohammad Kateb, Afghan National Tribes Pedigree by the efforts of Azizullah Rahimi, Published by: Ismaili Press Institute, 1372, p. 147

4. <https://da.azadiradio.com/a/29628594.html>

5.Center of Islamic Encyclopedia, Islamic Encyclopedia, Volume 17, Article No 6451, Pages 8-9 Available at <http://lib.eshia.ir/23022/17/6451>

6.<https://photos.state.gov/libraries/afghanistan/941877/Reports/AFGHANISTAN-IRF13.pdf>

Lizgai or Lekzai, Armenian, Tatar,¹ Habschy, Jewish, New Islam (Peshay and Nuristani²), and the Sultanate sect.³

It is worth mentioning that the names of some tribes are mentioned in Article 4⁴ of the Constitution. Likewise, it is also emphasized in its article 20⁵ that the tribes living in Afghanistan are referred to in the national anthem. However, both Articles have failed to include the names of all tribes living in Afghanistan, but they include the names of a number of great tribes known in Article 4, and cover the minorities with the term “other tribes.”

A noticeable point about the ethnic identity of Afghan citizens is that, in addition to the fact that the name of some of the tribes living in Afghanistan are referred to in Article 4 of the Constitution, the tribal identity of some ethnic minorities has been merged into larger tribes in the distribution of the ID cards. For example, the ethnic identity of the Sadat of the Pashtun areas and the majority of the tribes living in the Nuristan are recorded as Pashtun, the identity of Sunni Hazara and Aimak tribes are recorded as Tajik, and Sadat of the Hazaras area has been recorded as Hazara.

B: Religions in Afghanistan

AIHRC's studies have shown that in addition to followers of the holy religion of Islam, there are also a number of followers of Hindu, Christian and Baha'i religions. But there is no credible statistics on the number or quantity of followers of religions in Afghanistan. The US State Department wrote in its 2016 annual report on “International Religious Freedom” in Afghanistan: “There is no reliable statistics on the percentage of the followers of sects and religions in Afghanistan.”⁶

Moreover, according to the US State Department's report released in 2013, the number of adherents of Sunni religion comprising 80% of the country's total population (the population of Afghanistan was estimated to be 31.1 million in 2013) The followers of the Shia religion include the Imami Shia and Ismailis, accounting for about 19% of the country's population and the followers of other religions, such as Hindu, Christian, and Baha'i, make up less than 1% of the country's population.⁷

C: Common languages in Afghanistan

Research studies confirm the existence of more than 30 languages in Afghanistan. ⁸Dari, Pashto, Uzbeks, Turkmeni, Baluchi, Pashae, Pamiri, Qirqizi, Kazakh, Yoghouri, Gujari, Gortabi, Paroni, Anbakouyi, Vaigli Kate, Prachi, Manji, Vakhi, Serigy, Sanglich, Zebaki, Eshkashmi, Sheghnani, Roshani and Varshari, are the well-known languages in Afghanistan, most of which are used in two provinces of Nuristan and Badakhshan.⁹

There is still no reliable statistics on the percentage of populations speaking in these languages, and no significant research has been done on this issue.

1. ibid -Mullah Faiz Mohammad Kateb, 2 page 151

2. Mullah Faiz Mohammad Kateb in this book has mentioned the Pashae and Nuristani tribes in the name of the New sect of Islam. (Page 154)

3. ibid -Mullah Faiz Mohammad Kateb

4. The nation of Afghanistan consists of Pashtun, Tajik, Hazara, Uzbek, Turkmen, Baluch, Pashae, Nuristani, Aimak, Arabs, Qarghiz, Qizilbash, Gujar, Brahui and other tribes. (Clause 3 of Article 4 of the Constitution of the Islamic Republic of Afghanistan)

5. The Afghan national anthem is in Pashto, with the mention of Allahu Akbar and the name of the tribes of Afghanistan. (Article 20 of the Afghan Constitution)

6. <https://www.state.gov/documents/organization/269168.pdf>

7. <https://photos.state.gov/libraries/afghanistan/941877/Reports/AFGHANISTAN-IRF13.pdf>

8. http://www.bbc.com/persian/afghanistan/2010/02/100221_k02-afghan-local-languages

9. <https://photos.state.gov/libraries/afghanistan/941877/Reports/AFGHANISTAN-IRF13.pdf>

Chapter 4

Legal Basis or Theoretical Framework

Legal bases

International documents

National Laws

Legal Basis of Protection of Equality and Non-Discrimination

Racial discrimination in human history is one of the painful reality that has always hurt the human community and sacrificed a large number of people. Racial discrimination or the idea of superiority of some people over others on the basis of race or ethnic affiliations, descent, nationality, religion, or language is one of the historical foundations of slavery in human society and based on this thought millions of people around the world have been enslaved.

In Afghanistan's history, the discriminatory thought and view of the ruling system and authority has caused certain groups of people experience inequality in their political, social and cultural life, and be enslaved and deprived of access to their basic rights and freedoms based on their ethnic, national, linguistic or religious affiliation.

The widespread pain and tragedies of racism, especially in the mid-20th century, prompted scholars and modernist movements and human rights advocates to initiate a coordinated efforts and to plan and structure the idea of protecting human beings in accordance with the mechanisms of international law.

The elimination of racial discrimination, in addition to being protected in the international laws and regulations, has also been protected in the Afghan National Laws and has been supported by the Constitution.

A. International documents

The Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are among the most important documents that, in addition to the Convention on the Elimination of All Forms of Racial Discrimination, emphasize on equality and non-discrimination, and has laid the cornerstone of a just society and free of discrimination, and has introduced a new path to human social life.

1: United Nations Charter¹

The United Nations Charter strongly supports the promotion of non-discrimination as an integral part of social life and considers equality and justice as guarantees for access to fundamental rights and freedoms and the cause for salvation of humanity. Second clause of the preamble of the charter, with an emphasis on the legal equality of the human family, has also called for the international community's commitment to the need and observation of equality.² Also, the third paragraph of Article 1 and the second paragraph of Article 13 of the Charter declare that international cooperation in solving economic, social and cultural issues promotes and encourages respect for human rights and fundamental freedoms for all without distinction as to race,

1. United Nations General Assembly, June 26, 1945.

2. The previous paragraph 3 of Article 1 and paragraph 2 of Article 13.

gender, language or religion.¹ This Charter also affirms, in Articles 55 and 76, the universal respect for fundamental human rights and freedoms without discrimination on the grounds of race, sex, language or religion.

2: Universal Declaration of Human Rights²

The Universal Declaration of Human Rights also explicitly prohibits racial discrimination and affirms the equality of rights of all groups and human populations. The Declaration in its first paragraph of the preamble defines the inherent dignity and legal equality of all human families without discrimination, as the basis of freedom, justice and peace. The Universal Declaration of Human Rights has enshrined the inherent equality of human beings in its first Article, “All human beings are born free and equal, in terms of dignity and rights. They are endowed with reason and conscience, and should act towards one another in a spirit of brotherhood”.³ This Declaration prohibits, in its second article, discrimination between groups and human populations on the basis of race, ethnicity and other ethnic and religious affiliations.

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴ Article 7 has emphasized on equality of persons and non-discrimination before the law, Article 10 has emphasized on equality and non-discrimination between Human Society, Access to Courts, and Article 16 on equality and non-Discrimination among all human families in marriage and the formation of a family are the Articles in UDHR that have emphasized on the prohibition of racial discrimination.

3: International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights, in addition to its emphasis on equality and non-discrimination in terms of race, color, sex, language, religion, and political opinion, makes the State parties to commit themselves to ensure legal guarantees for the safeguarding and protection of basic rights and freedoms of the citizens in their laws and regulations, and create the competent structural prosecution capacities in cases of violations of the fundamental rights and freedoms of the citizens.⁵ Article 27 of this Covenant in support of the rights of ethnic, religious and linguistic minorities states: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”⁶

4: Covenant on Economic, Social and Cultural Rights

The Covenant also, in its second Article, while obliging member states to provide the ground and conditions for the enjoyment of citizens of their economic, social and cultural rights, emphasizing that the provision of these conditions should take place free from discrimination on the basis of race, color, language, religion, and political opinion.⁷

5: Convention on the Elimination of All Forms of Racial Discrimination

The Convention on the Elimination of All Forms of Racial Discrimination is the most basic step of the United Nations towards the elimination of racial discrimination, adopted by the United Nations General Assembly on December 21, 1965. This legal document is the clear basis for the elimination of all forms of racial discrimination and an effective guideline on the fight against racial discrimination at the national and international levels.

The Convention has been adopted to promote equality and encourage the government to criminalize every kind of behavior that promotes racial superiority and hatred, and also encourages states to treat citizens and those living under their sovereignty as equal and free from discrimination.

The International Convention on the Elimination of All Forms of Racial Discrimination in its first paragraph states: “Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.”

Article 1 of this Convention defines segregation as “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying

1. The previous paragraph 3 of Article 1 and paragraph 2 of Article 13.

2. United Nations General Assembly, December 10, 1948

3. Previous, Article 1

4. Previous, Article 1

5. United Nations General Assembly, International Covenant on Civil and Political Rights, Article 2, 1966

6. Previous, Article 27

7. United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, Article 2, 1966

or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. “

The convention initially states that the concept of racial discrimination includes a wide range of topics that include language and religion. For this reason, the Convention on the Elimination of All Forms of Racial Discrimination is a reliable document to assess the situation in the countries where the population enjoy racial, ethnic, descent, linguistic or religious diversities.

According to the definition of racial discrimination, the purpose of racial discrimination is not only discrimination that is based on the color or the skin, it also includes any cultural, political or social discrimination that is committed in terms of ethnic and religious and language affiliation, and are used to harm the culture and fundamental freedoms of a community or group of human beings.

According to the second Article of this important international document, all member states are committed to establishing national mechanisms and structures to prevent discrimination and have respect for equality and justice. It also supports the non-discrimination between citizens, and in its Article 3, it prohibits segregation of populations based on ethnic, racial, religious, and bilingual affiliations.

Based on the provisions of Article 4 of the Convention, “ States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination.

Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination protects the equal access of citizens to their basic rights and freedoms, and emphasizes that every citizen of a country has the right to have access to all his or her fundamental rights and freedoms without discrimination.

The emphasis on the criminalization of discriminatory practices based on racial, ethnic, linguistic and religious differences is one of the most important issues under the Convention, which is enshrined in its Article 6. According to the provisions of this Article, governments are committed to creating the conditions for compensation for victims of racial discrimination.

The obligation of States to combat racial discrimination is described in Article 7 of this convention. In accordance with the provisions of this Article, States Parties to the Convention are required to develop practical programs including criminalization of such behaviors, in order to combat prejudices that lead to racial discrimination, and to generalize and expand understanding and the spirit of reconciliation and friendship among different ethnic, racial, linguistic and religious groups.

6: Declaration on the elimination of all forms of prejudice and discrimination based on religion or belief

The United Nations General Assembly Declaration on the Elimination of All Forms of Religion or Belief-Based Discrimination published on November 25, 1981, is another document prohibiting discrimination based on religion or belief. The declaration states in its second Article: No one can be discriminated against on the grounds of religion or belief by the state, institution, group, or any other person. ¹

7: Declaration on the Rights of Persons Belonging to National, Ethnic, Religious, or Linguistic Minorities

The efforts of the International Community and the United Nations in the fight against racial discrimination continued, and on December 18, 1992, a new declaration was issued, entitled “ Declaration on the Rights of Persons Belonging to National, Ethnic, Religious, or Linguistic Minorities, approved by the United Nations General Assembly was published.” The Declaration, the main purpose of which is to protect the rights of national, ethnic, religious and linguistic minorities, is one of the most important steps taken by the United Nations to prevent racial discrimination, and it is the duty of governments to create legal and structural capacities for the protection of minorities’ rights in their territories. And guarantee their access to their basic rights and freedoms.

Article 1 of this Declaration provides a clear message to governments: “ States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. States shall adopt appropriate legislative and other measures to achieve

1. United Nations General Assembly, Declaration on the Elimination of All Forms of Prejudice and Discrimination Based on Religion or Belief, Article II 1981

those ends “¹ The declaration was adopted by the UN General Assembly at a time when citizens of many countries in the world faced serious challenges of inequality, and discrimination against national, ethnic, religious or linguistic minorities had become a serious threat to global security, and became reliable instrument to ensure the fundamental rights and freedoms of national, ethnic, religious and linguistic minorities.

Obligations of States Parties to the Convention on the Elimination of All Forms of Racial Discrimination

With regard to the legal basis for the elimination of racial discrimination in international law and instruments, in particular the Convention on the Elimination of All Forms of Racial Discrimination, the States Members of the United Nations and, in particular, the States which have acceded to the CERD, are committed to taking the five measures contained in the first paragraph of the CERD as follows:

1: Commitment to identification and definition;

In accordance with this commitment, States Parties are bound to give a clear definition of racial discrimination to be enacted in laws and instruments (Article 1 of the Convention)

2: Commitment to Dignity and Respect;

Under this commitment, States Parties are required to establish specific mechanisms and structures for the purpose of denouncing racial discrimination and respect for equality and non-discrimination (Article 2 of the Convention)

3: Commitment to Legal Protections

Commitment to legal protections includes four essential elements. One; devising supportive legislation, the laws that is approved to support the promotion of equality and the prohibition of discrimination. Two; laws that criminalize discriminatory behavior. Three; laws that anticipate punishment for perpetrators of such behavior; and four; laws that provide capacities for victims' compensation; e.g. commitment to support, a commitment to criminalization of crime, a commitment to punish perpetrators, and a commitment to provide compensation for the victims. (Articles 2, 4 and 6 of the Convention)

4: Commitment to maintaining national unity and non-segregation of citizens;

Under this commitment, member states are committed to maintaining national unity and integrity and to create the necessary mechanisms for the realization of the basic rights and freedoms of citizens without distinction (Articles 2, 3 and 5 of the Convention)

5: Commitment to education and public awareness;

In accordance with this commitment, member states are committed to combating racial discrimination and strive to take effective actions through education, cultural programs and publications in order to promote the spirit of understanding and tolerance. (Article 7 of the Convention)

B: National Laws

(In line with the implementation of Articles 2, 4, 6 and 7 of the Convention on the Elimination of All Forms of Racial Discrimination, focused on the obligations of the Government of Afghanistan to prohibit racial discrimination through protection, legislation, punishment of perpetrators and compensation of victims)

Discrimination and inequality among tribes, ethnic groups, religions and languages have been prohibited under national law, and such acts have been criminalized in the country's criminal laws. The prohibition of discrimination has been enshrined in the national laws of Afghanistan, including the constitution and ordinary laws, and, in addition to serious support provided for non-discrimination and equality of citizens in all areas of life, acts of racism is criminalized in the law. For this reason, we can classify the laws of Afghanistan in two groups of supportive laws and penal codes, and analyze each one separately.

1. United Nations General Assembly, Declaration on the Rights of Persons Belonging to National, Ethnic, Religious or Linguistic Minorities, Article I 1992

Group 1: Supportive laws

(In line with the implementation of Articles 2, 4 and 7 of the Convention on the Elimination of All Forms of Racial Discrimination)

Supportive laws include those laws that have been passed in support of the fundamental human rights and freedoms of citizens, and, in addition to identifying human rights and freedoms, it prohibits behaviors that are in conflict with them. Supportive laws are along with criminal laws. In criminal law, in addition to the criminalization of behaviors that violates the fundamental rights and freedoms of citizens, a certain punishment is also anticipated for perpetrators of crimes.

1: Afghan Constitution

The Constitution of Afghanistan has explicitly endorsed the prohibition of discrimination or equality of citizenship as one of its principles in Article 22. “Any kind of discrimination and distinction between the citizens of Afghanistan shall be prohibited. The citizens of Afghanistan, including men and women, have equal rights and duties before the law.”¹

According to Article 22 any behavior that creates discrimination and distinction between ethnic groups, tribes, religions and languages of the country is prohibited.

Article 4 of the Constitution states in the definition of the nation of Afghanistan: “The nation of Afghanistan is composed of all the individuals of Afghanistan who possess the citizenship of Afghanistan.”² “According to this text, all those who have the citizenship of Afghanistan, without any discrimination, are members of the Afghan nation, there is no discrimination or distinction between them.

Article 6 of the Constitution focuses on the responsibility of the government to provide equal and non-discriminatory conditions for its citizens in the economic and social fields: “The state shall be obligated to 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”³ “Article 6 of the Constitution has banned any form of discrimination and distinction between the citizens of the country in the fields of enjoyment of welfare and social justice, human dignity, human rights and freedoms, democratic system and national unity.

Article 7 of the Constitution, by emphasizing the responsibility for the observance of the Covenants and the International Treaties acceded by Afghanistan, has practically obligated the Government to comply with the provisions of the international instruments on non-discrimination, including the Convention on the Elimination of All Forms of Racial Discrimination, because, as Previously mentioned, the Government of Afghanistan signed the Convention on the Elimination of Racial Discrimination in 1980 and formally acceded it in 2003. Therefore, the government is obliged to observe all the provisions of this convention, and deviation from the provisions of this international document is in contradiction with Article 7 of the Constitution and Article 12 of the law on the international treaties and conventions of Afghanistan.”⁴

In general, the Articles related to the second chapter of the constitution is designed to prohibit discrimination and inequality among the citizens of the country, including tribes, nationalities, religions and languages, men and women, and guarantees the equal and non-discriminatory enjoyment of the basic rights and freedoms.

Citizens’ legal equality in recruitment by the state and serving in the government is enshrined in Article 50 of the Constitution. According to the provisions of this Article, the citizens of Afghanistan are admitted to state service on the basis of ability, without any discrimination, and in accordance with the provisions of law.”⁵

The principle of equality of citizens in recruitment by the state, and non-discriminatory treatment by the officials is mentioned in Article 80 of the Constitution, addressing to the cabinet ministers, as such: “During their tour of duty, the Ministers shall not use their positions for linguistic, sectarian, tribal, religious or partisan purposes.”

1. Government of the Islamic Republic of Afghanistan, Constitution of the Islamic Republic of Afghanistan, (1382) Official Gazette 818, Article 22

2. Previous, Article 2, clause 2

3. Previous, Article 6

4. Ministries and government agencies are required to take the necessary measures to implement international treaties and conventions, agreements, protocols and memoranda of understanding in the relevant field (Article 12 of The Law of the Treaties and International Covenants of Afghanistan 1395

5. Constitution of Afghanistan the last paragraph of Article 50

2: Afghanistan Labor Law

Based on the Afghan Constitution, labor law prohibits discrimination in general and racial discrimination in a specific case. Article 9 of this law explicitly prohibits discrimination in the fields of employment, payment and privileges, selecting of occupation and vocation, acquisition of skills and expertise, right to education and social security.¹

3: Afghanistan Civil Servants Act

Civil Servants Law in its Articles 2, 10, 12, 17, 25, and 28 has included important issues in the prevention of discriminatory treatment by the officials of the Administrative Reform Commission, the observance of ethnic balance in civil service sectors, and the prohibition of discrimination on the basis of race, ethnicity, religion and languages in the fields of recruitment and payment of financial and administrative privileges.²

4. Afghanistan Administrative Law

The Afghan Administrative Procedure Act, in its Articles 7 and 8, prohibits any form of discriminatory action in the public administration, and obliges public service employees to non-discriminatory treatment in granting administrative privilege.³

5: Law of Education

The Law of Education also prohibits any kind of discrimination in education in its Article 3, and states: "The citizens of the Islamic Republic of Afghanistan, without any discrimination, have the right to equal education."⁴

6: Draft Law on the Prohibition of Discrimination

The Afghan government also drafted a non-discrimination law last year. This draft law has not yet been approved by parliament. Discrimination is defined in this law and is categorized into two types: direct and indirect. Also, according to the provisions of the second chapter of this draft law, the application of any discrimination in the areas of employment and recruitment, education and training, retirement, promotion of ranking and awarding of medals, badges, resettlement and government support for returnees and internally displaced people, financial aid distribution and public service plans, the process of providing administrative services, contracts and projects are prohibited.

Group 2: Afghanistan Penal Codes

(In line with the implementation of Articles 4 and 6 of the Convention on the Elimination of All Forms of Racial Discrimination)

As mentioned, criminal laws include laws that criminalize behaviors that are contrary to the fundamental rights and freedoms of citizens, and anticipates penalties for its perpetrators. In Afghanistan, before the Criminal Code was enforced, there were numerous criminal penalties that, following the enactment and enforcement of the Code of Criminal Procedure, all the criminal articles were collected and enacted in this law; therefore, the Afghan Penal Code is now the most important legal source in the field that include all criminal laws. Of course, it should be recalled that after the adoption of the Afghan Penal Code, other laws have been passed, some of which also contain criminal provisions. Like the Torture Prohibition Act, it has enshrined articles that punish perpetrators committed crime of torture on the basis of racism.

1: Afghanistan Penal code

The Afghan Penal Code prohibits discrimination and inequality among tribes, nations, religions and languages and criminalizes behaviors that instigate discrimination, including racial discrimination, and punishes the related perpetrators.

Article 6 of this law states: "The suspect, accused and convicts regardless to national, racial, linguistic, tribal, religious affiliation, political opinion, sex, education, occupation, descent, property, social status, residence are equal before the law."

Under the provisions of Article 256 of the Afghan Penal Code, individuals who invites or instigate people to racial discrimination

1. Ministry of Justice, The Law on Civil Servants, 1387, Official Gazette No. 951, Articles 2, 10, 12, 17, 25 and 28

2. Ministry of Justice, Labor Law of Afghanistan, 1387, Official Gazette No. 914, Article 9

3. Ministry of Justice, Administrative Law Act of Afghanistan, 1397, Official Gazette No. 1298, Articles 7 and 8

4. Ministry of Justice, Education Law of Afghanistan, 1387, Official Gazette No. 955, Article 3

Ministry of Justice, Government of Afghanistan, Education Law of Afghanistan, 2008, Official Gazette No. 955, Article 3

ination will be faced with a legal reaction and are punishable. Article 256 writes;

(1) A person who invites or instigates people to discrimination of factionalism (religious, tribal, or linguistic) shall be sentenced in the light of circumstances to medium imprisonment.

(2) If the invitation or instigation mentioned in the above paragraph produces the result, or is accompanied by force or threat, the person committing it shall be sentenced to long imprisonment of not more than 7 years.¹

Also, Article 870 of the Afghan Penal Code, referring to racial discrimination in cyberspace, states: "If a person instigate religious or linguistic discriminations using a computer, internet or cassette tape, cybercrime image, he shall be sentenced to a fine of five thousand to sixty thousand Afs. If the offense set forth in paragraph (1) of this article results in violence, or the creation of hatred or riot among the citizens of the country, the offenders shall be sentenced to a medium imprisonment."²

Article 871 of this law, referring to the punishment of those who insult religion: a person who insult the religions or religion of Islamic residing in the country by using a system, program or computer information in cyberspace, is sentenced to moderate imprisonment.³

Article 409 of the Penal Code refers to discrimination in the offices: (1) If a public or private service staff administered by a foreign government or an international or intergovernmental organization or non-governmental organization commit discrimination based on personal, ethnic, regional, linguistic, religious, gender, political, and ideological considerations or based on the support of a particular group or sect, in the performance of duties or the provision of services, he or she shall be sentenced to imprisonment or cash penalty from thirty to sixty thousand Afghani. (2) If the act set forth in paragraph (1) of this Article is committed by senior government officials or senior officials of other authorities, he or she shall be sentenced to a medium term punishment or a fine of three hundred thousand Afghani.⁴

Article 218 of the Afghan Penal Code also states that crimes committed on the basis of ethnic, religious, gender, social status, or political thought are punishable by more severe punishment.⁵

In addition to the above, paragraph 4 of Article 279 prohibits financing of terrorism on the basis of political, religious, racial, ethnic, religious, moral or other considerations, Article 332, paragraph 7, on the prohibition of racially motivated crime, Article 333 on the commission of a genocidal crime, Article 334 on the punishment of perpetrators of genocidal crimes, Paragraph 8 and 10 of Article 335 on the prohibition of prosecution of a particular political, racial, national, ethnic and religious group and the recognition of racial discrimination as an example of human rights crimes, paragraph 5 of Article 450 in concerning the definition of torture and if torture is based on discrimination.

2. The Law on the Prohibition of Torture

According to clause 5, paragraph 1, of the Article 3 of the law on the prohibition of torture,⁶ commission of the practice of discrimination is an example of torture.

Based on this Article torture is an act and a crime by which severe physical pain or psychological suffering is inflicted on a suspect, accused, convict, or any other person by the command of or with the consent or in the silence of a public officer or any other person acting in an official capacity for purposes that one of the purposes is discrimination.

1. Previous Article 256

2. Previous Article 870

3. Previous Article 871

4. Previous Article 209

5. Previous Article 218

6. Ministry of Justice, Law on Prohibition of Torture, 1397, Official Gazette No. 1321

Chapter 5

Supportive structures

AIHRC

Human Rights Protection Office

Executive Committee for the Sustainable
Development Goals

Supportive structures

(In line with the implementation of Articles ٤, ٥ and ٧ on the establishment of structures and mechanisms for the protection of racial discrimination)

In accordance with the provisions of Articles 2, 4 and 7 of the Convention on the Elimination of All Forms of Racial Discrimination, Governments have the duty, in addition to legislation and criminalization of racist practices, to punish those who engage in such practices, and encourage individuals and communities who work to ensure equality and eliminate racial discrimination. They are also tasked to establish structures and supportive mechanisms of justice and equality, and to develop programs for public awareness of human rights of individuals and the prohibition of discrimination.

In addition to justice and judiciary organs that are duty-bound to fight criminal acts, including racial discrimination, and punish the perpetrators of such crimes, the government of Afghanistan has duty to establish the structures and institutions to promote, protect and monitor the human rights situation in the country.

A. Independent Human Rights Commission of Afghanistan

The AIHRC was established in June 6, 2002 on the basis of Article 58 of the Constitution of 1382 and acts in accordance with the provisions of the Law on the Structure, Duties and Mandates of the AIHRC.

In addition to its continued efforts to improve the human rights situation, the AIHRC has consistently monitored the human rights situation in the country, and has implemented various programs to protect human rights nationwide. The AIHRC, as one of the most effective institutions for the protection of the rights of victims of human rights violations, will register all cases of human rights violations, including racial discrimination, and support ensuring of justice through various activities, including referring the case to the law enforcement agencies. The Afghanistan AIHRC is the first institution that provided the report on the implementation of the Convention on the Elimination of All Forms of Racial Discrimination after 1984 when the Government of Afghanistan provided its first preliminary report to the CERD.

B. Human Rights Protection Office

The Human Rights Protection Unit was established under the Ministry of Justice in accordance with the Afghan Government's Memorandum of Understanding with the United Nations Development Program (UNDP) in 2010 on the basis of Article 4 of the Regulation on the Protection of Human Rights in Government Offices. In accordance with the provisions of Article 5¹ of this regulation, the Human Rights Protection Unit has been established to enhance the capacity of government sectors to ensure the proper implementation of international human rights obligations, and to follow up on the instruments that the Government of Afghanistan has acceded to, and conduct capacity building programs in

1. Ministry of Justice, Regulation on the Protection of Human Rights in Government Offices, 1393, Official Gazette No. 1248

in this area for the government organs, follow up the UN's and the AIHRC's recommendations. AIHRC is working for the Afghan government and reviewing legislative documents, policies and strategies of government agencies to help government abide by international human rights conventions. The monitoring of the implementation of the Convention on the Elimination of All Forms of Racial Discrimination and the provision of report on the extent of its implementation is also the responsibility of this institution.

C: Sustainable Development Goals Executive Committee (SDGs)

After the United Nations put forward for the governments a specific program, the "SDGs" with 17 goals, 169 targets and 217 indicators, the Government of Afghanistan made a commitment to this program, and took action to implement it. The program is scheduled for 15 years from 2015 to 2030.

The establishment of the Executive Committee for the Sustainable Development Goals, that the AIHRC is also a member of this committee, is the first step taken for the implementation of this program. The Executive Committee has so far done its activities in three stages. In the first stage, works on localization of the goals and indicators of this program has been done. In the second stage, called "Adaptation stage", in which budget units and their partners with regard to their responsibilities and government institutions' structures to implement the program, are determined, and finally, in the third stage the Executive Committee, by creating four working groups: (1- Security and Governance, 2- Rural Agriculture and Rural Development, 3- Health, Education, Environment and Social Security, and 4- Economic Growth and Infrastructure), has paved the ground for the said groups to formulate and implement the work plan for sustainable development goals.

There is no doubt that the implementation of the sustainable development program is to back up equality and non-discrimination and support the process of fighting and eliminating racial discrimination. Achievement of each of the goals and targets of sustainable development program will create the capacity for non-discrimination, especially racial non-discrimination, and will support equality and equity objectives. The implementation of the plans for sustainable development goals is in line with basic human rights and freedoms and the provisions of articles 3 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination.

Chapter Six

Analysis of the Focus Groups Sessions

Legal Challenges

Access to Basic Rights and Freedoms

Challenges to Access to Basic Rights and Freedoms

Analysis of Information Received from the Focus Group Meetings

In this section, information received from the focus group sessions will be analyzed. As mentioned, 14 focus group sessions were held in fourteen provinces of the country.¹ The information obtained from these sessions was analyzed by content analysis method and organized under specific titles.

A: Legal Challenges to Prohibition of Racial Discrimination in Afghanistan

Studies of this research, in addition to showing relatively good steps taken by the Afghan government in the area of legal protections for non-discrimination, also highlighted the challenges existing in this area, which includes a strong need for adoption and enforcement of the law on prohibition of discrimination and settlement of problems existing in the national laws, and it requires serious consideration.

Participants of the focus group sessions in this research, noted some articles of the national laws that are considered as legal challenges to prevention of racial discrimination.

According to some of the participants in these focus group sessions, some articles of the Constitution have been designed in a way that promote racial discrimination and deprive some of the citizens of their basic rights and freedoms due to their ethnic, religious and linguistic denominations. There are also articles in the ordinary laws that have caused segregation and separation of some citizens.

1. The Constitution

The existing challenges in the Constitution, according to participants of the focus group sessions relates to articles 62, 130 and 131 of the Constitution. The participants emphasized that article 62 of the Constitution² stipulates being Muslim as a condition for presidential post, while in this country there are followers of non-Islamic religions, and as citizens, they must enjoy all their basic rights and fundamental freedoms. For example, according to article 62, no Hindu or Sikh can be considered eligible as a candidate for presidential office because of not being a Muslim, and this means racial discrimination, which deprives some Afghan citizens of their basic rights, because of their dependence on a particular religion.

The participants of the focus group sessions evaluated and analyzed articles 130 and 131 of the Constitution and acknowledge that these two articles have also deprived some citizens of their basic rights and freedoms due to their affiliation to certain sects.

In their opinion, according to Articles 130 and 131, the Afghan Courts in addressing the cases should take into consideration the provisions of Constitution and other national laws. But if there is no specific instruction in this law to deal with the case, judges can refer to Shia jurisprudence in the

1. Kabul, Balkh, Bamyan, Herat, Ningarhar, Paktia, Kandahar, Kudoz, Badakhshan, Urozgan, Daikundi, Ghoor, Fariab, and Helamd

2. A presidential candidate should be: a citizen of Afghanistan, born from Afghan parents and has no citizenship of another country

cases related to the followers of the Shia Sect and in other cases refer to Hanafi jurisprudence. This general order makes it possible to refer to Hanafi jurisprudence in cases related to Hindus and Sikhs, or followers of other religions in Afghanistan. According to participants in the focus group sessions, the provisions of Articles 130 and 131 of the Constitution are in contradiction with the second paragraph of article 2 of this law, in which followers of other religions are free in the framework of the law to follow their religion and religious rituals, and in particular in the cases the Personal Status, the rights of these people has been ignored.

2: Penal Code of Afghanistan

According to findings by the focus group sessions, article 2 of the Penal Code of Afghanistan has also ignored the rights and freedoms of followers of other religions in a way and in the cases of serious crimes, implement Hanafi jurisprudence on them. It is similar to articles 130 and 131 of the Constitution which deprives non-Muslim citizens of their rights to freedom of religion.

3: Kankor (university entrance exam) rationing plan

The Cabinet of Ministers of Afghanistan approved the Kanko rationing plan in Afghanistan in Qaws 1397, which was prepared by the Ministry of Higher Education. According to this plan, 75% of students from state universities are attracted by a general and national competition, but, the other 25 percent are attracted by a competition held at the level of zones in the fields of Medicine, Engineering, Law, Economics and Agriculture, which include certain universities in certain provinces.

University of Herat, Balkh, Bamyan, Kandahar, Nangarhar, Khost (Sheikh Zayed), Paktia, Kunduz and Al-Biruni are included in this list.¹

According to the authorities the aim of this program is developing balanced development, but, the plan has provided grounds for misuse and has led to the development of discrimination in citizens' access to higher education. The most prominent example of this kind of abuse is the case of Ismatullah Alizada who failed in the Kankor exam to enter National Defense University of Marshall Mohammad Fahim, despite winning the highest score (312). while another student with a score of (145) was announced the winner and eligible to enter the said university based on an ethnic rationing plan.

Fortunately, this case was immediately addressed by President Ghani and the Second Vice President Mr. Danish, after it was widely criticized on the social pages.

The President gave direction to Kankor officials and the Head of the National Defense University of Marshall Fahim to adopt an explicit and transparent criterion in the Kankor exams. At the meeting, the President considered the work of the Kankor officials as a sabotage of national morale and emphasized that the actions of universities and higher education institutions should be very clear to all people. President Ghani emphasized that the future is important to us. The door of the government is open to all, and Esmatullah Alizada, who has won the highest score, will be included into the list of winners. The President of the country gave direction to the National Security Council's Office to create a special committee with a capacity to portray the national perspective in order to redefine the regulations and procedures of the National Defense University of Marshall Fahim, and also a special reserve should be available for those who win the highest scores.²

B. Access to Basic Rights and Freedoms

(Towards implementation of articles 3 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination, based on establishment of capacities and structures for equal access of the citizens to their fundamental rights and freedoms.)

In accordance with provisions of articles 3 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination, the Member States are committed to provide equal protection and capacities for the citizens. This means that they should not deprive a group of citizens of their rights due to racial, ethnic or religious affiliations or to deny their access to basic rights and freedoms, or provide a better condition for others.

In addition to provision of relative legal capacities required in this regard, the government of Afghanistan has established some national institutions and structures to protect human rights and create equal and fair conditions for the citizens to enjoy their basic rights and freedoms.

Studies in this research show that Afghan citizens are not faced with a serious legal constraint on access to their political

1. <https://ariananews.co/news/%D8%A7%D9%81%D8%B2%D8%A7%DB%8C%D8%B4-%D8%A7%D9%86%D8%AA%D9%82%D8%A7%D8%AF%D9%87%D8%A7-%D8%A8%D9%87-%D8%B3%D9%87%D9%85%DB%8C%D9%87-%D8%A8%D9%86%D8%AF%D8%B%8C-%DA%A9%D8%A7%D9%86%DA%A9%D9%88%D8%B1.html/>

2. https://president.gov.af/fa/NEWS-002431?fbclid=IwAR2nvWjBoTCTzo4QJmHoc_xJd54gZtbFZMuOazJCWAxnd-OMMKvqrXdSkY

and civil rights and they enjoy an equal access to justice and judicial institutions. All citizens, without distinction and differentiation enjoy access to education and higher education, health services and employment, and can equally benefit from the right to housing and the right of marriage and establishment of family. Even in some cases, the government of Afghanistan has created the conditions for the minorities to enjoy their basic rights and freedoms and ensure their presence in the national institutions.

For example article 53 of the Election Law, has allocated a parliamentary seat to Hindu and Sikhs, since these citizens do not have access to this national institution equally due to their small number of population. It should be noted that article 52 of the Election Law also counted Kuchies as a constituency and has allocated 10 seats to this population in accordance with article 48 of this Law. The participants in the focus group meetings had different views about this matter. Some participants considered this article of the Election Law to be in violation of the principle of equality and non-discrimination, and considered it a priority of one collective over other citizens and an example of racial discrimination, while others considered it fair and in support of the rights of minorities.

C. Challenges to access to basic rights and freedoms

As mentioned above, the equal access of citizens to their basic rights and freedoms is relatively guaranteed in accordance with the national laws, but the outcomes of studies in the focus group meetings and field research have also found out that there exist some problems regarding equal access of the citizens to their fundamental rights and freedoms. These problems, which are considered to be examples of racial discrimination, including various grounds that are being evaluated as following.

1: Discrimination in Distribution of Identity Card

Based on provisions of the second paragraph of article 9 of the Afghan Citizenship Act, "A person who is born in the territory of or outside Afghanistan, of parents who have Afghan nationality, is considered a national of Afghanistan."¹ Therefore, anyone who is born in Afghanistan or born from Afghan parents living abroad are without any condition Afghan citizen and is entitled to receive citizenship certificate.

Studies in this research show that a large number of people at present, though have been born for several generations in Afghanistan, have not yet been able to obtain a citizenship certificate to enjoy their rights and benefits as citizens.

Participants in the focus group meetings held in Ningarhar, Balkh, Herat and Bamyan provinces, referring to discrimination against Jogies pointed out that the Afghan government has failed to fulfill its legal obligations towards Jogy people, and refused to distribute identity cards to these people which has caused violation of their other fundamental rights and freedoms.

According to historical documents, Jogies are the people who arrived in Afghanistan from India centuries ago, and currently their population exceeds 13,000 people in Afghanistan and they live in different provinces of the country². Most of these people, who are mainly engaged in wheat reaping and livestock dealing, still do not have citizenship certificates.

Gulab is a 37 year old Jogy man who lives in Mazar-e-Sharif. During an interview with staff of the AIHRC he confirmed that he and his 9 family members have no identity cards, though they have repeatedly referred to the related organ. They still have not been able to receive this national document.

"I referred to the Census Bureau twice to receive identity cards for my children, but they told me that identity cards would be distributed only to those Jogies whose father has identity card."

Gulab confirmed that his children do not attend to school, because the schools do not register students who have no identity cards. According to Gulab a large number of Jogies do not have identity cards. Only a few of them had received identity cards during the previous regimes. At present only their children can attend schools.

Shir, is another man living in Kabul. In an interview with staff of the AIHRC he stated, "I am seventy years old and I was born in this country. My father was also born in Afghanistan. I have twelve children. My three sons and two daughters are married and they have children, but none of them have identity cards. They do not give us identity card and do not count us as Afghan citizens. We do not know where we are from, while we were born in this country."

Khan is another man living in Kandahar province and he introduced himself as a representative of Jogies. Khan has received identity card, but he confirmed that a large number of his relatives have no identity cards and their children are deprived of schools and even they face problems when referring to clinics and hospitals. They have no chance to work in the government offices.

1. Ministry of Justice, IEA, official Gazette, 782, year 1421 HL (1378)

2. Center of the great Islamic Encyclopedia, volume 17, number 6451, p.p 8-9 Available at <http://lib.eshia.ir/23022/17/6451>

The research conducted by the AIHRC shows that based on article 9 of the Citizenship Law, Jogies are entitled to receive identity cards, but a large number of them have not received this national document and have been deprived of the right to citizenship due to their affiliation to a particular ethnic group. Having no identity card, these people have been deprived of their other rights and social privileges including the right to vote, the right to education, work, shelter and access to health services and other social privileges.

2: Discrimination in Employment and Work Environment

Based on the provisions of articles 1 to 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 48 of the Constitution of Afghanistan, articles 2, 10, 12, 17 and 28 of the Civil Servants Act of Afghanistan and Article 9 of the Afghan Labor Law, any discrimination and unequal treatment in employment and work environment is prohibited. In cases where this discrimination is based on affiliation of individuals to race, ethnicity, religion, it is considered racial discrimination.

Studies by this research have shown that a number of citizens in the country has been worried about the recruitment process and managers treatment of the employees and they criticized the employees' bad treatment of visitors in the government offices and complained of discrimination based on ethnic, religious, and linguistic affiliations.

The analysis by focus group meetings in the 14 provinces shows that the participants complained about the existence of discrimination, especially in recruitment at the government organs, and confirmed that they were faced with a variety of discriminatory attitudes by some individuals.

A 28 year old man from Bamian province, active as a defense lawyer participated the focus groups meeting in that province. He stated, "I applied for different government posts and I was even interviewed. The average of my grads was satisfactory, but they employed people with lower level of education and grades. I practically faced with discrimination in this regard."

A young woman from Baghlan province participated in the focus group meeting in Pul-e Khumri city and she also complained about the discriminatory treatment by the government officials. She stated, "I was an employee in one of the government departments. The Head of this department was also a woman, but belonging to a different nationality. Because of that reason she did not treat me well and prevented my promotion to a higher step. Her bad treatment caused me to resign and work in another department."

Two employees of a government department in Paktia province participated in the focus group meeting in that province. One of them was insulted and humiliated by the provincial authorities because of writing a letter in Dari language, and he was shifted to an insecure district as punishment.

He stated: "After I wrote a formal letter in Dari language, I was insulted and punished by the Head of this office. So, I went to complain about the situation to the governor office, but the provincial authorities did not pay any attention to my complaint, but shifted me to an insecure district."

Discrimination is not only witnessed regarding employment and enjoying the privileges at the workplaces, but also in official's treatment of the visitors at the offices.

A 24 year women from Balkh province who participated in the focus group meeting in this province emphasized on this subject and stated, "Two months ago I was sick and went to a hospital for medical treatment. At the door, there was a man who led the patients to the doctor's office in turn. He postponed my turn many times and allowed the others to visit the doctor. I objected, but the man laughed at me and sarcastically said, "Go away and don't talk too much. You don't know that tribe you belong to.....tribe (pointing to nationality of the woman)." This woman added that the other patients waiting in the hall also started laughing.

3: Discrimination in Development and Infrastructural Programs

According to participants of the focus group meetings in this research, the government of Afghanistan has not been able to satisfy the people of their national development plans so far. They believe that all government development programs are discriminatory, and the national budgets are drafted and approved in a non-transparent process on the basis of ethnic, religious, linguistic and other tendencies by the high-ranking government officials, without considering the needs and requirements and peoples' participation.

One of the participants in the focus groups meeting in Badakhshan province, criticizing the allocation of development budget to the provinces, pointed out differences that existed in allocation of provincial development budgets for the years 1395 and 1396. According to the statement by this participant, "Some provinces of the country that do not even have the capacity to implement projects due to insecurity, receive twice amount of the development budget comparing to other provinces. It is because of their tribal, ethnic and religious relationships. It is a clear type of discrimination."

Participants in the focus group meeting in Daikundi province also said, “The allocation of budget and development projects has been unbalanced, unfair and based on ethnic, religious and linguistic affiliations.”

A participant in the focus group meeting held in Kandahar province, objected on allocation of development budget and national development plans, he said, “The government has not yet been able to prepare its development plans based on the provinces’ needs and requirements and to allocate budgets for them. For this reason, in some provinces, there has been no significant change in the areas of development and infrastructure projects. While in some other provinces the situation is different. “

The US State Department’s report on human rights situation in Afghanistan in 2017 confirmed existence of racial discrimination in Afghanistan, and wrote that ethnic tensions between different groups have led to ongoing conflicts and murders. Social discrimination against Shia Hazaras continued along with class, racial and religious discriminations in the form of money extortion, forced labor, physical misconduct and detentions. According to reports by NGOs, Hazara officers are often assigned to the defense and security ranks in a symbolic way with limited authority to be dispatched to insecure regions in the country. During the year, (2017), we witnessed an increase in violent attacks, mainly by ISIS in Afghanistan, against the Hazara community. In August, ISIS attacked several Shia Hazara mosques in Herat and Kabul, killing more than 100 people. Six major attacks on Hazara mosques or the Shia community in Afghanistan took place during the first half of the year (2017), which ISIS claimed the responsibility for all of them.

Sikhs and Hindus were also discriminated against. They reported on unequal access to public employment opportunities and harassment in the schools, as well as verbal and physical harassment in public places. According to the Councils of Sikhs and Hindus of Afghanistan, there are almost 900 Sikh and Hindus live in the country.

It is worth mentioning that suicide attacks against ethnic targets by the anti-government armed groups continue, the worst of which are the following attacks:

- 1- Attack on a cultural center in western Kabul city, Dasht-e-Barchi, on Judi 7, 1396, killing and injuring about 125 people;
2. Suicide attack on a center of identity card distribution in the above-mentioned area on Sawr 2, 1397, which left 57 dead including 22 women and 17 children and 112 wounded;
3. A suicide attack on a training center in the same area that killed 48 people and injured 67 people, all of whom were under the age of 20 and were trainees at this center, including girls and boys;
4. Suicide attacks on a sports center that occurred in the same area on Sonbulla 14, 1397, killing 8 and wounding 22 others.
5. Suicide attack on Hindu and Sikh nationals in Jalalabad City of Nangarhar Province occurred on Saratan 10, 1397, killing 19 people including 17 Hindu citizens and injuring 20 other people.

D: The Government Program on Addressing the Cases of Racial Discrimination

The received information has shown that during the last days of this research, and in the month of Dalwa 1397, a case of racial discrimination, that was already referred to the Attorney General office through the Presidential Office, was sent to the court after evaluation¹ and investigation. The former Deputy of the Monitoring and Investigation Administration of the Presidential Office was sentenced to two years of suspended imprisonment for acts of racial discrimination².

Except the above mentioned case, no other person has been judicially prosecuted in the provinces under the coverage of this research for provoking racial discrimination. Meanwhile, the outcomes of focus group meetings in 14 provinces and field research have shown that some individuals, especially in recent years, have been using social media and media networks or taking the opportunities at public meetings or at the government offices to spread racial discrimination. While the government and the responsible authorities have so far not been willing or able to deal with these individuals and bring them to justice and trial.

According to Mr. Yuosufi, a professor at Bamyani University who attended the focus group meeting in that province, racial discrimination, is one of the painful and destructive facts in this country, which have caused many calamities at the national level, such as wars and insecurity. It has not been taken into serious consideration as it should have been. The Afghan government has not formally arrested and tried anyone for this reason, and it has not been witnessed that anyone file a complaint against individuals who are fanning up racial discrimination.

Interviews conducted by staff of the AIHRC indicate that many citizens have complained about discrimination due to

1 <https://www.avapress.com/fa/note/150331/%D9%82%D9%88%D9%85-DA%AF%D8%B1%D8%A7%DB%8C%D-B%8C-%D8%AF%D9%88%D9%84%D8%AA%DB%8C-%DA%86%DB%8C%D8%B2%DB%8C-%D8%A8%D-B%8C%D8%B4-%D8%B1%D8%A7%D9%87%D9%86%D9%85%D8%A7%DB%8C>
2 - <https://da.azadiradio.com/a/29722465.html>

racial, religious or linguistic affiliations, but only few of them confirmed that they had unofficially objected to such treatments.

A 26-year-old woman from Kabul city, recounting her memories of racial discrimination in one of the government departments and she said, “I was hired by the Electric Card Distribution Office as a team leader of a working group, based on my application and good score. I signed the contract for the team leader post. But after a while, before starting my job, it was announced to me that my contract should be changed and I would sign a new contract as a member of the working group. After seeking for the reason, I realized that my ethnic affiliation led to this decision. A contract was signed for that post with another person from his own tribe, though that person had not applied for that post. I complained about it to a few high-level officials, but nobody heard me and did not pay attention to my complaint. I became disappointed and compelled to sign the new contract as a member of that group and I’m working on this post till now.”

The woman also added “Lack of attention by the authorities to my protest caused me give up complaining or to go to the judicial authorities, because I believed that no one was going to pay attention to my complaint in any institution”.

F. The State Program for Public Awareness Promotion

Based on provisions of Article 7 of the Convention on Elimination of All Forms of Racial Discrimination, the government of Afghanistan is committed to building up legal and structural capacities for enhancement of public awareness and is required to inform the people about racial discrimination, its negative consequences and the development of a culture of tolerance and coexistence.

Under this commitment, the government of Afghanistan, in partnership with the AIHRC, has provided the ground for revision of the curriculum in the Ministry of Education. According to reports by the AIHRC, all textbooks from the first to the twelfth grade have been revised, and human rights concepts including non-discrimination have been introduced into the curriculum.

The government also included the subject of the human rights in the curriculum at the universities of the country and this subject is currently being taught at the state and private universities.

In connection to this goal, article 43 of the Mass Media Law¹ duty-binds the media of the country to refrain from publishing any material that causes racial, linguistic, gender and religious discrimination.

It is worth mentioning that despite the achievements and measures taken, there have still been complaints in this regard and a number of citizens have been protesting especially against radio and television programs and internet publications in Afghanistan. According to them a number of media outlets, as well as some individuals on social networks, fan up and motivate racial discrimination, while the government of Afghanistan has not taken any concrete step in this regard and has not arrested and prosecuted anyone for this reason.

A 21-year-old university student from Parwan province at the focus group meeting in Kabul said, “Some TVs occasionally publish contents that clearly instigate and fan up discrimination. Also, when reading contents posted on social networks such as Facebook or Twitter, they are full of insults and bad language against a tribe or religion, but we have not yet witnessed the government to arrest or prosecute anyone for this reason.”



1. The Ministry of Justice of the IRA, the Law on Mass Media, Official Gazette... year 1388, article 43

Chapter Seven

Analysis of Statistical Outcomes

Discrimination Based on Tribal Affiliations

Discrimination Based on Religious Affiliations

Discrimination Based on Linguistic Affiliations

Instigation

Advocacy

Analysis of Statistical Outcomes

Analysis of the statistical outcomes is one of the most important parts of this research and the data have been obtained through conducting interviews and completion of questionnaires by 3498 people. Specific pre-prepared open and close questions were responded by the interviewees which will be discussed and evaluated in detail under separate titles

A: Racial Discrimination in Afghanistan

Racial discrimination as was discussed and studied in the legal foundation section, is prohibited according to international human rights documents and national laws of Afghanistan, including the Constitution and national laws. Based on articles 218, 256, 279, 332, to 336, 409, 450, 870 and 871 of the Penal Code of Afghanistan, the perpetrators should be punished. Despite the aforementioned legal documents, the information in this research shows that a large number of people in this country become victims and experience different forms of discriminations.

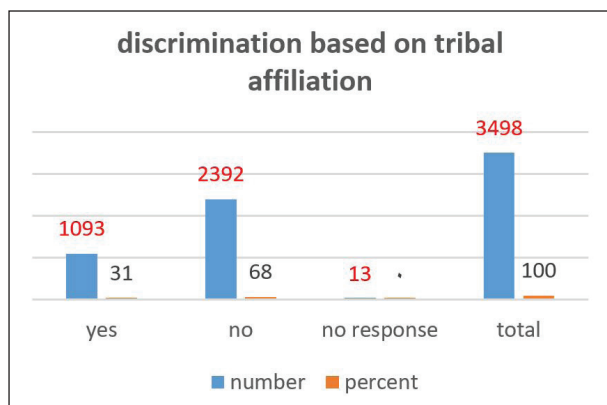


The first question in this part related to existence of, racial discrimination in Afghanistan. The interviewees were asked if they have been discriminated against due to racial, tribal, religious or linguistic affiliations. The responses to this question indicated that an average of 25.4% of the interviewees have confirmed existence of racial discrimination in Afghanistan and they have faced repeatedly with tribal, religious, and linguistic discriminations. 73.1% of the interviewees stated that they have not been discriminated against and the remaining 1.5% of them did not respond to this question and kept silent. For further information about this topic and finding clear examples of racial discrimination in Afghanistan, this research has posed more precise questions discussion and evaluation of racial discriminations in three basic pivots including tribe, religion, sect and language taking into consideration the population texture and composition.

1. Racial Discrimination Based on Ethnic Affiliation

Ethnic diversity is one of the most important grounds for ethnic discrimination in Afghanistan, and citizens of this country have always suffered from this problem. According to some citizens and interviewees of this research, ethnic differences are one of the factors for continuation of war and violence in the country, and most of the wars and important incidents in the country have been based on ethnic interests. Ethnic differences have caused the citizens of the

country to be divided into different collectives according to their ethnicity, and to share in political interactions on the basis of this affiliation. This fact has been deeply rooted in the Afghan society, and even most of political parties have been created in the context of ethnic affiliations. The fact that is contrary to the provisions of Article 35 of the Constitution, which reads: "The establishment and activities of the parties based on ethnicity, region, language, and religious jurisprudence is prohibited."¹

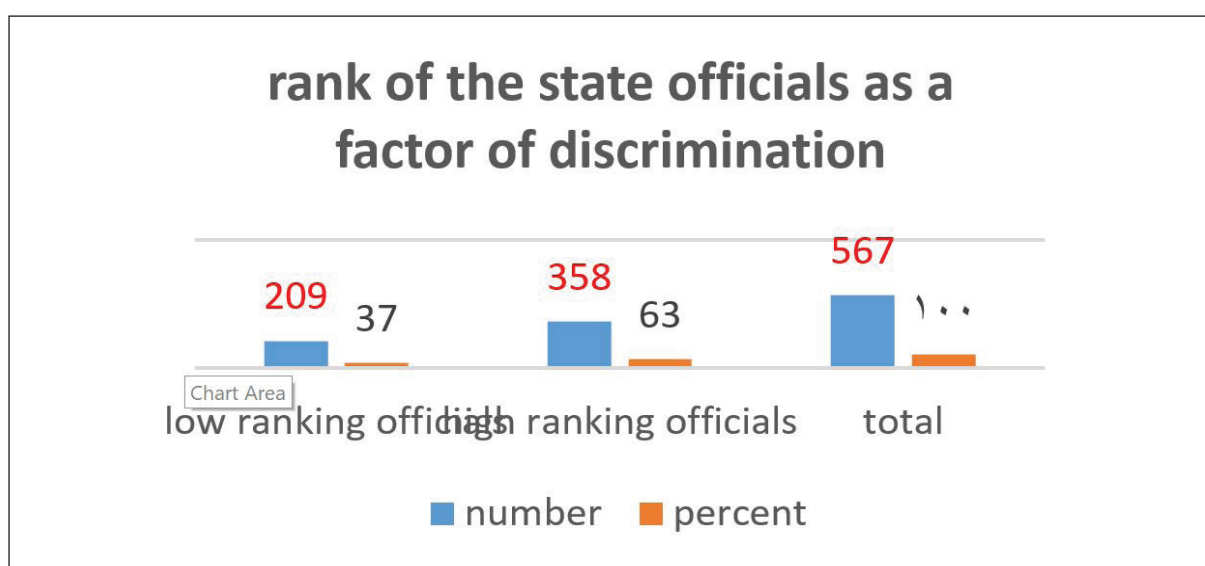
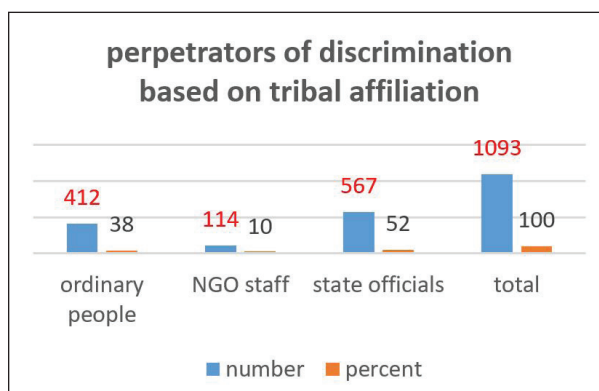


As mentioned in previous chapter, the government of Afghanistan has made significant efforts to consolidate national unity and eliminate ethnic borders, and has prohibited discrimination in accordance with article 22 of the Constitution and articles 218, 256, 409 and 870 of the Penal Code of Afghanistan. But what has actually been and is objectively understood in the context of the community and in the relations of individuals and confirmed by the interviewees of this research is that ethnicity and ethnic affinities still exist in our society and as the focus of political interactions and citizens' participation in the power, and an unwritten, but accepted norm for division and distribution of developmental programs at the provincial level.

The results of field studies in this research show that out of 3498 interviewees, 1093 people, including 31.2%, have confirmed of being discriminated against because of their affiliation to a particular ethnic group, but 2392 (68.4%) of them have said that they have not been discriminated against and the remaining 13 people, including 0.4%, did not respond to this question.

Out of those who gave positive answer to this question and confirmed experiencing of discrimination against, 412 (37.6%) of them said that the perpetrators of discrimination were ordinary individuals and 114 people (10.4%) were discriminated against by staff of nongovernmental organizations. In the end, 567 people (51.9%) confirmed that they were discriminated against by the government agents because of their ethnic affiliation.

Also, those who were discriminated against and insulted by the government officials because of their ethnic affiliations said that 209 people (36.9%) of those who committed discrimination were low-ranking government officials and 358 (63.1%) others were high-ranking government officials who committed discrimination against the interviewees.

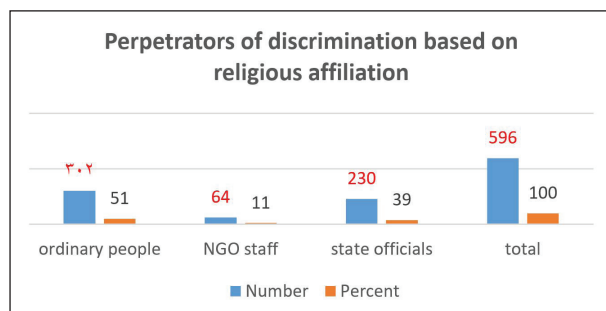
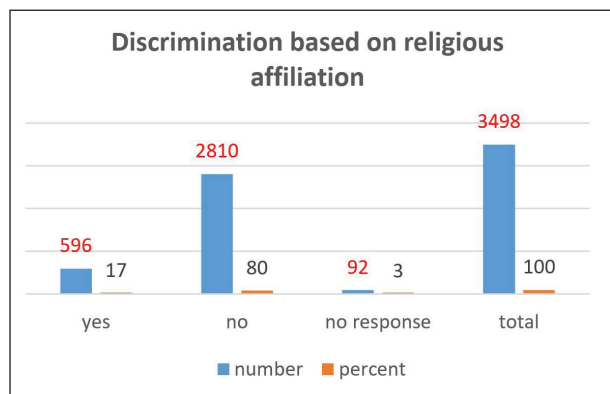


1. Ministry of Justice of the IRA, the Constitution, year 1382, Official Gazette 818 , article

2. Discrimination Based on Religions Affiliation

Discrimination based on religious affiliation, along with ethnic discrimination, has been one of the most important factors in the differences and challenges to national unity throughout the history of Afghanistan. There were also periods that most of the citizens were deprived of their rights and freedoms and threatened due to their religious affiliation. During the rule of the Taliban, the followers of religions other than Islam and even among Muslim followers of religions other than Sunnites, such as the Shia jurists-prudent of Jafari and Ismaili, faced particular challenges and problems. With the establishment of the interim government after the Taliban, the situation improved, and the religious differences that led to religious discrimination were faded and the pillars of national unity became more and more firm.

As pointed out in the discussion on legal foundations of non-discrimination, the Government of Afghanistan has prohibited all forms of discrimination and on the basis of religious affiliation through article 22 of the Constitution. Other national laws also clearly support non-discrimination. Article 871 of the Afghan Penal Code criminalizes religious instigations and punishes those perpetrators.

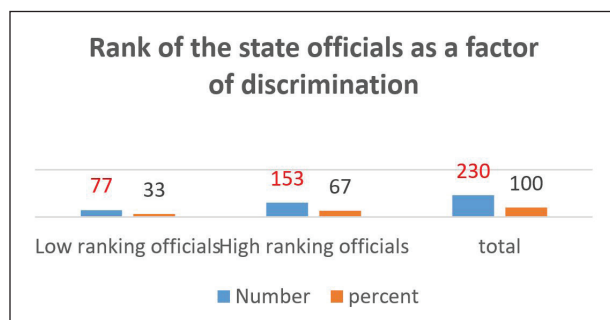


The outcomes of this research show that still some of the citizens in our country suffer from existence of religious discrimination due to their affiliation to certain religions.

The statistic shows that out of 3498 interviewees, 596 (17.0%) of them responded positively and confirmed that they were victims of discrimination because of their religious affiliation, while 2810 people (80.3%) gave negative response to this question and 92 people (2.6%) did not respond at all.

Out of those who responded positively to this question and were victims of discrimination on the basis of their affiliation to a certain religion, 302 (50.7%) have introduced the ordinary people as the perpetrators in the workplaces and community level, while 64 people (10.7%) have been discriminated agents by NGO staff and 230 people (38.6%) have accused government officials as a source of discrimination.

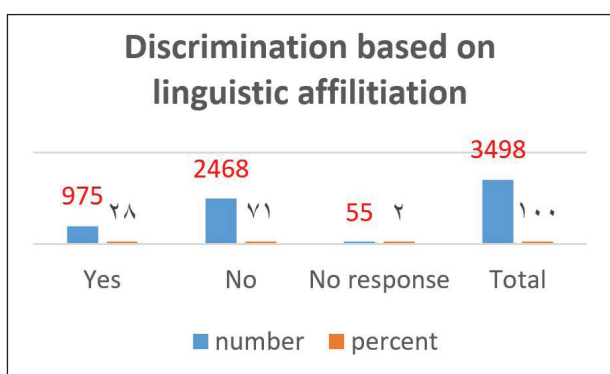
The information in this research also show that out of 230 government officials who were reportedly accused of discrimination and insult on the basis religious affiliations of the citizens, 77 (33.5%) of them were low-ranking and 153 (66.5%) others were high-ranking government officials. According to the interviewees, most of the discriminatory behavior by the government officials were imposed at the time when the citizens referred to them in their offices.



3: Discrimination on the Basis of Linguistic Affiliation

As mentioned in the first chapter of this research, Afghan citizens speak different languages. This linguistic diversity has sometimes caused discriminatory tendencies, and has created a number of segregated circles, focusing on mother tongue and fan up linguistic discrimination.

The data in this research show that out of 3,498 interviewees, 975 people (27.9%) were discriminated against because they spoke in a specific language. These people have confirmed that they have been treated differently, insulted and discriminated against after having talked to others in the offices or community. 2468 people (70.6%) responded negatively to this question, and the remaining

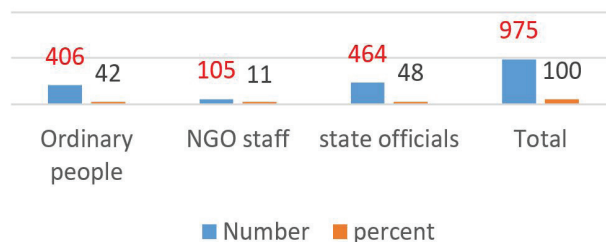


55 people (1.6%) did not answer this question.

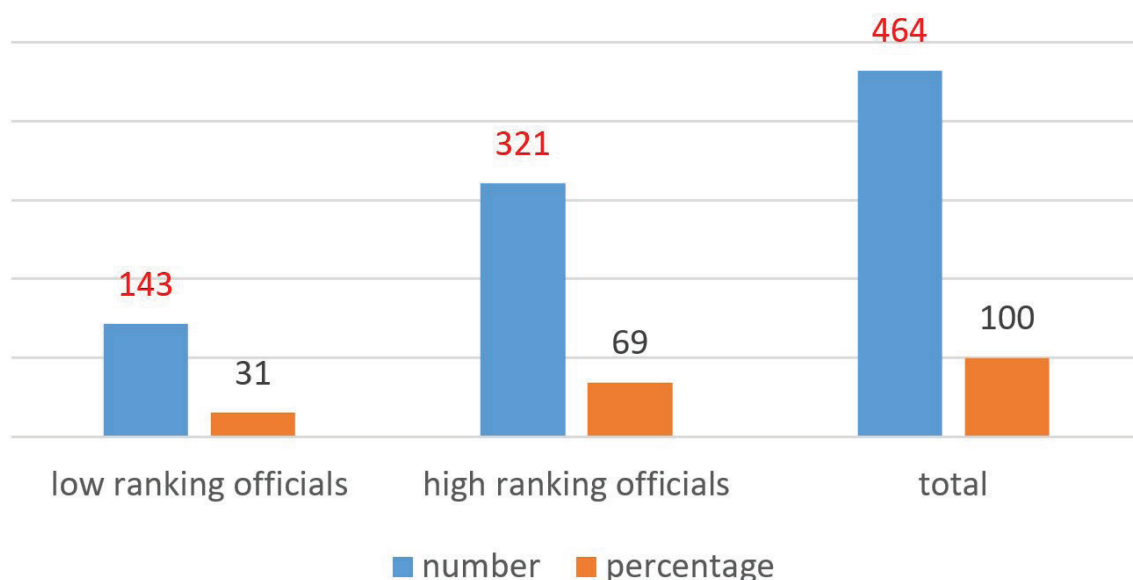
Regarding occupation of those who have been accused of discrimination based on citizens' language affiliation, the interviewees confirmed that 406 people (41.6%) of those committed language-based discriminatory behavior were ordinary people and 105 people (10.8%) of them were staff of Non-governmental organizations and the remaining 464 of them (47.6%) were government officials.

Similarly, information in this research shows that out of 464 government officials who had discriminatory behavior against the citizens on the basis of language affiliation, 143 of them (30.8%) were low ranking officials and 321 (69.2%) of them were high ranking government officials.

Perpetrators of discrimination based on linguistic affiliation



Rank of the state officials as a factor of discrimination



B: Consequences of Racial Discrimination in Afghanistan

Based on article 5 of the ICERD, the member states are obliged to prepare the ground for equal access of the citizens to their basic human rights and freedoms without any discrimination. Taking into consideration this commitment, the State of Afghanistan has fulfilled this obligation through the Constitution and other national laws and acknowledges this article as mentioned in the discussion on legal bases. The outcomes of this research about fulfillment of this obligation indicate that still there are some serious challenges and some of the citizens complain about violation of their human rights due to racial discrimination against them.

1. Violation of the Right to Participate in the Elections

According to article 33 of the Constitution¹ and article 5 of the Law on Elections, all citizens of Afghanistan eligible for voting are entitled without discrimination to vote or be a candidate in the elections. Based on the provisions of clause 4, paragraph 2 article five of the Law on Elections imposition of any restriction, direct or indirect on the voters and candidates based on linguistic, ethnic, gender, tribe, region, social status, occupation of disability is prohibited².

1. The citizens of Afghanistan have the right to vote and be elected. The conditions and manner of using this right are regulated by law. (Article 33 of the Constitution of Afghanistan)

2. Ministry of Justice, IRA, the Election Law, 1395 Published Official Gazette 1226, Article 5

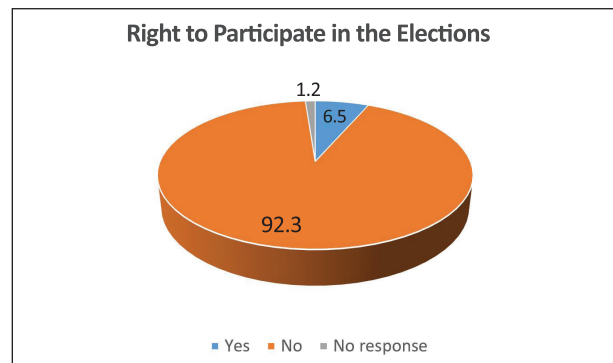
But the outcomes of this research show that out of 3298 people who were interviewed during the field research, 229 people (6.5%) stated that due to their tribal, religious or linguistic affiliations, they were deprived of the right to elections.

These people claimed that they were victims of racial discrimination during the elections and they were prevented from voting by the power-full individuals. Some others expressed that they did not participate in the elections because they were forced to vote for an unfavorable particular candidate.

Interviews conducted by the AIHRC with these individuals show that the majority of these people lived in the villages and due to domination by the powerful figures, privacy of voting was not ensured and there was a high likelihood of voting disclosure.

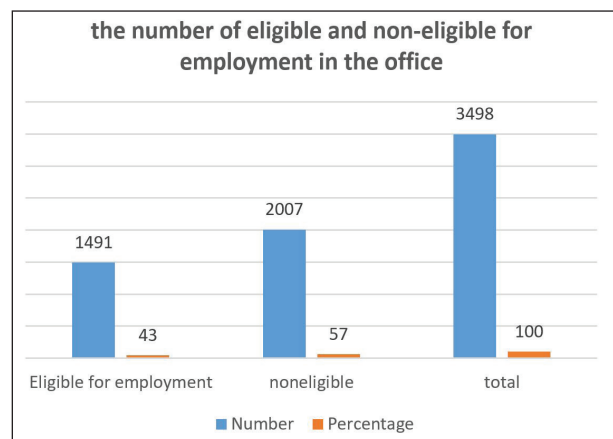
Out of 3,227 interviewees, who make up 92.3% of all interviewees, confirmed that they did not face any problem in this regard and had not been deprived of their right to vote due to discrimination. Almost 42 people (1.2%) of the interviewees did not respond to this question.

It should be noted that the information of this inquiry was collected before the parliamentary elections of 1397, so the problems in this election are not included in this research.



2. Violation of the Right to Work

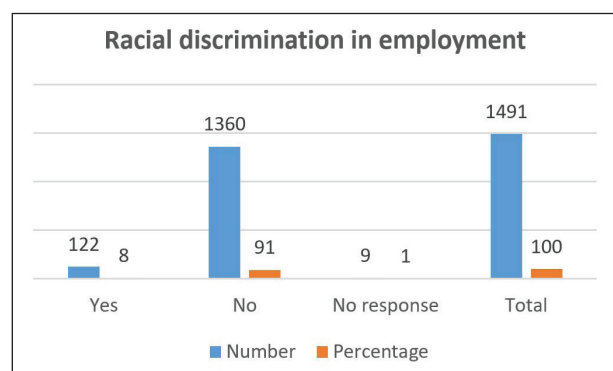
Based on article 48 of the Constitution, every Afghan has the right to equal opportunities for employment and not be discriminated against in this area. Also, the Afghan Labor Law has fully provided the ground and conditions for enjoying the right to work and the related rights. But the information in this research has identified and listed the challenges in this field, which includes the right to employment, the right to promotion and financial privileges without discrimination at the national level. It is worth mentioning that questions about work and employment have been answered by a section of the sample population including those who work in the offices, as well as those who are eligible for employment, but are unemployed or have free occupations. The total number of these people exceeded 1491 people, representing 42.6% of the total sample population or interviewees (3498 people); therefore, out of 3498 interviewees, 2007 people (57.4%) were those who were not qualified for employment at the Government departments and they are not included in this part of the research.



A: Racial Discrimination in Recruitment of Employees

This question was posed to those who confirmed and have been employees or eligible for employment, but have turned to free occupations. The question was, "Have you been discriminated against in access to employment due to tribal, religious or linguistic affiliation?"

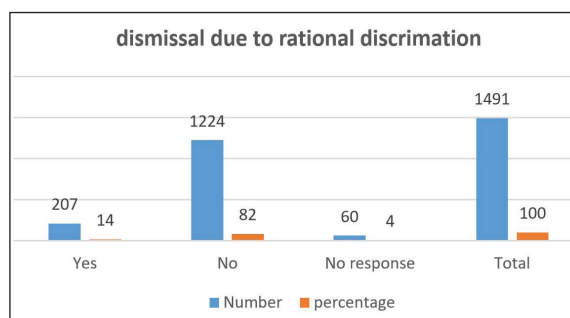
Those 122 people (8.2%) who gave positive response to this question confirmed existence of discrimination in this area. They claimed that they had faced discriminatory attitudes by the authorities during employment process and were deprived of equal opportunities. They also confirmed that discrimination against them were due to affiliation to a particular tribe, religion or language.



The other 1360 people (91.0%) who gave negative response to this question rejected racial discrimination, especially during employment process. The remaining 9 people (0.6%) did not respond to this question.

B: Discharging of Employees Due to Racial Discrimination

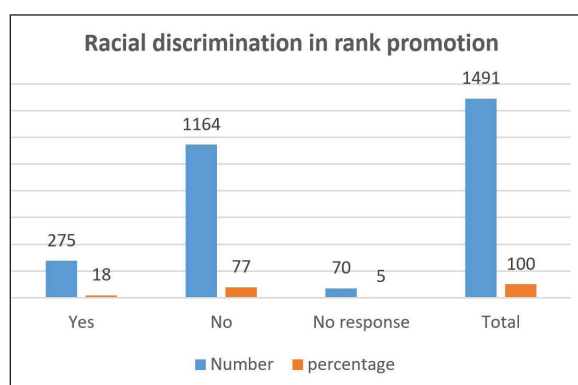
207 people covering 13.9% of the interviewees stated that due to racial discrimination against them in their workplaces, they were discharged or fired of duties. The other 1224 people (82%) of the interviewees gave negative response to this question and the remaining 60 people (0.4%) did not respond to this question.



C: Discrimination in Promotion of the Employees

Out of the interviewees in this research who were eligible for employment in the government departments, 275 people covering 18.4% of the interviewees claimed that because of their affiliation to a certain tribe, religion or language they were deprived of promotion, though they had the required capacities and qualifications.

Out of the interviewees, 1146 people covering 77% of the interviewees rejected existing of discrimination regarding promotion in the government offices. The remaining 70 people (4.7%) did not respond to this question.

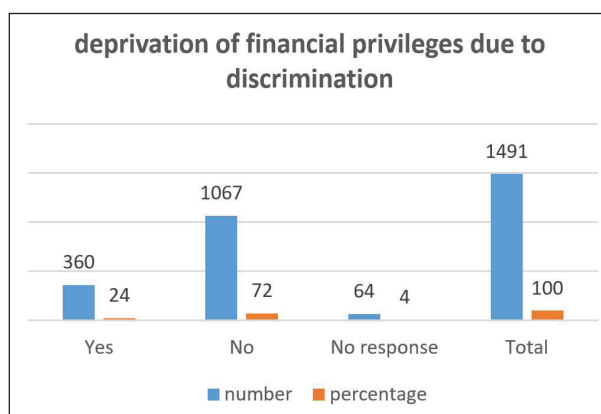


D: Deprivation of the Employees of Financial Privileges Due to Racial Discrimination

Some government employees complained that because of their affiliation to certain tribe, religion and language, they were deprived of financial privileges in their workplaces. They considered the reason for their deprivation of financial privileges due to discriminatory attitudes and behavior of the high ranking authorities and Heads of their departments.

The victims of such discriminatory attitudes including 360 people covering 24.1% of the interviewees who were eligible for employment in the government departments believed that there are conditions and capacities in the offices that enable the employees to deserve financial privileges. They believe that they have not been able to receive the privileges. They claimed that in some cases due to unknown reasons, but in reality tribal, religious and linguistic affiliations they have been deprived of financial privileges, even their salaries.

Out of the interviewees who were eligible for employment, 1067 people (71.6%) of them rejected discrimination in distribution of financial privileges and the remaining 64 people (4.3%) of the interviewees did not respond to this question.



3: Violation of the Right to Justice Due to Discrimination

The right of access to justice has been protected by the national laws of Afghanistan. Articles 22 to 32 of the Constitution¹ ensure the right of access to justice. Non-discrimination against the law has been protected by article 22 of the Constitution.

Based on the Constitution of Afghanistan, the national laws also protect the right of access to justice. The most important of these laws are: the Criminal Procedural Law, the Penal Code, the Police Law, the Law on Structure, and Mandates of the Attorney, the Law on Structure and Mandates of Judiciary, the Law on Prisons and Custodies, the Law on Children

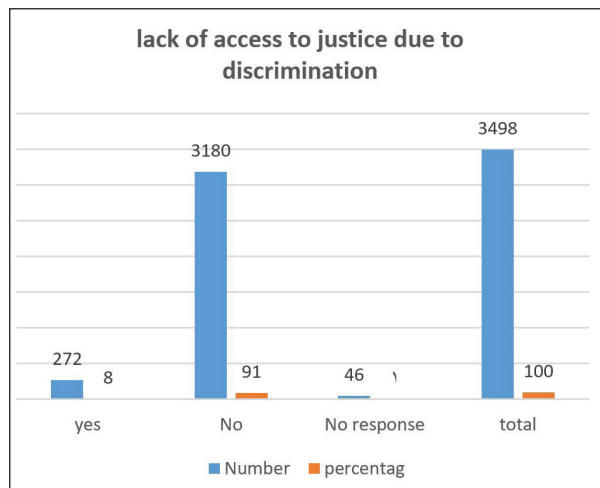
1. Constitution of the IRA adopted in 1382

Correction Centers, the Regulations on Women Protection Centers, the Law on Defense Lawyers, the Law on Addressing Juvenile Delinquency, the Law on Elimination of Violence against Women, the Law on Prohibition of Torture, the Law on Civil Procedure Principles, the Shia Personal Status Law, the Regulations on Legal Aids, and the Law on Structure, Duties and mandates of the AIHRC.

The Decree No 45¹ is another legal document issued on 5.5.1391 by the then Presidential Office which obliges the state institutions to prepare easy conditions for public access to justice and judicial services. Despite the aforementioned achievements, the outcomes of studies conducted by the AIHRC indicate that still there are challenges against public access to justice. Unfortunately, a portion of these challenges relate to existence of racial discrimination or discrimination based on tribe, religion, or language affiliations.

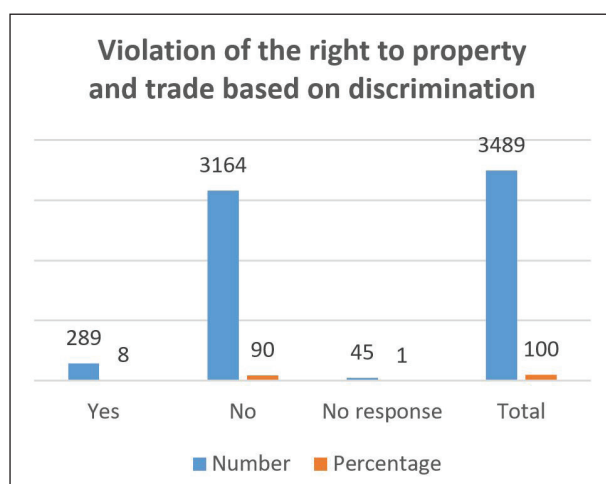
Some of the citizens complained about misbehavior and degrading treatment by the staff of Justice and judiciary institutions which even deprived them of access to justice, especially if they affiliated to a different tribe, region or language.

Out of 3498 interviewees, 272 people covering (7.8%) of the sample population confirmed racial discrimination against them by the justice and judicial staff, while referring to those institutions, but 3180 people including 90.9% of the interviewees gave negative response to this question and denied existence of discrimination in these institutions. The remaining 46 people (1.3%) of the interviewees did not respond this question.



4: Violation of the Right to Property and Trade Due to Discrimination

The right to property and trade is the right of citizens protected by the Constitution and national laws of Afghanistan. Based on provisions of Articles 10 and 11 of the Constitution, the government is obliged to create the capacity for trade and investment equally and without discrimination at the national level. Also, Articles 40 and 41 of the Constitution have protected property right in Afghanistan. The right to property and trade is also protected by the national laws of the country, and the Government of Afghanistan is responsible for ensuring the conditions for citizens to enjoy this right without discrimination and in accordance with the provisions of article 5 of the Convention on the Elimination of All Forms of Racial Discrimination at the national level.



Outcomes of this research show that many of the citizens have been deprived of the right to property and trade due to their tribal, religious and linguistic affiliations and they are discriminated against.

Information in this research show that 289 people (8.2%) of the interviewees stated that during the recent years, they have been discriminated against regarding their right to property and trade. According to these people there are cases that individuals have usurped their properties. There are also cases that some people have been deprived of the right to property and trade due to their tribal, religious or linguistic affiliations.

Out of 3498 interviewees, 3164 people (90.5%) denied existence of racial discrimination in the area of the right to property and the remaining 45 people covering 1.3% of the interviewees did not respond to this question.,

5: Violation of the Right to Health Services Based on Discrimination

Articles 52, 53 and 54 of the Afghan Constitution have protected the right to health and the right to access quality health services without discrimination and has mandated the government to ensure the conditions for access of the citizens to the right to access high-quality health services, including prevention and treatment equally.

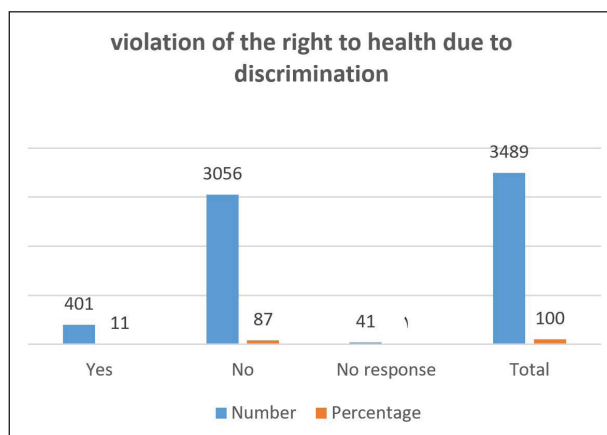
1. Decree No. 45 issued in 1391

The Public Health Law of Afghanistan is also one of the most important laws that protects the right to health and access to quality non-discriminatory health services. This law, has been adopted in accordance with Articles 52-54 of the Constitution of the country. Based on clause 4 of the first paragraph of article 2 of the Public Health Law, the state is obliged to provide free primary health services to the citizens of the country without any discrimination.

Despite the emphases made in the national laws, a number of the citizens still complain of discrimination in access to high quality health services or healthcare, and have said that they have been exposed to discriminatory treatments by the health workers and health officials.

Out of 3498 interviewees, 401 people (11.5%) complained about the existence of discrimination against access to health care, and confirmed that they had faced discriminatory behavior by health officials at the time of referral to health centers. Some interviewees also said that the government of Afghanistan in allocation budget and establishment of health centers follows discriminatory policies against some regions based on tribal, religious and linguistic affiliations.

But 3056 people (87.4%) rejected the existence of discrimination in access to health services, and the remaining 41 people (1.2%) did not answer this question.



6: Violation of the Right to Education and Higher Education Based on Racial Discrimination

According to international documents, the Constitution and other national laws of Afghanistan, access to education and higher education is a basic human right. Article 43 of the Constitution clearly reads,

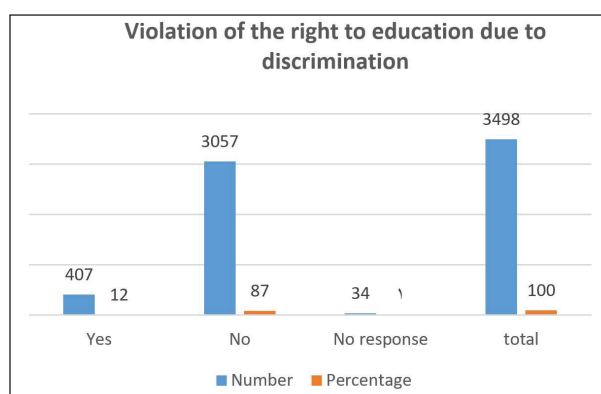
“Education is the right of all citizens of Afghanistan, which shall be offered up to the B.A. level in the state educational institutes free of charge by the state. To expand balanced education as well as to provide mandatory intermediate education throughout Afghanistan, the state shall design and implement effective programs and prepare the ground for teaching mother tongues in areas where they are spoken.”

Similarly, article 45 of the constitution reads, “The state shall devise and implement a unified educational curricula based on the tenets of the sacred religion of Islam, national culture as well as academic principles, and develop religious subjects curricula for schools on the basis of existing Islamic sects in Afghanistan.”¹

This right is also protected by the two laws of education and higher education in Afghanistan, and the government of Afghanistan is obliged to provide equal opportunities and equal access for all the citizens to education and higher education without any discrimination.

The findings of this research about government’s achievements in this area show that so far the people of Afghanistan have faced serious problems in this field as well as in other areas.

407 people, including 11.6% of all interviewees in this research, have stated that they have been discriminated against by the staff and officials of the relevant departments regarding their right to education and higher education. 3057 people (87.4%) rejected existence discrimination in this area, and 34 people (1%) of the interviewees did not answer this question.



1. The Ministry Justice of the IRA, the Constitution 1382

7: Violation of the Right to Participate in Social, Cultural and Religious Events

Article 2 of the Constitution reads, “ The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free within the bounds of law in the exercise and performance of their religious rituals¹.” The citizen of Afghanistan are free in celebration of their religious rituals and their right is protected by the law.

Similarly, article 24 of this law reads, “Liberty is the natural right of human beings. This right has no limits unless affecting others freedoms as well as the public interest, which shall be regulated by law. Liberty and human dignity are inviolable. The state shall respect and protect liberty as well as human dignity.”² Therefore, any action which violates the right to freedom and dignity is prohibited. Celebration of religious rituals and gatherings that are not in contradiction with the Constitution is counted as the basic rights of the citizens and must be respected.

Articles 34 to 36 of the Constitution also protect the fundamental freedoms of citizens, including the right to freedom of expression, the right to freedom of assembly and freedom of gathering in accordance with the law, and the law protects their free participation in these cultural and religious events.

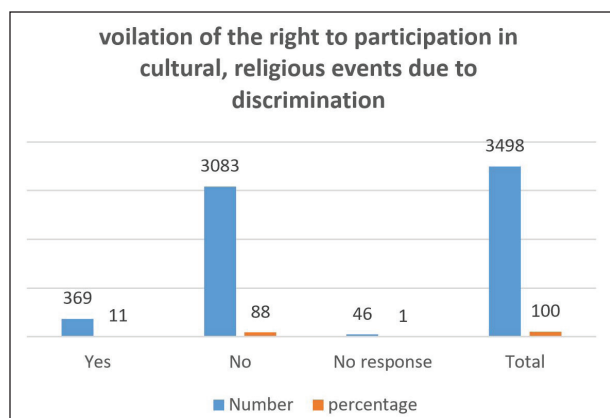
In addition to the Constitution of Afghanistan, the national laws including the Law on Mass Media, the Law on Assemblies, Strikes and Demonstrations, and the Law on Political Parties, all somehow protect the right to freedom of association and participation in religious gatherings.

But what has happened in practice and experienced by the citizens of the country, is part of the government’s program in recent years. Some of the citizens expressed their concern and pointed it out during their interviews with staff of the AIHRC.

The interviewees, in addition to pointing out cases of terrorist attacks on religious gatherings of Hindus and Shias in recent years by terrorists and anti-government armed groups in the provinces of Ningarhar, Kabul, Balkh and Herat, they were also worried about some other challenges that according to them related the government officials which restricted their right to freedom of association and participation in religious gatherings.

Out of 3498 interviewees in the field research, 369 people, including 10.5%, said that their right to freedom of participation in the cultural and religious gatherings was restricted.

3083 people including 88.1% rejected existence of discrimination in this area, and 46 of them, including 1.3%, did not answer this question.

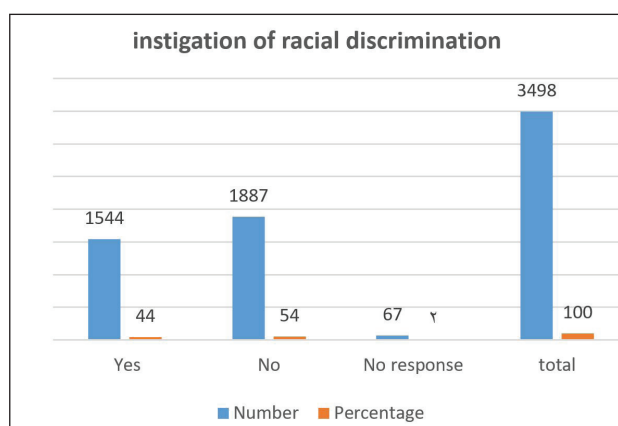


8: Spreading Seeds of Discord

Spreading the seeds of discord and fanning up racial discrimination is one of the challenges in our society. Based on information obtained by this research, some individuals irresponsibly resort to such acts through gatherings, media and internet pages.

However, based on the provisions of article 22 of the Constitution, citizens’ equality before the law is guaranteed and any discrimination among the citizens by anyone is prohibited. Also based on articles 256, 870 and 871 of the Penal Code, provoking and fanning up racial discrimination is a crime and should be prosecuted.

Studies in this research found out that of 3498 interviewed people, 1544 of them (44.1%) confirmed that they know some individuals who spread the seeds of discord in the society through public gatherings, media, and internet pages.



These people referred to those who, using the opportunities mentioned above, to fan up discrimination among ethnic

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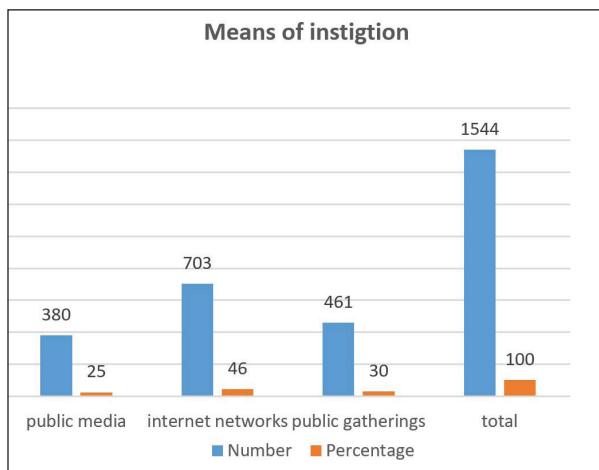
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groups at the national level.

1887 people (53.9%) stated that they did not know anyone or any community who provoke racial discrimination at the national level, and the remaining people (1.9%) did not answer this question.

In continuation of this discussion, interviewees were asked about the tools those people have used to provoke discrimination and saw the seeds of discord. The responses showed the following figures.

380 people (24.6%) used public media to resort to spreading the seed of discord, 703 people (45.5%) through internet pages, and 461 people (29.9%) used public gathering to provoke discrimination and harm the national unity.



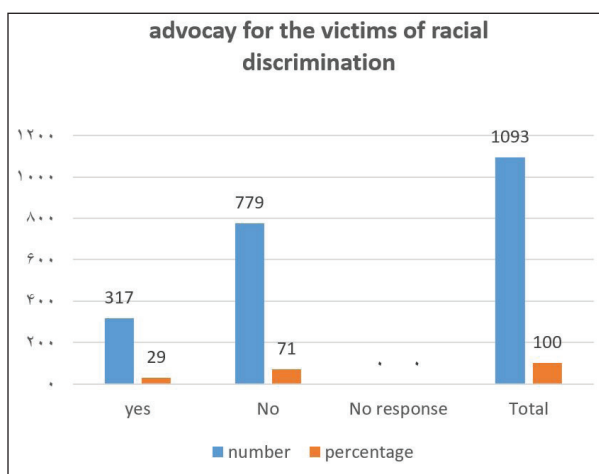
9: Advocacy

Advocacy and litigation is a civil right based on provisions of articles 51, 130, 131 and 134, of the Criminal Procedure Law and Penal Code of Afghanistan. Therefore, anyone who is affected as a result of personal conducts by others or institutional practices, has the right to appeal to the justice and judicial authorities.

In this research, those who claimed to have been victims of racial discrimination were asked if they had referred for litigation to justice or judicial authorities or to high-level authorities where they had been discriminated against. And if you referred, how was the attitudes of the government officials towards you? Has your complaint been heard and addressed?

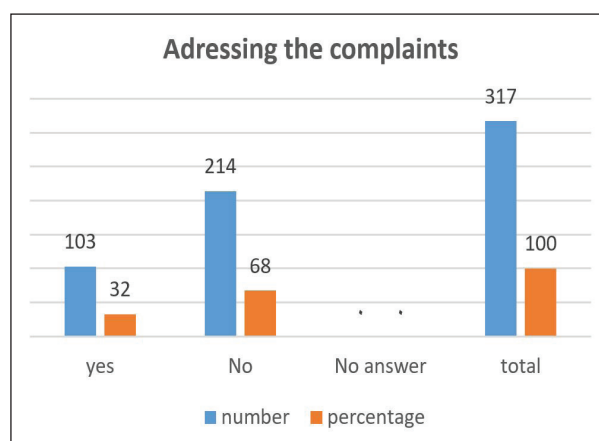
The first section of statistical analysis, in this research showed that out of 3,498 people, 1,093 individuals, including 31.2%, had confirmed that they were victims of racial discrimination. Out of them, 317 people, including 29.0% of the victims, claimed to have filed a complaint after they felt they were discriminated against, but all of them confirmed that they did not go to justice and judicial institutions, but to high ranking authorities in that institution and filed a lawsuit; therefore, according to these individuals, no one has so far referred to the justice and judicial authorities to litigate about violation of their right. All of these individuals confirmed referring to non-judicial authorities to file complaints.

Taking into consideration this figure, it can be specified that the remaining 776 victims covering 71% of the interviewees, did not file complaints to any institutions.



10-Addressing the Complaints

Out of those who claimed that they had filed a lawsuit after being discriminated against, 103 people (32.5%) of them said that their complaints had been received and addressed. These people have confirmed that they referred to the responsible authorities for advocacy, but the remaining 214 (67.5%) confirmed that, despite litigation, and filing complaints, their complaints have not been heard and have not been investigated.



Conclusion

The results of studies in this research show that the government of Afghanistan has made good achievements in establishing the legal and structural foundations for combating racial discrimination, and in addition to the constitution, the national laws have also emphasized on prohibition of racial discrimination.

The Constitution of Afghanistan prohibits discrimination among the citizens and obliges the State to comply with the Charter of the United Nations and other international instruments and conventions to which it has acceded or signed. Article 256 of the Penal Code also has criminalizes racial discrimination and punishes the perpetrators.

The establishment of human rights monitoring and protection institutions is another achievement that has been made so far on protection of human rights and, prohibition of racial discrimination.

But what is related to practical implementation of the concept of non-discrimination at the national level, and the process of behaviors or attitudes of the state agents towards citizens, especially in relation to their ethnicity, religion, or sect and language show in a way the treatment of the state agents towards the people and it is another discussion. Based on the information or data of this research, there are more serious issues to be tackled.

The studies conducted by the AIHRC show that, according to a large number of participants in focus group sessions, there are some articles of the Constitution which require more detailed studies and they are in contradiction with the spirit of equality among the citizens and provoke racial discrimination, such articles 62, 130 and 131 of this Law.

Despite hundreds of year presence in Afghanistan, a number of residents in the country, such as Jogies, have been deliberately deprived of their citizenship right contrary to article 9 of the Citizenship Law. The deprivation of this right has caused violation of their other human rights, including political and civil rights, economic, social and cultural rights.

Discrimination based on ethnic, religious, and linguistic affiliations exists in the institutions, which includes the process of recruitment, promotion and distribution of financial and non-material privileges.

Citizens of the country are not satisfied with the government's services delivery in the provinces and consider allocation of development budget as unfair and discriminatory.

Totally, 31.2% of interviewees confirmed that they have been discriminated against one or many times because of their affiliations to a particular tribe, religion or language.

This research has also clarified that racial discrimination, in addition to being an examples of human rights violations, has led to violations of many other human rights of the citizens, such as the right to vote, the right to work, the right to justice, the right to property and trade, the right to health services, the right to education and to higher education, the right to participate in cultural and religious-religious gatherings.

The information in this research also revealed that there are groups and individuals that use media, public gatherings and the internet pages, to provoke discrimination and spread discord in the society.

According to studies in this research, no individual or group has been arrested or trialed at the national level because of fanning up and provoking racial discrimination, and no one has formally filed a complaint against these individuals and groups.

Therefore, it is acknowledged that the government's plans and policies for combating racial discrimination continues to face serious challenges and requires reconsideration.

Recommendations

1. The absence of a Law on Elimination of Discrimination to address all racial discrimination practices and envisage punishment for the perpetrators is a serious challenge. It is a serious challenge to prohibition of racial discrimination in Afghanistan. Therefore, the AIHRC expects that the government of Afghanistan will accelerate the process of ratification, and enforcement of the Law on Elimination of Discrimination and removal all obstacles in front of it;
2. Revision of cultural, educational and awareness programs on racial discrimination and the consequences of this harmful phenomenon in the collective and private lives of citizens, including cultural, educational, publication and curriculum aimed at enhancement and effectiveness of these programs as a fundamental necessity. Therefore, the AIHRC calls on the government of Afghanistan to take serious measures through designing and implementation of effective programs for prevention of discrimination and turn it into a national discourse and cultural general process.
3. Establishment of a mechanism or system for receiving complaints from victims of racial discrimination and effectively addressing these cases, through referring them to justice and judicial institutions, and prosecution of individuals and groups who provoke and fan up racial discrimination. It will cause the scope of their activities to diminish. The AIHRC expects the government to take this seriously and to eliminate the culture of impunity, especially in this regard;
4. The AIHRC also recommends that formal and rapid action be taken to distribute identity cards to Jogies and other people who are legally entitled to national identity cards, but have been deprived of this right due to discrimination
5. The AIHRC also recommends modification and strengthening of the monitoring mechanisms for public service agencies to ensure the provision of public services is void of discrimination all over the country. In addition to strengthening the process of detection of crimes committed in this area, the process of addressing them by the justice and judicial authorities should also be properly monitored;
6. Taking into consideration the commitments of Afghanistan to the Convention on the Elimination of All Forms of Discrimination, the AIHRC emphasizes on the need for reporting to the Elimination of Discrimination Committee at the Human Rights Council, and recommends that the Government of Afghanistan should present its national report on implementation of the said Convention based provisions of article 9 of this Convention, and, reflecting the objective realities in the country, takes the first practical step towards elimination of racial discrimination at the national level;
7. The AIHRC considers transparency in the process of employment, promotion and demotion of the employees at the government departments as a need and the most important and effective factor of good governance. Therefore, it is recommended that transparent systems and mechanisms should be developed and strengthened in this regard to uproot discrimination, especially racial discrimination in the government departments.
8. A serious concern expressed by the people during this research, related to allocation of development budget to provinces of the country. A large number of the people believed that the process of allocation of the national budget, especially the development budget to the provinces of the country, was discriminatory and not fair. Therefore, the AIHRC recommends that the government Afghanistan establishes the necessary monitoring mechanisms to ensure transparency in identification and prioritization of the needs through public participation to attract their confidence in this regard.

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Annexes

Memories of Some Victims of Racial Discrimination in Afghanistan

One of the questions in the field research questionnaire was, “Would you narrate briefly about a case which you have experienced related to racial discrimination or heard from your friends?”

In response to this question, 734 people, representing 20.1% of all 3498 interviewees, expressed their experiences of discrimination based on their ethnicity, religion, or religious sect and language. The remaining 2764 people (79.0%) did not have any special experience in this field or did not mention.

A review of the memories narrated by victims of racial discrimination shows that this negative phenomenon existed all over the country and the people suffered it during their social relations in a way.

The most parts of these memories about tribal, religious and linguistic discrimination narrated by the minorities living in the provinces.

The experiences of interviewees in the offices prove that there is discrimination in the departments, and fanatic individuals, using their position, discriminate against different ethnic, religious or linguistic followers.

The memories of the interviewees also show that, in some cases, despite the victims’ complaints, no attention had been paid and their cases had not been addressed.

It is worth mentioning that in this part of the report, only a few of the victims’ memories are presented, because, as stated above, out of all 3,498 interviewed only 734 people, included their experiences about racial discrimination in the questionnaires. A summary of their views is presented as following.

The memories of victims show that discrimination existed in the government offices as well as in the society, including the universities, schools, health centers, offices as mentioned by the interviewees.

26-year-old woman from Balkh Province

“When I went to the Ministry of Education for employment of my sister, I was discriminated against and they insulted me in bad language because I related to a different tribe. For this reason, even they did not sign my sister’s documents.”

A 42-year-old man from Punjshir province:

“When I referred to the Ministry of Higher Education for signing my monograph, I was discriminated against by one of the staff, because is of being from Punjshir.”

A 47-year-old woman from Samangan Province:

“We are originally from Herat province, but people call us Jat and Jogy. In all village, even women do not want to eat with us and they consider us untouchable. It is very insulting.”

A 29-year-old man from Balkh Province:

“I passed in the academic cadre examination at Balkh University, but the Dean of that university cancelled the result and re-announced the post because I belonged to a different tribe. I spent 8 months at the Ministry of Higher Education to prove my claim and regain my right.”

A 24-year man from Ghoor Province:

“My brother, a school student is discriminated against by others because he affiliates to a different tribe, most of the time this ends up in fight among the students.”

A 23-year-old woman from Maidan Wardak Province:

“Racial discrimination is prevailing in this country. Haven’t you heard that we are not employed in the offices and they kill or take us hostage along the roads because we belong to a particular tribe or religion?”

A 28-year-old man from Balkh Province:

"I referred to the Ministry of Education in 1396 because there was some problem in my employment record. When I entered the related office, they were not speaking in Dari. I talked in Dari, but was discriminated against and I felt very bad about it."

A 41-Year-Old Man from Maidan Wardak Province

"I was discriminated against in the Appeal Court of Balkh province regarding ownership documents of my land."

A 27-year-old woman from Balkh Province:

"I was discharged from Kamar Band Baba Yadgar Turkmania School because of being a Soni."

A 25-year-old man from Bamyan Province:

"When I refer for employment, they always ask me which tribe I belong to. As soon as they understood that I am a Tajik, they refuse to employ me."

A 30-year-old man from Bamyan Province

"Many years ago, I together with 15 other people wanted to attend a meeting held in a hotel. As we entered, the others were allowed, but I was searched because of being a Tajik. I felt very cheap."

A 27 old man from Maidan Wardak Province

"In 1391 I was a student in the Faculty of Social Sciences at Kabul University. I was openly discriminated against by some the instructors. In this regard Hazara students organized a sit-in, but it was useless and in vain."

A 26-year-old women from Balkh Province

"One of my friends wanted to become a teacher. At the Education Department, she was told,

"Pashtuns always want to become teachers, though they do not have sufficient knowledge."

A 27-year-old man from Balkh Province:

"Mulahs in the mosque say bad words about Shia. I talked to the local people many times, but it was not heard."

A 24-year man from Balkh Province

"Turkman tribe is a minority group and always deprived of their rights. Discrimination is continuing against them."

A 17-year-old women from Samangan Province

"In most of the clinics I face with problems, because my tribe is not the same as the doctor's tribe."

A 26-year-old man from Samangan Province

"I was discriminated against in many cases. I took a test at the Election Commission, but I was rejected because of being an Uzbek."

A 43-year-old man from Samangan Province

"They do not allow Uzbek people to enter the Ministries of Defense and Interior."

A 23-year-old man from Jawzjan Province:

"Last year I together with other ten students belonging to Tajik and Pashtuns failed in the exam at the university. It was a discrimination against us, because the weaker Uzbek students in our class passed the exam."

A 45-year-old man from Paktia Province:

"I was in a taxi in Kabul when two Dari speaking boys got into the taxi. Since I was a Pashtoon, they told with each other that Pashto is the language spoken in the Hell."

A 42-year-old man from Paktia:

“At Char –Sad- Bester Hospital I was insulted and discriminated against. A health worker told me, “Afghan, the ghoul”.

A 26-year-old man from Paktia Province:

“I was a student at Fariab University. At the dormitory I was discriminated against. They addressed me Afghan the ghoul. That is discrimination.”

A 50-year-old man from Khost Province

“I wanted to register for Haji pilgrimage, but I was delayed in Haj and Auqaf Department of Khost province because I was a Kochi. If I were a Mangal or Zadran, I would be delayed.”

A 48-year-old man from Khost Province

“I am Petar Singh from Hindu village. Our land was usurped. We referred to the government, but they did not help us.”

A 23-year-old woman from Diakundi Province

“My brother is a student at Poly-Technic Institute of Kabul. He complains about the instructors because they provoke racial sensitivities and discriminate against Hazars in any possible way which discourages Hazara students.”

A 26-Year-Old Man from Badakhshan Province

“We, 21 teachers were discharge of school because of being addicted and belonging to Esmailia sect. Still our destiny is not clear.”

A 27-Year-Old Man from Urozgan Province

“I took an exam for employment to a government post and passed the exam, but due to existence of discrimination I was not employed. Discrimination prevails in the government offices. “

An 18-Year-Old man in Ghor province:

“A religious preacher in a city mosque usually provoke religious discrimination during gatherings and events. We have not witnessed any security authorities to prevent him from doing so.

A 23-year-old woman from Ghor Province

“In 1397, my sister took an employment exam at the Elections Commission. Although she passed the exam, was not employed. Because the office in charge employed his own relative instead of my sister.”

A 17-year-old man from Bamyan Province:

“Many times I was discriminated against by my classmates. For this reason, I left the school.”

A 45-year-old woman from Ghazni province:

“Two years ago the Taliban arrested the son of my husband’s brother along the way to Qarabagh and took him away, because we belong to a different sect and tribe. First they asked for money and then his dead body was found in the desert. This is discrimination.”

A 27- year- old man from Bamyan Province:

“Two years ago, my son was discriminated against by some school students many times. Finally, he left school and now he is deprived of education”.

A 27-year-old woman from Bamyan Province

“We are usually under threat because of affiliation to a particular tribe. They kill, behead and take us hostage along the roads, because we belong to a particular tribe.”\

A 28 Year Woman from Ghazni Province

“ I am working in a government office for 4 years, but still have not been promoted higher than grade five, though there is no doubt about my capacity. The other staff from different tribes promote every month. I am really a victim of discrimination in my office. “

A 46-Year-Old Man from Ghazni Province

“ On the way to Kabul, in the area of Maidan, we stopped for praying. I used Mohr in my praying, but suddenly someone kicked my Mohr away and he insulted me to my sect.”

A 28-Year-Old Man from Ghazni Province:

“ I was working with the Ministry of Transport on a contract base. I did not receive my salary for one year, because I belonged to a different tribe. I complained to the related organs, but it did not help”.

A 33-Year-Old Man from Ghazni Province

“ In a journey from Kandahar to Kabul, unknown men under the name of Talib took us out of the bus. We were five Hazara people and they kept us for many days. During that period, they harassed and insulted us because of being Hazara.”

A 22-Year-Old Woman from Ghor Province

“Based on my interest, I chose Pashto Literature as field of my study in Ghor Teachers Training College. Now, I want to continue my education at Ghor University, but they question me that why I did choose Pashto as the field of my study.”

A 27-Year-Old Women from Fariab Province

“I applied for job to an NGO, but after a week, they told me that I am a Tajik and they only employ Uzbeks in this organization.

A 28-Year-Old Woman from Fariab Province

“My husband is an Uzbek, but I am Tajik. Sometimes my mother-in-law and sister-in-laws humiliate and insult me because I am Uzbek.”

A 27-Year-Old Man from Farah Province:

“During my studies at school, I was discriminated against by a teacher from another tribe and I received low grades.”

A 27-Year-Old Man from Zabul Province:

“Sometimes ago I was a school teacher. I was introduced to a seminar, but later I understood that someone else was introduced in my place. The reason was that I was a Dari speaking.”

A 67-Year-Old Man from Kandahar:

“I belong to Taraki tribe of Pashoon in Kandahar, but the tribes of Achakzai and Noorzai have control in Kandahar. They discriminate against us and we cannot take high posts in the offices”.

A 29-Year-Old Man from Kandahar Province:

“I referred to the Ministry of Public Health to receive a license for opening a pharmacy. They told me that you are from Kandahar and license would not be given to you. It means discrimination.”

A 28-Year-Old Man from Helmand Province

“I had a legal litigation with a person, but in the court, my right was not protected because I was a Kochi (nomad) and the other person belonged to a Pashtun tribe.”

A 34-Year-Old Woman from Kabul Province

“ I was employed as a teacher in one of the private schools, but after the owner of that school realized that I am not belonging to the same tribe, he discharged me.”

A 33-Year-Old Woman from Kabul Province:

One year ago I was asked for a job interview at the Ministry of Finance. When the interview started, everyone was speaking in Pashtu, but unfortunately I did not understand very well. I wanted to speak in Dari, but they made fun of me and kicked me out.”

A 44-Year-Old Man from Kabul Province:

“ I am working in an office on step 5, though I have MA degree. The Head of my office is a graduate of 12 grade. Many times I tried for a higher post and passed the exam, but I was not selected. The reason was racial discrimination.”

A 23-Year-Old Man from Kabul Province:

“ I had a friend who was a Hazara and he loved a girl who affiliated to Tajik tribe. The girl also love that boy, but when they went for proposal, the girl’s farther rejected the proposal, because the boy belonged to Hazara tribe. Now the boy is addicted and the girl suffers from psychological problem.”

A 16-Year-Old Woman from Kunduz Province

“ Our teacher is a Hazara and she always encourages Hazara students in our class and gives them high grades.”

A 27-Year-Old Man from Baghlan Province:

” A vacancy was announced at the Governor office in Baghlan province. I together with two others were candidates for that post. We took the exam and answered the questions properly. I was asked to wait because I was a Pashtun, but the other person was employed because he affiliated to Tajik tribe, though he was a graduate of 12th grade. I had a BA degree.”

A 27-Year-Old Woman from Baghlan Province:

“I took an employment exam in an office and passed. Since I was a Pashtu, they did not employ me.”

A 50-Year-Old Man from Takhar Province:

“One day an Uzbek friend sent me for proposal to Tajik family. The girl’s father not only rejected the proposal, but insulted and expressed discrimination against Uzbeks.”

A 26-Year-Old Man from Paktia Province:

“I referred to the Ministry of Higher Education for an official work. I spoke in Pashtu language, but they did not help and told me to go ahead. When I spoke in Dari, they solved my problem.”

A 27-Year-Old Man from Ningarhar Province

“I am from Khewa district of Ningarhar province and relate to Pashae tribe. The people in Ningarhar province call me Shali which is a word of insult to my tribe and language.”

A 26-Year-Old Woman from Ningarhar province:

“Posts for teachers were announced on ACBAR site and I applied to one of the schools I preferred. I wanted to become a Chemistry teacher. I took the test and received a high grade, but when the results were announced, I realized that another person was employed in my place who was a graduate of the field of History. I had completed my studies in the field of Chemistry, but I related to another tribe, therefore I was not employed.

A 43-Year-Old Man from Ningarhar province:

Because of racial discrimination in my office, I am deprived of financial privilege. “

A 40-Year-Old Women from Kunar Province

“During a training workshop held at the Ministry of Women Affairs, I faced with language discrimination because I was a Pashtun.”

A 27-Year-Old Woman from Kunar Province:

“At the Documents Evaluation Department of the Foreign Ministry, I faced discrimination by a low ranking official of that Ministry because of my language and regional affiliation.”

A 26-Year-Old Man from Kunar Province:

“I was working at the Ministry of Education. Most of the times, some of the officials discriminated against me because of my language and tribe.”

A 23-Year-Old Woman from Herat Province

“We are originally from another province. When we speak in our own language, the local people make fun of me.”

A 25-Year-Old Man from Herat Province:

“Racial and religious discrimination prevails in this province. Except the natives of Herat, other people have less opportunity for employment in the offices. I took the exam two times, but I did succeed to take the post, because I am not a native of Herat.”

A 25-Year-Old Man from Herat

“In Herat province some people insult us during the Month of Moharam”

A 30 Year Old Man from Herat Province

“Two years ago, when I was passing the center of Herat during a night, the security police focused his torchlight at my face and looked at me. He addressed me, “You are Hazara! Why are you walking here at night? He intended to insult me.”

A 24 Year Old Man from Herat Province:

“When I attended the university, one of the lectures repeatedly threatened me to failure and he usually humiliated me because of my tribal affiliation.”

A 27 Year Old Woman from Herat:

“I have a BA degree in the field of Social Sciences. When I heard an announcement through the TV, that a private school in Herat needs a Social Science teacher, I applied for that job. Since I was not Hazara and Shia, my application was rejected.”