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UN Justice Reform in Afghanistan

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THE JUSTICE SYSTEM BEFORE UNAMA

Looking at the formal justice system in Afghanistan before UN intervention, it is possible to argue that its evolution has been influenced, to varying degrees, by Western legal thought, moderate Islam, radical Marxism, and finally by radical interpretations of Islam. These influences reflected the values, ideologies, and politics of the various governments that Afghanistan has witnessed since its emergence as a politically organised society.

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Before Taliban administration

In the 1950s and 1960s, the justice system was modernised and the rule of law, rather than *shari'a*, became the primary source of the justice system.

In the 1950s and 1960s, as Afghanistan's political, economic and cultural relationships increased with the rest of the world, the rulers started to modernize the Afghan justice system in line with those of the Western world. The justice model that Afghan rulers chose to adopt resembled closely the Egyptian model, which was strongly influenced by the French and Ottoman legal systems.

This modernization process was also accompanied by the codification of many Afghan laws in the 1960s and 1970s.

This process gradually resulted in the relative secularization of the Afghan justice system, especially in the areas of criminal law, commercial law, and civil law. Thus, the rule of law, rather than *shari'a* became the primary source of the justice system. Nevertheless, *shari'a* remained a secondary source. As Article 69 of the 1964 Constitution states: '... In area [s] where no such law exists, the provisions of the *Hanafi* jurisprudence of the *Shariaat* of Islam shall be considered as law.'

While this justice system appears to have reflected a balance between Islamic *shari'a* and modern legal norms, its administration involved long delays, bribery and corruption.

Many Afghans, particularly in rural areas, avoided contacts with state judicial institutions.

As a result, many Afghans, particularly in rural areas, continued to use traditional institutions of informal justice such as the *Jirga* system (a cross between arbitration and mediation). Indeed this has always represented for the local population the main way to resolve tribal and local conflicts expeditiously and in cost-effective ways.

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After the 1978 military coup, the Afghan Marxist government attempted to introduce the Soviet-style judicial system in line with the Socialist ideology. However, due also to the incompatibility between the Marxist system and both Islamic laws and Afghan traditions, the whole system of governance and its judicial reforms were massively rejected. After the collapse of the last Afghan Marxist government, the mujahedin government (1992 – 1996) declared shari'a as the basis of their 'Islamic State of Afghanistan' even if the various mujahedin factions, which formed the government, interpreted shari'a in conflicting ways.

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During Taliban

The situation during the mujahedin government approximated a Hobbesian state of nature where there appeared to be a war against all. The Taliban authority was largely focused on imposing order, under a sort of "Pax Islamica" and did little otherwise to govern the country. Indeed with their own interpretation of Islamic Justice that was ruthlessly, some sort of civil order emerged.

Under the Talibans, Afghanistan became a truly theocratic state. Taliban leaders believed that the primary function of law was to protect and promote Islamic ideals and values and promoted a peculiar world view based on their interpretation of Islam. Punishment was seen as a means for the promotion of an Islamic way of life and consequently the role of the police and the judiciary was seen in that context.

Moreover, during the Taliban administration the respect of basic human rights, especially for what concerned women rights, reached its lowest point.

The formal Justice system (i.e. the Shari'a system) was often different from its *de facto* enforcement. Indeed many disputes from civil to criminal cases were resolved still by the Jirga system. More precisely, after someone submitted a complaint to an executive officer, they would be asked which way they wanted to resolve their problem: by the Jirga system or by the Shari'a

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To conclude: the conflicting coexistence of two different Justice systems, one formal *de jure* and one *de facto* actually enforced, has always been a reality that characterizes the different phases of the contemporary history of Afghanistan.

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The war and subsequent UN intervention

After the terrorist attacks of 11 September 2001, an international alliance under U.S. leadership launched a military operation supporting Afghan opposition forces (regrouped under the so called "Northern Alliance") and aimed at overthrowing the Taliban regime following their refusal to hand over bin Laden. The taking of Kabul and successively the fall of Kandahar in December 2001 signaled the fall of the Taliban regime, even if their leader, the mullah Omar remained at large.

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UNAMA MISSION

Following the Taliban regime's fall in 2001, the starting point for rebuilding Afghanistan was the "Bonn Agreement" signed by the representatives of the Afghan people in December 2001. The Agreement established an Interim Afghan Authority and provided the basis for an interim system of law and governance.

Following the 2005 parliamentary elections, the Government of Afghanistan and the international community have entered a new phase of transition. On January 2006 the Government of Afghanistan and the international community set out an extensive document entitled “Afghanistan Compact” containing the main critical issues that have to be tackled in 2006-2010. The document includes some specific targets under three interdependent pillars:

- Security
- Governance, Rule of Law and Human Rights
- Social and economic development

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UNAMA mandate in general

The Bonn Agreement assigned a lead role to the UN in the transitional process, including monitoring and assisting in the implementation of all aspects of the Agreement. In March 2002, the Security Council established the UN Assistance Mission in Afghanistan (UNAMA) for the coordination of all UN activities in support of the Bonn process.

On 20 March 2008, the United Nations Security Council, in its resolution 1806 (2008) extended the mandate of UNAMA for one year, until 23 March 2009.

UNAMA’s overall function is to promote peace and stability in Afghanistan by leading efforts of the international community in conjunction with the Government of Afghanistan in rebuilding the country and strengthening the foundations of peace and constitutional democracy.

The Security Council decided that UNAMA leads civilian efforts to:

- Promote more coherent support by the international community to the Afghan Government;
- Strengthen cooperation with the International Security Assistance Force (ISAF);

- Provide political outreach through a strengthened and expanded presence throughout the country;
- Provide good offices in support of Afghan-led reconciliation programmes;
- Support efforts to improve governance and the rule of law and to combat corruption;
- Play a central coordinating role to facilitate the delivery of humanitarian aid;
- Monitor the human rights situation of civilians and coordinate human rights protection;
- Support the electoral process through the Afghan Independent Electoral Commission;
- Support regional cooperation in working for a more stable and prosperous Afghanistan.

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Overview of UNAMA activities for what concerns Justice Reform

For what concerns UNAMA efforts in promoting Justice Reform in Afghanistan, it is possible to identify 11 areas of activities:

- Legislative reform
- Physical Infrastructures
- Reform of Justice Institution
- Legal Education and Professional Training
- Legal Aid and Access to Justice
- Prison and Detention Centers
- Land Reform
- Human Rights/Transitional Justice
- Fight against Narcotics
- Fight against Corruption

Legislative Reform

Main purpose of the legislative reform activities is to align justice sector activities under national laws which conform with the Afghan Constitution and international human rights standards and to ensure the implementation of standards and norms in the administration of justice that seek to actively promote and safeguard the rule of law for all persons in Afghanistan without prejudice or discrimination.

The Legislative Drafting Process

One main issue to be considered before proceeding in an effective legal reform in Afghanistan is the legislative drafting process itself. Greater consultation, policy development and debate among national and international stakeholders, particularly government institutions, legal professionals, civil society, and the private sector needs to take place before legislation is drafted and enacted.

Currently the legislative process still lacks enough Afghan ownership. Indeed is still driven mainly by international legal experts often importing unfamiliar terminology and foreign legal concepts largely bypassing adequate input from national stakeholders.

Moreover, the Council of Ministers needs to develop a clear legislative agenda. With the large number of laws the Legislative Department within the Ministry of Justice (Taqnin) is asked to prepare, the lack of prioritization causes confusion as to what order and by what date the various drafts should be assessed. Moreover, clear and consistent drafting guidelines need to be developed and include guidance on how line ministries and the Legislative Department should work together in presenting legislation to Parliament. Currently USAID has a projects that support the Taqnin offering training, equipment and research facilities. Another obstacle is represented by the rules for passing laws themselves. Indeed general procedures for making law in Afghanistan are still the ones decided during the Taliban administration, but its provisions are often vague and interpreted differently by various parties.

The process of drafting of new key legislation (including a new Penal Code, a new Criminal Procedure Code, a new Code of Civil Procedure and a Code of Conduct for Public Servants) is involving various UN Agencies (UNDP, UNODC, UNIFEM), the IDLO and is co-lead by the Governments of Italy and the US.

Finally translation capacity will have to be significantly strengthened. Translation difficulties cause significant delays in the finalization of laws in Afghanistan. A number of laws are originally prepared in English and contain complicated legal concepts and terminology that are not readily translated into Dari. Translating from Dari to Pashto also causes many problems. Without accurate translations in both official languages, the official gazettes should not be published, further delaying the law enactment process.

Enforcement and Dissemination of Laws

Enforcement and implementation of laws and the application of international standards incorporated in new legislation also remains a critical problem. A clear example is the application of the 2004 Interim Criminal Procedure Code. Although a number of extensive training programs of judges, prosecutors and police, have taken place over the last year in relation to the new law, procedures relating to the investigation, arrest and detention, charging, trial and imprisonment of individuals are rarely adhered to. There is ample evidence that the statutory timelines for detention and other fundamental safeguards are almost invariably not applied.

Individuals are routinely detained for months without charge or being brought before a judge and rarely receive legal representation. Many prosecutors and police officers complain that they do not have resources or the capacity to meet timelines laid down by the law. Failure to adhere to the penal code is particularly grave in relation to women who are frequently detained and sentenced for acts that are not defined as crimes under the law.

Also the access to laws still remains a critical problem. Many judges are unfamiliar with the law and make decisions without any reference to the legal codes. Particularly at district level, judges' personal opinions are the primary source of law.

The Afghan Ministry of Justice with the US support is trying to address this problem creating an electronic law library available on CD and accessible by all relevant Justice institutions (by the way, an electronic law library seems to be quite a non sense considering the lack of equipment and even electricity in many parts of the country).

Physical Infrastructure

Inadequate justice infrastructure, resources and communications continue to be a serious problem. An increasing amount of reconstruction works in Kabul and in the provinces is being coordinated through the Provincial Reconstruction Team (PRT) structure consisting of various UN agencies (especially USAID, UNDP and UNOPS), ISAF and international partners (Italy and US in particular) working closely with Afghan provincial institutions. The international cooperation activity is focused mainly in restoring the capabilities of Afghan primary courts buildings and district attorneys' offices.

International support has also ensured that some urgent resource requirements such as generators, computers, furniture and vehicles have been provided.

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Reform of Justice Institutions

There is a critical need to establish a clear institutional framework for the administration of justice. Support needs to be more effectively targeted towards strengthening the capacity of the national institutions, enhancing the work conditions of judges and prosecutors and other justice officials through increases in salaries, better resources and facilities and security, accompanied by transparent appointment as well as disciplinary and other accountability mechanisms including the promulgation, implementation and enforcement of ethical standards.

Strong obstacles in this ample reform attempt are still represented by the politicization of the judiciary, the lack of adequate salaries that significantly contributes to corruption and lack of professionalism, and finally by the general insecurity.

Indeed it must be clearly understood that the failure to ensure a secure environment for courts, judicial personnel, witnesses of crime and victims undermines all the efforts mentioned before and will continue to have a detrimental effect of the capacity of the legal system to act impartially and independently

UNDP, Italy, Germany (through GTZ) and USA (mainly through USAID/AROLP and JSSP/Justice Sector Support Program), have been providing technical support to the justice institutions through the placement of international and national experts in the Ministry of Justice, Supreme Court and Attorney-General's Office. UNDP, for example, with the project "Strengthening the Justice System of Afghanistan", commenced in 2006 aim to provide further support to the justice institutions in reforming the justice sector promoting honesty, integrity independence and impartiality among the personnel of the different judicial institutions. Moreover, one of the most important goals of the UN Justice Reform initiative in Afghanistan is promoting and strengthening the presence of women in the different Afghan Justice institutions.

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Legal education and professional training

All the programs mentioned before will remain short term oriented and will not be truly sustainable on the long term if the international community will not support the creation of an Afghan legal education system of acceptable quality.

More precisely the international community of donors needs to review its assistance to short term standalone training, assisting in the longer term rebuilding of Sharia and law curricula, supporting the Supreme Court's program of continuing judicial training, harmonizing related training of other law professionals, coordinating assistance to related strategies to develop capacity to monitor performance, and reviewing compensation incentives, and discipline.

A number of training programs for judges and prosecutors have been conducted by IDLO, ISISC, USAID and the Max Planck Institute, funded by the Italy, USA (USAID), Canada (CIDA), Germany and France. All these programmes are trying to address not only the reality of Kabul but includes also different provinces. Indeed the aim is to re-activate criminal justice administration in the provinces by developing training as well as capacity building activities including provincial mentoring and monitoring cells. Judges, prosecutors, judicial police, and defence lawyers are being trained by Afghan trainers on criminal procedure (moot courts system), penitentiary law and juvenile code with reference to Constitution and human rights protection. UNAMA has been organising rule of law and human rights protection seminars.

Also UNICRI is currently involved in this nation wide training initiative and, in cooperation with UNODC, is finalizing two training manuals for Afghan judges and prosecutors dealing with corruption and drug related crimes, as will be explained later on.

Another essential step to be undertaken by the international community in order to ensure a sustainable Afghan legal education is the reform of the law faculty system. Legal education in fact is currently divided between the Sharia Faculty and the Faculty of Law and Political Science. This has inhibited substantial international funding and consequently university staff are often under qualified, poorly paid and lacking in both morale and skills. The curricula and teaching methods need to be improved. Support facilities are limited and even basic legal materials are often not readily available.

Currently UNDP and USAID are supporting law faculty reform focusing on curriculum development and implementing different Law student exchange programs.

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Access to Justice

The majority of Afghans are largely illiterate and uneducated. They have little or no understanding of their rights or the legal and justice system. They also lack basic understanding of the obligations of duty bearers (the police, prosecutors and judges) and the procedures for claiming these obligations. Currently the legal mediation services

provided by the Afghan state is really limited and the vast majority of defendants go unrepresented in the court system. In the same way detainees continue to suffer in prison without lawyers to represent them.

Without an effective access to justice by the majority of the Afghan population a Justice reform initiative in the country will always remain sterile and, even more importantly, the respect of the basic human rights cannot be granted by the international community.

A first step in this path is represented by the establishment of an Independent Afghan Bar Association currently promoted by the international community. The aim is to regulate the legal profession, establish standards to enter the profession and practice in Afghanistan, establish ethical standards, as well as to oversee the development of the profession through admission courses and programs of continuing legal education.

Probably the main issue regarding the access to justice in particular and the whole Justice reform initiative in general in Afghanistan is represented by the difficult coexistence between the current formal legal system with the traditional dispute resolution system (Jirga) that relies on respected community elders and is still adopted by most Afghans, especially in rural areas.

Although, in many respects the traditional system provides community cohesion and accessibility, some elements of this system may be never compatible with the legal rights of the citizens in a modern state and often are in clear violation of fundamental human rights especially with respect to the treatment of the woman and children. Moreover a traditional legal system can be excessively influenced by powerful local leaders and warlords.

Therefore, even if traditional dispute resolution mechanisms cannot be banned, the international community must help the Afghan government in following two parallel strategies. On the one hand, access to state sponsored justice should be enhanced throughout the country. On the other, the international community should sponsor legal research initiatives and a true national dialog process, in order to develop and disseminate a human rights approach to traditional dispute resolution.

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Prisons and detention centers

Following years of armed conflicts, prisons as an essential component of the criminal justice system, are still in a dramatic state and affected by the lack of trained and qualified staff. Detainees have been commonly held in overcrowded detention centers, deprived of adequate food, sleeping places, basic hygienic facilities, sanitary installations and efficient medical assistance. Moreover torture and other forms of ill treatment have been often reported. Finally the international community is particularly concerned about the situation of female prisoners, juvenile offenders, drug addicts and women with children.

In the framework of UNAMA, UNODC is the lead agency currently involved in penal reform in Afghanistan with the aim of ensuring compliance with international standards and the protection of human rights by providing the necessary technical support and expertise. Major priorities within the penitentiary system are the revision of the national legislation as well as the development of rules and regulations for the penitentiary, the refurbishment and construction of physical infrastructures and finally the delivery of capacity building activities aimed at educating penitentiary staff; all in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners.

Finally the Justice reform effort should take into account the development of viable alternatives to incarceration as essential component for the establishment of an effective and humane criminal justice system for Afghanistan. Indeed the basis of the new Afghan correctional system must lie on the understanding that imprisonment should be used as last resort for all offenders, but in particular women, juveniles and non-violent offenders, and that the development of other suitable alternatives to incarceration should be paramount.

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Land reform

Due to the fact that more than one third of Afghanistan's population was displaced during the recent history of conflicts in the country, conflict over land, rural and urban, continues to be a significant source of instability in Afghanistan. Disputes over land range from boundary disputes to possession conflicts due to poor records, land-grabbing, migration, inheritance, and issues of communal pasturage. Corruption and forged land titling is widespread. Sales of land and land-use agreements made in the past may have been fraudulent or currently impossible to prove. The lack of functioning courts and reliable documentation has made legal adjudication extremely difficult.

The United Nations, specifically UN Habitat and UNHCR are involved in a comprehensive Land Property reform programme which goals are the reform of the Property Law, the institution of an up-to-date land registry and the implementation of a just compensation system.

Human Rights/Transitional Justice

Afghanistan still needs to address the legacy of egregious human rights violations committed during the two decades of armed conflicts. Impunity for these violations continues to cast a dark shadow over the country and reinforces the lack of public confidence in the justice system.

The key for a successful genuine national reconciliation process in Afghanistan lies indeed on the delicate balance that the Government, with the help of the International community, should reach between the need of a general amnesty to all political parties and belligerent groups involved in the armed conflicts prior to the establishment of the Afghan Interim Administration and the importance of prosecuting those responsible for having committed war crimes and crimes against humanity during the conflict.

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Fight against narcotics

The booming of the opium economy, 93% of opiates in the international market originating in Afghanistan, encouraged by the lack of security and State's resources, is

one of the greatest pressuring challenges facing Afghanistan. Drug-related corruption is largely recognized as one of the dominant component of corruption in the country. Opium cultivation, drug trafficking, drug-related corruption combined with the general context of insecurity are intertwined phenomena, which hinder the development of licit economic activities in Afghanistan. Not fully functioning law enforcement agencies and judicial institutions, seriously compromise the detection, prosecution and punishment of corrupt practices. Moreover, it is important to remember that the cultivation of opium in Afghanistan represents a truly transnational threat given that the bulk of the opium production ends in the European and Russian criminal markets.

The country's unique characteristics and their intricate interdependencies require an approach that is both complex and creative, which do not allow a simple replication of actions undertaken in other contexts.

UNODC has proposed a number of specific goals to the Afghan Government including a strong justice system that will allow the Government to prosecute traffickers effectively; the extradition of major traffickers, regional cooperation to control the spread of trafficking and corruption; enhancing government capacity in outlying regions, and providing alternative development to communities where drug cultivation is the only source of income for many Afghan farmers.

The main components of this counter narcotics initiative, that foresee UNODC as the leading agency, are the establishment of the Afghan Counter Narcotics Task Force, Special Counter Narcotics Courts and finally the implementation of a new Counter Narcotics Law.

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Fight against corruption

Rampant corruption exists in Afghanistan and is quite evident that corruption, clientelism and an excessive reliance on systems of patronage will remain a major challenge in Afghanistan for years to come.

The Afghan judicial system suffers from endemic corruption among police, prosecutors, and judicial officials. One systemic cause of corruption in Afghanistan is the low pay. It is commonly understood that justice officials supplement their salary, either through alternate employment or bribery. The decimation of government revenue sources has made this problem more acute. Many positions must be bought with bribes, so officials need to supplement their incomes in order to recover their 'investment' costs. The lack of transparent and merit based appointment, promotion, and transfer mechanisms further fuels corruption.

The peculiarity of the Afghan case is that not only weak governmental control greatly supports the diffusion of corruption, but its capillary diffusion is also linked with burgeoning of drug economy since 2001. Corruption in the law enforcement bodies that are responsible for countering drug trafficking has contributed in making the drug industry stronger (more consolidated, with fewer but powerful players with strong political connections), severely compromising parts of the Government.

In addition the large inflows of international assistance, accompanied by high pressure to spend resources quickly, constitute an unprecedented potential source of corruption. In addition to development and humanitarian aid, this includes large inflows and contracts related to international military forces and their activities, to international and domestic security firms and aid to Afghan security forces. There are allegations and perceptions of corruption, or at least serious waste, in donor-executed contracting processes (such as sole-sourcing), cascading layers of contracts and sub-contracts (with overheads at each level), in international community expenditures on security (for example in the way in which local security firms and guards are contracted), just to provide some examples.

UNODC, UNICRI and the World Bank among other international partners are closely coordinating in the development and implementation of anti corruption activities in collaboration with the Afghan Government. More precisely there has been the creation of a new multi-agency Anti-Corruption Committee to look into the forms and motivations of corruption and develop recommendations for action to the President. In addition, progress has been made in reducing vulnerabilities to corruption in the management of funds in the Government's core budget, notably through strengthened financial controls; contracting a private firm to carry out functions akin to internal audit (now being extended to cover the entire civilian recurrent budget); efforts to strengthen the external audit function, etc.

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THE CONTRIBUTION OF ITALY

Since the Bonn Agreement, Italy has been the lead nation in the reconstruction of the Afghan justice system, operating in the field through the Italian Justice Project Office (IJPO) created in 2003. The IJPO operates within the framework of the new Afghan Constitution approved in 2004, and the International Treaties on Human Rights Protection.

IJPO's activities are carried out mainly in fields such as legislative reform, the construction and rehabilitation of infrastructures, and the organization of training courses for judges, attorneys, and administrative staff. Moreover, the IJPO is currently in charge, together with the Afghan Government and UNAMA, of coordinating the assistance provided by all the international organizations operating in the field of justice.

Infrastructure:

In August 2006, UNODC, funded by Italy, began construction on a new judicial complex in Jalalabad. The Nangarhar site is part of a larger Italian funded project for Justice Centers in selected provinces in order to support the justice sector at the provincial level. These centers will play a vital part in helping strengthen the rule of law and good governance in Afghanistan's provinces. Other Justice Centers will be built in Paktia, Balkh, Kunduz and Laghman provinces. Construction for the Jalalabad site, which also includes equipment and furniture, will cost US \$200,000

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Legal Education

In July 2003, IDLO started its first project of "Interim Training for the Afghan Judiciary", funded by the Government of Italy. The program delivered skills-oriented training over an 18-month period to 500 Afghan judges, prosecutors and Ministry of Justice officials, completed in December 2004. IDLO is currently implementing two multi-component projects: "Strengthening the Rule of Law in Afghanistan", funded by CIDA. Activities include: legal aid training for 50 law graduates from the University of Kabul and 20 women recommended by the Ministry of Women's Affairs, specialized training in civil, criminal and commercial law and procedure for 150 senior judges, training and technical assistance to build capacity in court administration, specialized training for 75 prosecutors in financial crime, juvenile crime and gender justice. "Enhancing the Rule of Law in Afghanistan" is funded by Italy, with a duration of 36 months. Activities include, training and technical assistance to the Faculty of Law and Political Sciences at the University of Kabul, training for a total of 350 judges of all levels, training for a total of 350 prosecutors of all levels, training in legislative drafting for 240 government officials at the Secretariat for the National Assembly and the Ministry of Justice.

Work continues through the Italian Justice Office and USAID to establish a permanent National Legal Training Centre (NLTC). In 2004, discussions among the donors, particularly Italy and the US, led to some initial plan to develop a centre in Kabul to address the needs for continuing training for lawyers, prosecutors and judges. In July 2004, a MoU was signed between Italy US, Ministry of Higher Education, Ministry of Justice, the Supreme Court and the Attorney General committing to the establishment of a governing board representing the institutions that will run the centre. However, the concept of the training centre was largely donor driven and the Afghan justice institutions were insufficiently involved in the policy and planning of the centre. A site was found for the centre in the Ground of Kabul University and construction implemented by UNOPS. Construction was completed in early 2007. The building is being used for the 2007 Judicial Stage Course. However there still remains a lack of clarity and agreement as to what role the training center will play. The Supreme Court in particular appears keen to keep judicial training separate and has established its own Judicial Education and Training Committee within the Court. Its new 5 year strategy refers to the establishment of a separate Judicial Training Institute. Will the NLTC merely be a facility to be available for separate training programmes conducted for judges, prosecutors and lawyers, or will it be an institution responsible for developing, planning, and implementing professional training courses? An Interim Board of Directors made up of the Chancellor of Kabul University, representatives from the Supreme Court, Attorney General's Office and the Ministry of Justice, with the two main donors of the NLTC, Italy and the US acting as the secretariat. A governing charter and interim regulations are in the process of being finalized. The centre will require financial support for its operation for the first three years, which the Afghan government will not be able to afford from the national budget. According to the IJO, the necessary support has been estimated at USD 1,000,000.

Access to Justice:

Italy's Provincial Justice Initiative includes a new training programme with classes on case management, research skills, and ethics. The aim of the project is to encourage recent law graduates to establish legal aid clinics.

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THE CONTRIBUTION OF UNICRI

Characteristics, mandate and expertise of UNICRI (SLIDE 21)

- Emerging Crimes and Counter Human Trafficking (***SLIDE 22 - 23***)
- Justice Protection and Ethics (***SLIDE 24 – 25***)
- Security, Governance and Counter Terrorism Laboratory (***SLIDE 26 – 27***)
- Training and Advanced Education (***SLIDE 28 – 29***)

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UNICRI/UNODC Projects in Afghanistan

UNICRI and UNODC entered into partnership on the 17th of February 2008 for the implementation of the projects “Criminal Justice Capacity Building – Extension to the provinces” and “Strengthening anti-corruption measure in Afghanistan”. The major outcome of this joint effort is the elaboration of two Training Manuals and, on their basis, the organization of trainings on Counter-narcotics and Counter Corruption for Afghan Judges and Prosecutors.

The Manuals give support in improving of the professional skills and delivery capacity of judges, prosecutors and investigators in selected provinces of Afghanistan in handling of drug and corruption related crimes. Namely, these Training Manuals and trainings will support Judges, Prosecutors and Investigators in investigating, prosecuting, arresting and sentencing alleged corruption and drug crimes offenders.

In both projects, two different but connected products have been produced. The Methodology Handbook has a twofold aim: 1) provide technical information to the Trainers, guiding them through the most advanced training techniques and 2) provide a detailed training plan where the techniques illustrated before are put in practice. This way, the Handbook will, not only provide the trainer with the information needed and the methodology to deliver an effective five days training, but also furnish him/her with methodology tools improving his/her trainer's capacity and skills. The Manual for trainees is an integrative resource that shall be used as a reference for the topics presented during the training course. It is aimed at providing basic information, allowing trainees to better understand and assimilate the concepts and situations encountered during the five days training.

CHALLENGES AND CURRENT PROBLEMS

It is possible to argue that Afghanistan's Justice system has been and still is marked by 2 main fault lines. The first is common to most legal systems of the developing world, namely the wide gap between official, state made and enforced law, and the legal reality, which bears no resemblance to the official legal system. The second fault line manifests itself in the role of Islamic law within this essentially plural legal system. Islamic law derives its authority not from the state but from religion. As a result at times it has clashed not only with positive laws but also with customary laws de facto co-existing with state laws.

Linked with the second point is the issue of the substantial difference that exists between the reality in Kabul and the Provinces, that merely mirrors the lack of effective State control over its own territory. This everlasting problem is the main cause of the substantial absence of a modern Justice system in Afghanistan.

Overall if we want to give sustainability to this reform effort in Afghanistan the international community need to address in the most decisive and definitive way the problem of security, supporting the Afghan elected Government in gaining the monopoly on the legitimate use of power in its territory

Finally it must be remembered that although the support by the international community represents a necessary element in the process of reforming the Justice in Afghanistan, by no means will ever be sufficient. Indeed the import of foreign laws and the international support will continue to have a very limited and short term effect in the Justice reality of Afghanistan, if a genuine impetus for change and reform will not come from within.

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