



**Islamic Republic of Afghanistan**  
**Afghanistan National Development Strategy**

**NATIONAL JUSTICE SECTOR STRATEGY**

**Prepared & submitted by:**

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

*In the name of Allah, the Most Merciful, the Most Compassionate*

## Vision for Afghanistan

By the solar year 1400 (2020), Afghanistan will be:

- A stable Islamic constitutional democracy at peace with itself and its neighbors, standing with full dignity in the international family.
- A tolerant, united, and pluralist nation that honors its Islamic heritage and deep aspirations toward participation, justice, and equal rights for all.
- A society of hope and prosperity based on a strong, private sector-led market economy, social equity, and environmental sustainability.

## NDS Goals for 1387-1391 (2008-2013)

The Afghanistan National Development Strategy (ANDS) is a Millennium Development Goals (MDGs)-based plan that serves as Afghanistan's Poverty Reduction Strategy Paper (PRSP). It is underpinned by the principles, pillars and benchmarks of the Afghanistan Compact. The pillars and goals of the ANDS are:

1. Security: Achieve nationwide stabilization, strengthen law enforcement, and improve personal security for every Afghan.
2. Governance, Rule of Law and Human Rights: Strengthen democratic practice and institutions, human rights, the rule of law, delivery of public services and government accountability.
3. Economic and Social Development: Reduce poverty, ensure sustainable development through a private sector-led market economy, improve human development indicators, and make significant progress towards the Millennium Development Goals.

# Foreword

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*In the name of Allah, the most Merciful, the most Compassionate*

Six and one-half years ago, the people of Afghanistan and the international community joined hands to liberate Afghanistan from the grip of international terrorism and to begin the journey of rebuilding a nation from a past of violence, destruction and terror. We have come a long way in this shared journey.

In a few short years, as a result of the partnership between Afghanistan and the international community, we were able to create a new, democratic Constitution, embracing the freedom of speech and equal rights for women. Afghans voted in their first-ever presidential elections and elected a new parliament. Today close to five million Afghan refugees have returned home, one of the largest movements of people to their homeland in history.

Thousands of schools have been built, welcoming over six million boys and girls, the highest level ever for Afghanistan. Hundreds of health clinics have been established boosting our basic health coverage from a depressing 9 percent six years ago to over 85 percent today. Access to diagnostic and curative services has increased from almost none in 2002 to more than forty percent. We have rehabilitated 12,200 km of roads, over the past six years. Our rapid economic growth, with double digit growth almost every year, has led to higher income and better living conditions for our people. With a developing road network and a state-of-the-art communications infrastructure, Afghanistan is better placed to serve as an economic land-bridge in our region.

These achievements would not have been possible without the unwavering support of the international community and the strong determination of the Afghan people. I hasten to point out that our achievements must not distract us from the enormity of the tasks that are still ahead. The threat of terrorism and the menace of narcotics are still affecting Afghanistan and the broader region and hampering our development. Our progress is still undermined by the betrayal of public trust by some functionaries of the state and uncoordinated and inefficient aid delivery mechanisms. Strengthening national and sub-national governance and rebuilding our judiciary are also among our most difficult tasks.

To meet these challenges, I am pleased to present Afghanistan's National Development Strategy (ANDS). This strategy has been completed after two years of hard work and extensive consultations around the country. As an Afghan-owned blueprint for the development of Afghanistan in all spheres of human endeavor, the ANDS will serve as our nation's Poverty Reduction Strategy Paper. I am confident that the ANDS will help us in achieving the Afghanistan Compact benchmarks and Millennium Development Goals. I also consider this document as our roadmap for the long-desired objective of Afghanization, as we transition towards less reliance on aid and an increase in self-sustaining economic growth.

I thank the international community for their invaluable support. With this Afghan-owned strategy, I ask all of our partners to fully support our national development efforts. I am strongly encouraged to see the participation of the Afghan people and appreciate the efforts of all those in the international community and Afghan society who have contributed to the development of this strategy. Finally, I thank the members of the Oversight Committee and the ANDS Secretariat for the preparation of this document.

Hamid Karzai  
President of the Islamic Republic of Afghanistan

# Message from the Oversight Committee

For the preparation of the Afghanistan National Development Strategy



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*In the name of Allah, the most Merciful, the most Compassionate*

We are pleased to present the Afghanistan National Development Strategy, which reflects the commitment of the Islamic Republic of Afghanistan to poverty reduction and private sector-led economic growth for a prosperous and stable Afghanistan. The ANDS Oversight Committee (OSC) was mandated by the Government to produce a Millennium Development Goals-based national strategy that is Afghan-owned and meets the requirements for a Poverty Reduction Strategy Paper. The OSC met on a regular basis to design, discuss and oversee the development of the strategy, including the identification of the needs and grievances of the people, and the prioritization of resource allocations and actions. To embrace ‘Afghanization’ and ownership, the OSC facilitated inclusive and extensive consultations both at national and sub-national levels.

Sustained fiscal support and continuous evaluation and monitoring are essential now to meet the challenges ahead related to ANDS implementation. The democratic aspirations of the Afghan people are high, yet financial resources remain limited. While much has been accomplished since 2001, more remains to be done as we move from “Compact to Impact”. The Afghan Government with support from the international community must act decisively, strategically, and with an absolute commitment to the ANDS goals and vision.

We look forward to working with our government colleagues, civil society representatives, tribal elders and religious scholars, the private sector, the international community and, most importantly, fellow Afghans to implement the ANDS, to help realize the Afghanistan Compact benchmarks and Millennium Development Goals.

# Acknowledgments

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*In the name of Allah, the most Merciful, the most Compassionate*

The Afghanistan National Development Strategy (ANDS) could not have been developed without the generous contribution of many individuals and organizations. The ANDS was finalized under the guidance of the Oversight Committee, appointed by HE President Hamid Karzai and chaired by H.E. Professor Ishaq Nadiri, Senior Economic Advisor to the President and Chair of the ANDS Oversight Committee. The committee included: H.E. Rangeen Dadfar Spanta, Minister of Foreign Affairs; Anwar-ul-Haq Ahady, Minister of Finance; H.E. Jalil Shams, Minister of Economy; H.E. Sarwar Danish, Minister of Justice; H.E. Haneef Atmar, Minister of Education; H.E. Amin Farhang, Minister of Commerce; and H.E. Zalmi Rassoul, National Security Advisor.

We would like to sincerely thank the First Vice-President and Chair of the Economic Council, H.E. Ahmad Zia Massoud. Special thanks are also due to H.E. Hedayat Amin Arsala, Senior Minister and H.E. Waheedulah Shahrani, Deputy Minister of Finance and the Ministry of Finance team. In addition, we would like to thank the Supreme Court, the National Assembly, Government Ministries and Agencies, Provincial Authorities, Afghan Embassies abroad, national Commissions, the Office of the President, Civil Society Organizations, and International Community.

All Ministers, deputy ministers and their focal points, religious leaders, tribal elders, civil society leaders, all Ambassadors and representatives of the international community in Afghanistan; and all Afghan citizens. National and international agencies participated actively in the ANDS consultations. Their contributions, comments and suggestions strengthened the sectoral strategies, ensuring their practical implementation. Thanks are also due to the Ministry of Rural Rehabilitation for their significant contributions to the subnational consultations. Special thanks are further due to the Presidents Advisors, Daud Saba and Noorullah Delawari for their contributions, as well as Mahmoud Saikal for his inputs. We are also indebted to the Provincial Governors and their staff for their contributions, support and hospitality to the ANDS preparations.

Special thanks to Wahidullah Waissi, ANDS/PRS Development Process Manager, for his invaluable contribution and for the efforts of his team of young Afghan professionals who dedicated themselves tirelessly to completing the I-ANDS, Afghanistan Compact and the full ANDS in consultation with both national and international partners. The Sector Coordinators included Rahatullah Naeem, Farzana Rashid Rahimi, Shakir Majeedi, Attaullah Asim, Mohammad Ismail Rahimi, Zalmi Allawdin, Hedayatullah Ashrafi, Shukria Kazemi, Saifurahman Ahmadzai, and; the Sub-National Consultations Team consisted of Mohammad Yousuf Ghaznavi, Mohammad Fahim Mehry, Shahenshah Sherzai, Hekmatullah Latifi, Sayed Rohani and Osman Fahim; and Prof. Malik Sharaf, Naim Hamdard, Saleem Alkozai, Mir Ahmad Tayeb Waizy, Sayed Shah Aminzai, Khwaga Kakar and Mohammad Kazim, and thanking Nematullah Bizhan from his special contribution from the JCMB Secretariat. We are also indebted to the many national and international advisers who supported this effort. In particular, we would like to thank Zlatko Hurtic, Paul O'Brien, Jim Robertson, Barnett Rubin, and Ameerah Haq.

Finally, I would like to thank all who contributed towards this endeavor in preparation of the first Afghanistan National Development Strategy, a milestone in country's history and a national commitment towards economic growth and poverty reduction in Afghanistan.

Adib Farhadi,  
Director, Afghanistan National Development Strategy, and  
Joint Coordination and Monitoring Board Secretariat



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## ABBREVIATIONS

AC	Afghanistan Compact
AGO	Attorney General's Office
AIHRC	Afghan Independent Human Rights Commission
ANDS	Afghanistan National Development Strategy
ARTF	Afghanistan Reconstruction Trust Fund
CJTF	Criminal Justice Task Force
CPD	Central Prisons Department
GIAAC	General Independent Administration of Anti-Corruption Commission
IBA	Independent Bar Association
IINLTC	Independent National Legal Training Center
MDG	Millennium Development Goals
MOF	Ministry of Finance
MOHE	Ministry of Higher Education
MOI	Ministry of Interior
MOJ	Ministry of Justice
MOWA	Ministry of Women's Affairs
NAPWA	National Action Plan for the Women of Afghanistan
NDS	National Directorate of Security
NJP	National Justice Program
NJSS	National Justice Sector Strategy
PIU	Program Implementation Unit
PJCM	Provincial Justice Coordination Mechanism
POC	Program Oversight Committee
SC	Supreme Court
TDR	Traditional (or informal) Dispute Resolution
UNAMA	United Nations Assistance Mission to Afghanistan
UNCAC	United Nations Convention Against Corruption
VCA	Vulnerability to Corruption Assessments
MRRD	Ministry of Rural Rehabilitation and Development

## Glossary

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Holy Qur'an	The holy book of Muslims
Laws of Allah	God's Orders
Traditions of the Prophet (S.A.W.)	Sunnah(h) of the prophet (S.A.W)
Shari'a	Islamic Laws
<i>Daira-yi'-Adalat</i>	Circle of Justice
Wolesi Jirga	Lower House of Parliament
Meshrano Jirgas	Upper House of Parliament
Stage courses	Induction courses
Taqnin	Legislative Drafting Department
Huquq	Departments of Rights
<i>Jirgas</i>	Traditional Afghan gatherings
<i>Shuras</i>	Traditional councils

*“And the Firmament (sky) has He raised high, and He has set up the Balance of Justice in order that you may not transgress due balance. So establish weight with justice and fall not short in the balance” (Qur’an 55:7-9).*

## **Executive Summary**

Over the last six years, the Supreme Court (SC), Ministry of Justice (MOJ) and Attorney General’s Office (AGO) have worked assiduously to lay solid foundations for the sustainable development of the justice sector. The National Justice Sector Strategy (NJSS) is designed to enhance performance, integrity, transparency, efficiency and independence of justice institutions.

The NJSS is based on a vision of an Islamic society in which an impartial, fair and accessible justice system delivers safety and security for life, religion, property, family and reputation with respect for liberty, equality before the law and access to justice for all.

NJSS builds upon prior reform efforts and in particular the individual strategies of the SC, MOJ and AGO.

### **A. The Conceptual Framework**

NJSS is guided by a systems approach; that is, it seeks to strengthen the justice sector comprehensively, building and strengthening the institutions and systems that guide their relationships. The NJSS addresses the Justice and Rule of Law Benchmarks of the Afghanistan National Development Strategy (ANDES) in three fundamental goals:

Goal 1 – Improved institutional capacity to deliver sustainable justice services;

Goal 2 – Improved coordination and integration within the justice system and with other state institutions; and

Goal 3 - Improved quality of justice services.

### **B. Implementation**

The National Justice Program (NJP) will implement the NJSS. Funding for implementation will come from a variety of sources, including the Ministry of Finance and international donors (using both bilateral and multilateral mechanisms). Implementation will be managed by an inter-institutional Steering Committee, assisted by a Program Support Unit(s).

## **Introduction**

The Islamic Republic of Afghanistan presents the National Justice Sector Strategy (NJSS) for the development and strengthening of the rule of law and the justice sector institutions over the next five years. It reflects the values, traditions and Islamic culture of the Afghan people. It integrates the institutional strategies of the Supreme Court (SC), Ministry of Justice (MOJ) and Attorney General’s Office (AGO), and recognizes the Government’s constitutional obligations to adhere to international legal commitments and human rights standards. Finally, the NJSS demonstrates that Afghanistan’s justice sector will need the support of the international community in order to realize its goals and aspirations.

### **C. Vision**

The Government’s vision for justice is of an Islamic society in which an impartial, fair and accessible justice system delivers safety and security for life, religion, property, family and reputation; with respect for liberty, equality before the law and access to justice for all.

### **D. Guiding Islamic Values**

Justice in Afghanistan is dispensed according to the laws of Allah and the traditions of the Prophet (S.A.W.) as enshrined in the provisions of the Constitution. Justice must be provided in the most remote parts of the country and must be dispensed by justice sector institutions. This strategy’s core values are derived from the higher goals of Islam, and the purposes for which Allah bestowed upon all

men, women and children the sacred and undeniable rights and responsibilities in the Shari'a of equality before the law and access to justice for all. Achieving justice is therefore the main objective of the justice sector institutions. As the ninth century Islamic scholar, Ibn Qutayba, wrote: *There can be no government without an army, No army without money, No money without prosperity, And no prosperity without justice and good administration.*

The challenge for the Government and the justice institutions is to entrench these visions of justice, values, standards of conduct and performance into the justice system.

### **E. The Afghanistan Compact and the Afghanistan National Development Strategy (ANDS)**

The Afghanistan Compact provides the framework for international engagement with Afghanistan for the next five years in three areas of activity: security, governance (including human rights and rule of law), social and economic development and cross-cutting areas such as counter narcotics, gender equity and anti-corruption. The Compact and the ANDS commit the Government to achieve several 'high level' benchmarks by the end of 2010 (1391). The ANDS provides the strategy and mechanisms for achieving the Compact's benchmarks as agreed upon by the Government and the international community.

Rule of Law Benchmarks of the Compact are as follows:

- 1) By the end of 2010 (1391), the legal framework required under the constitution, including civil, criminal and commercial laws, will be put in place, distributed to all judicial and legislative institutions and made available to the public.
- 2) By the end of 2010 (1391), justice institutions will be fully functional and operational in each province of Afghanistan, and the average time to resolve contract disputes will be reduced as much as possible.
- 3) A review and reform of oversight procedures relating to corruption, lack of due process and miscarriage of justice will be initiated by end of 2006 (1387) and fully implemented by end of 2010 (1391); by end 2010 (1391), reforms will strengthen the professionalism, credibility and integrity of key institutions of the justice system (the Ministry of Justice, the Judiciary, the Attorney-General's Office, the Ministry of the Interior and the National Directorate of Security).
- 4) By end 2010 (1391), justice infrastructure will be rehabilitated; and prisons will have separate facilities for women and juveniles.

Other justice-related benchmarks in the Compact have direct or indirect impact on the justice institutions and justice sector strategy-making. These include the benchmarks on Counter-Narcotics, Land Registration, Human Rights, Anti-Corruption, Public Administration Reform, Gender and Parliament.

### **Approach to the Strategy**

At the July 2007 (1386) Afghanistan Rule of Law Conference in Rome, the Government, the justice institutions and the international community agreed on measures to improve coordination and set realistic and achievable goals for justice sector reform. The Rome Conference Conclusions and Joint Recommendations re-energized the justice sector strategy-making process, and resulted in pledges of new resources to the justice sector.

### **F. Systems Approach to Strategic Planning**

This strategy provides a systems approach to planning and programming to ensure adequate and sustained coordination, focus and integration within justice sector. The systems approach recognizes that the justice system is comprised of several institutions that are accountable, interdependent and independent.

Its objectives and goals are stated broadly and holistically, in order to capture all elements and issues which are relevant for the re-building of the country's legal system. In addition, the strategy takes an access to justice and rights-based approach. Access to justice in this context is defined as the ability of people, particularly those from disadvantaged groups, to seek and obtain a remedy for grievances through the justice system, in accordance with the Constitution and international human rights principles and standards. Access to justice contemplates: (1) The availability of legal protection under the Constitution, laws, and regulations, and Islamic jurisprudence and traditional practices that are consistent with such protection; (2) The capacity to seek a legal remedy through legal awareness, legal counsel and formal and informal justice services; and, (3) The availability of an effective remedy through effective adjudication and due process in judicial proceedings, with enforcement through police and prisons with judicial, governmental and civil society oversight.

The strategy's premise is that productivity and professional excellence in the justice system can be primarily measured by the level of demand the system generates and sustains. Demand depends in part on access to justice (including access to services, laws and service providers), and in part on the accessibility and credibility of justice institutions (which are, in turn, dependent on the functionality, impartiality, professionalism, integrity, and infrastructure of justice institutions). While it is imperative that the Government creates and maintains an equitable system of justice throughout the country, it is important to note that many Afghan citizens use informal and traditional community-based dispute resolution mechanisms to resolve a range of disputes. This situation exists even though these mechanisms are not always easily accessible to women and children.

#### **G. Structure of the Strategy**

The strategy is divided into three goals. These goals represent the sector-wide changes or results that the strategy seeks to achieve as follows:

**Goal 1 - Improved institutional capacity to deliver sustainable justice services focuses on** improved functionality, competence and professionalism of the justice institutions that will enhance credibility and improve institutional arrangements for service delivery. It focuses on four main areas; administrative structure and information/operating systems, human resources development (including remuneration and professional education), and institutional and professional integrity, and infrastructure, transportation and equipment needs. This goal also integrates cross-cutting issues of gender, counter-narcotics, international cooperation and anti-corruption as well as special topics including national security, and counter terrorism and transitional justice.

**Goal 2 Improved coordination and integration within the justice system and with other state institutions** focuses on linkages between critical areas of support necessary for the proper functioning of justice institutions that includes the legislative process, support for legal education and training as well as partner institutions in government and civil society.

**Goal 3 - Improved Quality of Justice** focuses on processes and practices in the justice institutions that will facilitate citizens' access to quality justice services. Specifically, it will address issues related to the availability of basic legal information to access quality justice by victims, witnesses, accused persons, civil litigants and other constituents of the justice system. Goal 3 is divided into three sections: criminal justice, civil justice and access to justice. Some of the key topics covered under this goal include reform of and coordination among criminal justice actors, streamlining of civil justice procedures and improved case management, improved standards of judicial education and training, the establishment of the Bar Association and a legal aid system throughout the country, and legal awareness and also to draft a policy for determining necessary principles and benchmarks for the decisions of Jirgas and councils. *(for more details please see Annex I Policy actions Matrix)*

#### **Rule of Law and Justice Institutions**

The strategy's goals are aimed at improving access to justice and service delivery across the justice sector, in particular by the Supreme Court, the Ministry of Justice, the Attorney General's Office and the National Legal Training Center. These justice institutions, though either independent or independent in their functions, depend on each other and are jointly accountable to the public. Each

justice institution is separately administered by its own administration and has its own property, staff and budgets. To achieve the goals of this strategy, each justice institution must be fully functional and competent.

### **1. The Supreme Court**

The judicial power is an independent organ of the Islamic Republic of Afghanistan, comprising the Supreme Court, Courts of Appeal, and Primary Courts, which carry out their duties in accordance with the law and separate from the legislative and executive powers.

The SC operates as the highest judicial organ, dominating the judicial power.

Pursuant to Article 120 of the Constitution, the authority of the judicial power includes consideration of all cases filed by real or legal persons, including the state, as plaintiffs or defendants, before the court in accordance with the provisions of the law.

Pursuant to Article 121 of the Constitution, the SC has the authority to review the laws, legislative decrees, international treaties as well as international conventions for their compliance with the Constitution and the interpretation of these laws at the request of the government or courts, accordance to the provisions of laws.

Pursuant to Article 122 of the Constitution, no law shall under any circumstances exclude any case or area from the jurisdiction of the judicial organ as defined in chapter seven and submit it to another authority.

The Supreme Court and other relevant courts shall, according to the law, take appropriate action in order to protect the fundamental rights of citizens and resolve their legal disputes in a fair and transparent manner and to ensure justice through an independent, useful and effective judiciary system.

The SC acts as a final court of appeal. Its constitutional mandate is to resolve legal disputes in a fair and transparent manner, and to ensure justice through an independent, honest, and effective judicial system.

Thus, the Supreme Court heading the judicial power shall regulate the judicial system consisting of the high council (composed of members of the Supreme Court), five final divisions, 34 appeals courts and 408 primary courts and employing 6126 judicial and administrative staff including 1700 judges.

### **2. The Ministry of Justice**

The Ministry of Justice has extensive responsibilities that include arrangement of drafts of Laws and Decrees of the President's Office, printing and disseminating of Legislative Documents, protection of property and material interests of the State and when need arises taking legal actions against those liable, protecting the rights of property, employment, family and all other civil rights of citizens based on their complaints, and taking measures towards enforcing judgments issued by courts on civil rights disputes and raising public legal awareness.

In addition, The Ministry of Justice regulates and manages the activities related to Prisons, Detention Centers and Juvenile Rehabilitation Centers throughout the country.

The Ministry of Justice carries out its activities in accordance with the Constitution, Law on main organizational structure of the State and other Legislative documents of the country. The Ministry of Justice also has other duties which include dissemination of registered trade marks and advertisements on documents registration in the official Gazette, and expressing an opinion on congruence of legal and international treaties, compacts, and international trade agreements with the country's Laws is another aspect of the ministry's activities.

The MOJ also provides legal advice to the government and international institutions, registers political parties and social organizations, and licenses advocates practicing in courts. The MOJ has 11 departments and in general it has 7180 staff including 1971 professionals, 4000 prisons personals and 1209 service providers. The MOJ has departments in provincial centers and offices in 365 districts of the country.



The Central Prisons Department (CPD), with about 5,000 personnel is the largest department of the MOJ, which was transferred from the Ministry of Interior in 2003.

In accordance with the Advocates Law, the MOJ is further required to assist with the establishment of an independent bar association and ensure availability of legal aid in criminal cases to indigents.

### **3. The Attorney General's Office**

In general, The Attorney-General's Office has four deputy Attorneys and there are 23 Departments in the Capital, 34 Appellate Departments in provinces, 365 Primary Attorney's Offices in districts and communities, 45 Military Attorney's Departments, 38 Attorneys Departments of The National Security's Presidency, and has 2500 attorneys and 2000 administrative staff throughout Afghanistan. In accordance with the article 134 of the Constitution and based on Laws, Attorney's Office investigates crimes and takes legal action against the accused in the courts, Attorney General's Office is part of the Executive branch and is independent in its work. During investigations, Attorneys act as impartial persons, while investigating. They monitor the activities of the police and other agencies, and guide them. Deputy Attorney General's Office monitor judgments of the appellate and boards (divans) of the Supreme Court, based on this duty the Attorney Generals Office has direct responsibility over all 34 provincial and more than 365 district offices throughout the country. Attorney General's Office has specialized sections to carry out its investigation and legal prosecution activities against crimes for internal and external security, military, police, financial crimes, administrative corruption and counter narcotics .For comprehensive and objective investigation of cases, especially administrative corruption crimes, there is a need to establish and equip a Criminal Technical Office with its related equipment and tools for finding evidence and signs of crimes during investigations. In addition, based on all Laws of the country, the Attorney Generals Office has duty to monitor implementation of Laws, decrees and sanctions of the Council of Ministers and internal regulations of departments, and monitor detention sites and enforcement of sentences and for enhancement of public legal education level, it publishes and disseminates "Tsarenwal" Gazette, "Tsarenwal" magazine, decisions of the Attorney general's Office's high Council and for the strengthening of this process. The Office needs to establish and functionalize its printing house with all relevant printing equipment.

### **4. The Independent National Legal Training Center**

The Independent National Legal Training Center (INLTC) is the newest of the governmental judicial institutions and was established by Presidential Decree on 9 June, 2007. It is responsible for the induction training (the stages) for the other governmental judicial institutions, all of which are actively represented on the Board of Directors of the INLTC. The Center has a broad presidential mandate and is responsible for enhancing the knowledge and education of the legal profession of Afghanistan. Currently the Board of Directors is focused on increasing the knowledge and skills of the new recruits to the Supreme Court, the Attorney General's Office and the Ministry of Justice through the stage process.

### **5. Other Justice-Related Institutions**

Other justice-related institutions are the proposed Independent Bar Association (IBA). In addition, the following institutions interact with the justice system: Ministry of Interior (Police); National Directorate of Security (NDS); Parliament (Wolesi and Meshrano Jirgas); Ministry of Higher Education; traditional (or informal) dispute resolution mechanisms (TDR); Ministry of Women's Affairs; General Independent Anti-Corruption and Anti-Bribery Commission (GIACC); Afghan Independent Human Rights Commission (AIHRC); media organizations; civil society organizations including professional organizations (judges and prosecutors associations), legal aid providers , Competent institutions for informal dispute resolution and the public.

These institutions have justice-related mandates and functions. By including the Ministry of Interior (police) and the NDS (as foreseen in the Afghanistan Compact's *Rule of Law Benchmarks*) this strategy covers parts of the security, coercive and law enforcement aspects of the rule of law. It also addresses the benchmark requirement to review and reform miscarriages of justices and lack of due process. Parliament's role in the justice sector relates to legislation, the legislative process and law reform while addressing the benchmark requirement to put in place the legal framework and disseminate laws. The Ministry of Higher Education's role addresses the human resource needs for

appropriately qualified legal professionals, while also satisfying the benchmark requirement to reform and strengthen professionalism. The role of informal dispute resolution mechanism is that with handling individuals' disputes in cases other than criminal, it will reduce the load of work in the Courts. Meanwhile, it will save the litigants' time and money and brings settlement among parties.

The institutions that make up the justice system provide support to each other and act as the necessary balance and counterweight. They operate in the larger governmental and social environment in which the rule of law is upheld. This balance is essential if the weight of justice is not to fall short as mandated by the Holy Qur'an, which states: "*So establish weight with justice and fall not short in the balance.*"<sup>1</sup>

#### **6. International Assistance and the Provincial Justice Coordination Mechanism**

Essential direct and technical assistance from international and bilateral donors has lacked a structured coordination mechanism with a presence in the provinces. The Provincial Justice Coordination Mechanism (PJCM), approved at the July 2007 Rome Conference by stakeholders and donors, will fill this gap. The PJCM will help improve the delivery of justice assistance in the provinces consistent with this strategy and the National Justice Program. PJCM will focus on coordinating donor actions to adhere to three strategic goals: (1) To facilitate the comprehensive and consistent reform of justice systems in the major cities; (2) To ensure comprehensive regional assessments of formal and informal justice systems in each PJCM area; and (3) To expand justice programming by identifying and helping to target future justice assistance to the district level and more remote provinces. UNAMA will provide supervision of the PJCM, which is funded by donors, and UNAMA. The PJCM will become operational in winter 2008 (last quarter 1386).

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<sup>1</sup> Surat- Ar Rahman - Verse 9.

## **Goal 1: Improved institutional capacity to deliver sustainable justice services**

### **H. Current State Analysis**

Since 2001, significant achievements have been made in the capacity of the justice institutions to deliver services to the public. Yet even with many successes, deficiencies and challenges persist and work remains to be done.

The institutions experience difficulty in recruiting and retaining qualified professionals particularly in the provinces and districts. Nearly two out of every five judges appointed have not completed the “Stage” course induction training before taking office. A large proportion of judges and 80 percent of provincial prosecutors are not graduates of a law or Shari’a faculty.

A large proportion of judges, prosecutors and MOJ professionals work in provinces and districts without basic legal resources, such as appropriate Afghan laws, manuals and published works. While there has been considerable construction and rehabilitation of infrastructure in the past six years, the majority of buildings in the justice sector, including prisons, need repair or rehabilitation. Indeed, many justice professionals work in areas where there are no dedicated justice buildings or facilities, and are forced to operate in extreme crowding or in spaces inadequate for their mandated duties. In addition to infrastructure challenges, transportation and communication remains inadequate. For example, the AGO does not have a single vehicle in 26 provinces to transport prosecutors to courts or crime scenes or to bring witnesses and victims to hearings.

Salaries for judges and prosecutors and other justice professionals are low. Though there have been improvements in paying salaries on time, they are still sometimes paid late. The capacity to effectively manage human resources, finances and the assets of justice institutions remains weak. This affects in particular procurement and asset management.

Poor personal safety combined with low salaries makes justice officials prone to bribery and corruption. Corruption also thrives where there is a lack of clarity regarding appointment processes, career progression and transfers. A lack of credible mechanisms to enforce standards and codes of conduct governing accountability, discipline and ethics and lack of attention to and control over quality of services also contributes to a culture of impunity. Corruption and low morale can be found throughout the justice sector which results in a lack of confidence and credibility among the public.

Justice is a key concern for the National Anti-Corruption Strategy. The NJSS will support the implementation of the National Anti-Corruption Strategy by creating a legal and institutional framework that is sufficiently robust to reduce corruption in the justice sector.

## **I. Institutional Reform, Restructuring, Management, Information and Processes**

### **1. Expected Results**

*Within five years the justice institutions will:*

- a) Be structured, managed and staffed according to processes that improve efficiency and enhance performance;*
- b) Have strengthened their management, leadership and administrative capacity;*
- c) Have established program management units for development planning, analysis and implementation;*
- d) Have established and/or enhanced specialized capacity to prosecute and adjudicate cases involving cross-cutting issues in counter narcotics, violence against women, corruption, as well as juvenile justice;*
- e) Have a particular policy on the traditional dispute resolution mechanism;*

*f) Have Established a judicial service commission to evaluate the judiciary and make recommendations for necessary improvements; and*

*g) Have established translation and publication units in every justice institution*

## **2. Strategies to Achieve Expected Results:**

To enhance capacity to deliver services, the justice institutions' structure and management must enable them to fulfill their mandates. Good organizational design is a critical prerequisite for implementing increased pay and grading, improving work and security conditions and enhancing professional and career development. It is also necessary for the streamlining of internal processes and the achievement of higher performance standards. *(for details please see Annex I Policy actions Matrix)*

### ***a) Administrative Restructuring***

Consistent with implementation considerations, reorganizing the justice institutions will initially focus on head quarters and the eight major provinces. Organizational re-design of the justice institutions aims to ensure efficient and cost effective delivery of justice services. Where necessary, organizational changes will be codified into law.

Deployment of human resources should be prioritized based on public need and staff merit. It is recognized that prioritization will require difficult choices, for which significant analytical preparation is needed. To ensure effective administrative restructuring the SC, MOJ, and AGO will:

- Conduct administrative restructuring assessments of their organizations aimed at identifying sustainable staffing levels and space needs;
- Implement new administrative structures in phases; initially at headquarters, then in the regional centers, and finally extending to all provinces and districts; and
- Train and develop capacity of staff in their new roles and according to new structures, involving the Civil Service Commission's Leadership Development Program in developing capacity training for change management.

Information systems and flows form a critical component of organizational design and structure. Areas of priority for information systems are human resources management, procurement, finance and pay roll. Establishing information technology in each institution including databases and revised records keeping practices in human resources and payroll are a prerequisite to pay and grading reform, determining appropriate staffing strength and performance levels. Departments within each institution responsible for keeping records and managing information will be among the first to be reformed to prepare the rest of the organization for reform.

### ***b) Management and Leadership***

To better enable the justice institutions to fulfill their respective mandates and functions, professional management and quality leadership is required. Each institution will analyze and, in consultation with its stakeholders, develop recommendations for improving organizational leadership. The institutions will formalize the recommendations in new policies and procedures, which will in turn be communicated to managers via new operations manuals. Such measures may take the form of management support units, as has been outlined in the Strategy of the Supreme Court. As envisioned by the SC, the unit will increase administrative capacity and efficiency, helping to modernize operational procedures, support training programs, increase the use of technology, and establish proper procedures for the management of court records. Ensuring that administrative processes are understandable, transparent, and efficient may require revision of existing regulations. The Supreme Court in particular intends to appoint a committee to review and modernize existing regulations relating to court regulation.

### ***c) Program Management***

The justice institutions will establish dedicated units to create and implement development strategies, and to assist in donor relations. The units will play an important role in the implementation of the National Justice Program (NJP). Because the Afghanistan Reconstruction Trust Fund (ARTF) will

likely be one funding mechanism used for the NJP, the units should be designed and structured in accordance with the ARTF's Justice Sector Reform Project requirements.

#### ***d) Specialized Criminal Justice Capacity***

This strategy pays particular attention to the investigation and prosecution of cases involving narcotics, gender (violence against women), corruption, and juveniles. The justice system will benefit from specialization in each of these cross-cutting areas. Specialization will be achieved through training of judges, prosecutors and other professionals, and through appropriate institutional arrangements.

##### **(1) Narcotics**

The Criminal Justice Task Force (CJTF) is a specialized counter narcotics joint effort of several institutions. Despite significant progress in improving law enforcement interdiction and prosecution of drug traffickers, the CJTF lacks an effective presence in key geographic areas. The strategy aims to expand the geographic reach and effectiveness of the CJTF. To that end, the justice institutions will continue cooperating to:

- Improve the CJTF's capacity to address sentencing and treatment options for drug users and addicts,
- Link counter-narcotics efforts to the government's anti-corruption strategy by increasing investigation and prosecution of public officials associated with the drug trade; and
- Cooperate with regional governments in combating trafficking and narcotics money laundering.

##### **(2) Violence against Women**

Through the National Action Plan for Women, the Government has committed itself to eliminating violence against women. The three justice institutions play an important role in the implementation of the National Action Plan and have adopted a five-level approach that will require:

- Each justice institution to take a firm stand against violence against women, which will include strong leadership to communicate and raise awareness about the criminality of violence in general and violence against women in particular;
- Improving the investigation and prosecution of domestic disturbances to ensure that the rights of women and other vulnerable groups are protected;
- Reviewing laws and practices to identify those that are discriminatory to women, and recommending needed reforms;
- Increasing the number of justice professionals with specialized training in investigating and prosecuting violence against women, with a particular focus on techniques for effective and sensitive interviewing of victims and witnesses; and
- Developing the necessary infrastructure and referral mechanisms to ensure safety and security of female victims of violence.

##### **(3) Corruption**

The justice institutions will collaborate and coordinate in order to assist with the execution of the Government's Anti-Corruption Strategy. To this end the justice institutions will:

- Identify all laws that need to be harmonized with international anti-corruption standards, including the United Nations Convention Against Corruption (UNCAC), and will develop a plan for completing the harmonization;
- Support the creation of a well equipped and resourced, specialized anti-corruption department in the AGO to investigate and prosecute corruption;

- Ensure that judges and prosecutors gain international exposure to anti-corruption best practices in other countries; and
- Develop and provide specialized training on the detection, investigation, prosecution and trial of corruption.

#### (4) Juvenile Justice

The juvenile justice system will be improved by:

- Developing regulations, protocols, and manuals to implement the Juvenile Justice Code and international norms and standards on juvenile justice;
- Developing a common approach to re-integration of juveniles with their families, in cooperation with the Ministry of Social Affairs;
- Increasing the number of justice social service professionals with specialized training in juvenile issues; and
- Improving and expanding juvenile justice facilities and programs throughout the country, with a special attention to non-custodial measures such as community-based interventions.

#### *e) Judicial Service Commission*

An independent advisory commission, composed of up to five eminently qualified persons, will evaluate the judiciary and make recommendations for necessary improvements. Areas of inquiry by this commission will be judicial pay, conditions of employment, qualifications for appointment to judicial office, standards for appointment and transfer, judicial conduct and enforcement procedures, and reform of court practices. Having an independent commission making recommendations, after providing an opportunity for public and stakeholder input, will enhance objectivity, credibility, and the prospect of the adoption of its recommendations by Afghan institutions and the receipt of necessary support from international donors. The Judicial Service Commission will have an operating life of one year, with an option for an extension of an additional six months.

#### *f) Translation and Publication Unit*

Many of the laws of Afghanistan have been translated and made available in hardcopy and electronic form, and are also available on websites. However, written educational and training materials for more effective legal and judicial education, both at the university level and in continuing legal and judicial education programs, are urgently needed. One of the most serious education problems of the past 30 years has been the absence of books and other written materials for judges to study to increase their learning and knowledge. Since these materials do not exist in adequate numbers in original form in Dari, translation is required, at least for the foreseeable future. An abundance of written judicial and legal education materials exist in international languages, and if the capacity exists to translate those materials, the information gap will diminish. Lack of books and training materials in the justice sector requires the establishment of a translation unit of highly qualified translators, including individuals with native Dari and Pashto skills, all of whom must be proficient in English (and some proficient in Arabic, Urdu, and other languages as well). These translators will translate documents from English and other languages to Dari and Pashto. The translated documents will then be published for distribution to judges and court personnel to raise their judicial knowledge and skills.

### **J. Human Resource Development and Salaries**

Human resource development strategies aim to establish a more professional and better-performing justice sector workforce. The strategies focus on vocational education, capacity development of administrative staff, recruitment, appointment and career development, salaries and benefits, job descriptions and classifications.

#### **1. Expected Results**

*Within five years, the justice institutions will:*

- a) Have recruited and promoted justice professionals on merit, based on established policies and procedures, including meeting the target of 30% of the professional staff being female;*
- b) Be paying their professional and other staff recruited on merit according to increased salary and grading scales; and*
- c) Have developed and implemented institutional arrangements for vocational training of judges and prosecutors, as well as for continuing legal education.*

## **2. Strategies to Achieve Expected Results**

### *a) Recruiting and Promotion*

To recruit qualified graduates, the justice institutions will:

- Establish transparent, objective and merit-based recruitment and promotion policies;
- Adopt selection criteria requiring minimum levels of academic qualifications and professional experience;
- Monitor graduates after appointment to ensure that satisfactory progress is maintained through subsequent levels of induction and vocational training;
- Develop and put in place a program of continuous professional development consisting of practical on-the-job experience and mentoring by experienced personnel;
- Develop and implement special access programs to overcome obstacles women experience in attending or being selected for legal education and training; and
- In conjunction with the Civil Service Commission, develop and implement a policy specifically for recruitment and promotion of women.

### *b) Salaries*

Salaries in the justice sector must be increased if the most capable people are to be recruited and retained, and if progress is to be made in the battle against corruption. The justice institutions will:

- Implement new pay and grading systems; and
- Deploy at least 50 percent of all justice professionals recruited under new pay and grading schemes to the provinces.

### *c) Vocational Training*

Vocational training of justice professionals is essential to justice reform. The justice institutions will:

- Evaluate university curricula to determine preparedness of law and Shari'a graduates for justice office, and also for service as government legal officers;
- Evaluate existing justice training programs, in order to determine the extent to which such programs have enhanced justice competence and capacity;
- Assess and define vocational training requirements for judges and prosecutors, incorporating lessons learned and best practices identified during evaluation exercises;
- Design and implement training for educators at the INLTC and justice Stage courses;
- Forge closer ties between legal educators at universities and elsewhere with foreign institutions and experts in vocational legal training and adult learning methods;
- Develop capacity of the INLTC, and finalize arrangements for the justice institutions' use of INLTC or other facilities for training purposes;

- Develop plans for improving access to vocational education and continuing legal education, with particular focus on delivering training programs in regional facilities, so as to increase the participation of provincial judges, prosecutors and graduates, and in particular women in training and stage courses;
- Produce, publish, and disseminate manuals and other written reference resources for judges, prosecutors and other legal professionals; and
- Develop and implement plans for training justice professionals who do not have the formal qualifications required for the positions they currently occupy.

## **K. Information Systems and Processes**

### **1. Expected Results**

*Within five years, the justice institutions will:*

- a) Have mapped in detail the processes linking all justice institutions, and have streamlined them to improve information systems and business processes, with the aim of reducing delays in processing of cases, administrative costs and vulnerability to corruption.*

## **L. Strategies to Achieve Expected Results**

If new job descriptions, roles, reporting and management structures are to function effectively, the operational functions of the justice institutions must be clearly understood and intelligently designed. Mapping, review and redesign of processes and practices will be conducted at the same time as organizational restructuring to improve or eliminate processes that cause delays, unnecessarily increase costs, or provide opportunities for corruption. The justice institutions will assess their procedures and develop recommendations in the following phases:

- Assess current institutional processes and practices to identify gaps and design improvements, with a particular focus on eliminating delay; unnecessary cost, opportunities for corruption;
- Assess the information and communications gaps between headquarters and provincial offices within each justice institution, and design improvements to eliminate such gaps;
- Assess the information and communications gaps among justice institutions at the national and sub-national levels, and design improvements to eliminate such gaps;
- Improve processes for managing and storing information, and begin introducing new technology options for electronic information systems;
- Develop a recruitment and remuneration strategy to attract qualified information technology professionals to operate and maintain new electronic information systems that are introduced at the justice institutions; and
- Establish a clear communications strategy that explains new procedures and technology to justice sector officials who will be responsible for implementing and working with information systems, and train the justice sector work force on newly introduced technology.

## **M. Professional Integrity and Institutional Transparency**

### **1. Expected Results**

To improve both integrity within justice institutions and enforcement of public integrity laws to combat corruption, within five years the justice institutions will:

- a) have determined their vulnerabilities to corruption and established policies and procedures to eliminate such vulnerabilities;*



*b) Have published and disseminated codes of ethics and professional standards at the provincial level;*

*c) Have trained 60 percent of all judges and prosecutors on their respective ethics codes. Have arranged for curricula at university and Stage courses to incorporate ethics training;*

*d) Have worked in cooperation with the Independent Bar Association to put in place enforcement, oversight and disciplinary mechanisms, like ethics panels;*

*e) Have established an easily accessible and functioning public complaints system in at least eight major provincial capitals with clear processes for handling complaints.*

## **2. Strategies to Achieve Expected Results**

All of the justice institutions are driven by a common goal to improve professionalism, integrity and credibility. The objective is to create accountable and transparent institutions, which is a precondition to public confidence in the justice sector. To achieve this objective, the institutions have identified a number of common priorities, strategies, programs and techniques.

- Ethics and disciplinary procedures must be established through amendment and promulgation of laws and regulations, as well as consideration of the use of integrity testing and severe enforcement of asset reporting. The implementation of the UN Convention Against Corruption may add other methods of administrative monitoring of unjust enrichment of legal professionals;
- Ensuring the personal security of judges in particular, and other justice professionals;
- Enabling the full implementation and growth of professional associations, such as *the Afghan Prosecutors' Association*.

### *a) Vulnerability Assessments*

To identify weaknesses in administration, the justice institutions will conduct vulnerability to corruption assessments (VCA). The VCA should produce a set of recommendations that can be incorporated into a plan of action for combating corruption. The institutions will establish units to oversee and monitor the implementation of these action plans and policies, and will incorporate the findings of the VCA into other institutional development efforts, including in particular ethics training for staff and establishment of a public complaints system.

### *b) Ethics Codes, Training, and Enforcement*

The professional ethics of judges, prosecutors and lawyers need certainty in definition and enforcement. Each institution is drafting or has completed its respective code for ethics. This strategy calls for finalization, dissemination and implementation of harmonized ethics codes in cooperation with the Independent Bar Association. The justice institutions will:

- Establish ethics and integrity units that will develop training material for the codes of ethics and will coordinate training. The units will also serve to provide confidential advisory services to guide justice professionals facing ethical issues;
- Establish enforcement (disciplinary) bodies in the three justice institutions to investigate, prosecute, and adjudicate claims of violations of proper ethical and professional conduct. The mechanisms will include appropriate rules to protect the rights of justice professionals accused of such violations. The Strategy of the Supreme Court envisage that the remit of existing inspection tours will be expanded to include training on the judicial code of ethics;
- Establish procedures to enable lawyers, prosecutors and judges to make confidential complaints relating to corruption, unprofessional conduct or breaches of ethics.

### ***c) Public Complaints System***

The justice institutions will:

- Launch a pilot public complaints mechanism in select provinces for court users that will involve representatives from all criminal justice institutions and the Afghan Independent Human Rights Commission;
- Incorporate lessons learned from the pilot program in the creation of a national public complaints system;
- In designing the pilot and nationwide public complaints systems, pay particular attention to ensuring access to the system by illiterate complainants and vulnerable groups, including women; and
- Launch a nationwide campaign to inform and engage the public on issues of judicial standards and conduct.

### **N. Infrastructure, Transportation and Equipment**

Competent professionals without infrastructure, transportation and equipment have limited capacity to deliver justice. Justice infrastructures are the service centers of justice. The development of justice human resources must be accompanied by justice infrastructure, and the necessary tools (legislative and physical) with which to work.

#### **1. Expected Results**

*Within five years the justice institutions will:*

- a) Complete an inventory of all infrastructure and transportation assets;*
- b) Establish a comprehensive nationwide (regional, provincial and sub-provincial levels) infrastructure development plan with standardized design, prioritized and sequenced for Supreme Court, MOJ and AGO.*
- c) Develop training materials and programs for maintaining and managing facilities, transportation and equipment;*
- d) Construct new Supreme Court Building in Kabul; as well as new MOJ and AGO headquarters facilities;*
- e) Constructed or rehabilitated justice infrastructure, including offices, courts, prisons, and juvenile rehabilitation centers in all provinces;*
- f) Construct and maintain residences for judges; and*
- g) Have sufficient transportation assets to provide justice services throughout the country.*

#### **2. Strategies to Achieve Expected Results**

The strategy aims to concentrate on providing resources and infrastructure in areas where demand is the greatest.

##### ***a) Inventory***

Before planning or construction of new facilities, justice institutions must assess their infrastructure needs. A pre-condition to any such assessment is a comprehensive understanding of the number of existing assets and their state of repair. To this end, the justice institutions will conduct a comprehensive inventory of all infrastructure assets, including detention centers and prisons, indicating location, age, state of repair, and ownership status.

##### ***b) Infrastructure Development Plans***

Each justice institution will prepare an infrastructure development plan and timetable including construction of headquarters and centers at provincial and sub-provincial levels; as well as a transportation acquisition and deployment plan to address needs identified in the inventory. Such plans should be built on the experiences of the last six years; incorporating lessons learned and best

practices, with particular emphasis on standardizing designs to increase efficiency. Moreover, the plans should prioritize construction timetables so as to achieve the maximum cost/benefit ratio. Infrastructure development for courts and offices will be informed by the need to expand the formal justice system throughout the country. Efforts will be made to continue integrating justice facilities where appropriate to reduce costs, facilitate access, expedite processes and improve security. The plans will forecast maintenance cost for new construction and rehabilitation to facilitate future budget projections.

***c) Asset Management***

Development of capacity to acquire, maintain, and manage assets is a critical component to this strategy. The justice institutions will establish dedicated units of trained and qualified personnel to fulfill this need.

***d) New Headquarters***

New headquarters for each of the three justice institutions will be constructed in Kabul. The headquarters will be designed with sufficient spare capacity to accommodate future need.

***e) Construction and/or Rehabilitation of Existing Infrastructure***

Buildings need to be constructed or rehabilitated to be ready for the deployment of qualified professionals in areas of greatest demand. Priority in construction and renovation should be given to the busiest courts, prosecutors and MOJ offices, as determined by reported caseloads.

To make a significant impact on the need in the first five years of strategy implementation, at least 20 courthouses should be constructed, and 40 buildings should be renovated each year.

Priority will be given to constructing: firstly, secure and safe provincial prison/detention centers; secondly, juvenile rehabilitation centers; and finally, transitional housing and shelters for women and children victims of violence.<sup>2</sup>

***f) Residences for Provincial Judges***

Construction of official residences for judges will enhance security and provide an incentive for qualified justice professionals to transfer to provincial posts.

***g) Transportation***

Transportation allows justice professionals to expand the reach of their services. The justice institutions will acquire vehicles for use by justice professionals in the performance of their duties. Priority will be given to equipping those areas where there are no permanent courts and other justice facilities.

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<sup>2</sup> Many of these are outlined in greater detail in the National Action Plan for Women in Afghanistan (NAPWA), which the institutions will implement.

**Goal No. 2: Improved coordination and integration within the justice system and with other state institutions.**

**O. Current State Analysis**

**1. Enhancing Cooperation in the Legislative Process**

Prior to Parliament's inauguration in December 2005, the Government passed laws through approval by the Cabinet following review and finalization by Taqin. The MOJ then published the laws in the official Gazette and distributed them to national and provincial institutions and made them available to the public. The MOJ also indexed the laws and posted them on its website ([www.moj.gov.af](http://www.moj.gov.af)).

Since December 2005, the Parliament has been also proposing and drafting legislation, and must approve all legislation however originated. While the legislative process is now enriched by the involvement of the two houses of the Parliament, it has also slowed down the process of passing laws. As a result, key pieces of legislation await consideration and approval by the Parliament. Further, more than 700 legislative documents must be reviewed to ensure their compliance with the new Constitution and about 10 new laws alone must be drafted and enacted in order for Afghanistan to comply with its international legal obligations. The review and enactment of these laws are required to ensure that the legal framework, including civil, criminal and commercial laws, will be put in place. These requirements are in addition to the laws required by various agencies to fulfill their mandates and the fact that the Parliament may wish to consider laws passed by the executive authorities between 2001 and 2005 – the period beginning with the establishment of the Interim Authority and the establishment of the Parliament. In short, there is need for the approval of a large number of laws.

**2. Poor Quality Legal Translation**

The legislative process is also often delayed due to lack of professional legal translators and the lack of access to legal material in Afghanistan's official languages. Further, long delays in drafting and passing legislation have been attributed to language limitations of international experts, limited technical drafting capacity of legislators and legislative staff, and lack of explanatory notes accompanying laws presented for passage. Legal translators are needed to ensure that the legislative process may make best use of international resources and expert advice.

**3. Inadequate Level of Higher Legal Education**

Similarly, the capacity of staff of the justice institutions has suffered due to lack of adequate legal education and training. University legal education provides the foundation for the development of capable and professional justice sector actors. The long years of war have severely compromised the ability of universities to provide proper education to students, many of whom have joined the justice institutions after graduation. Further, due to lack of sufficient supply of graduates, the justice institutions have been forced to hire under-qualified staff. For instance, 80 percent of prosecutors in provinces are without university qualifications, and two out of five judges have not completed Stage training before assuming judicial appointments.

The lack of access to the latest materials has also limited Afghan professors' opportunities to develop Afghan Legal scholarship. Over the last five years, support has been disproportionately focused on Kabul University's Faculty of Law and Political Science at the expense of similar faculties in the rest of the country. Extending the curriculum and other reforms and changes to date to all universities in the country needs to be expedited. There remains much to be done to improve infrastructure and facilities, especially library and technology resources in Kabul University and at other universities. The division between the faculties of Shari'a and Law and Political Science has meant that there is a lack of core subjects common to both. There is a need for greater harmonization of curricula so that graduates of both faculties have knowledge of common foundational legal subjects. Further, consideration should be given to establish post-graduate masters program in law. The Independent National Legal Training Centre (INLTC) was established by a presidential decree in 2007 to enhance legal and professional knowledge of the staff of the judicial institutions and graduates of the faculties of law and Shari'a, and for continuing legal education. The INLTC is an independent institution. All

justice institutions and the Ministry of Higher Education are represented on the INLTC board and are already using it to conduct training. The INLTC provides a single institutional approach to coordinate all remedial and vocational training.

#### **4. Uncoordinated Professional Training**

The last 5 years have witnessed an explosion in remedial vocational training offered by a variety of donor implementers agencies with little systemization and less coordination. Up until 2006, it was not uncommon for the senior management of the institution not to be aware of the training being conducted. Complaints have been made regarding the usefulness of the training. Further, providing training without improving the working conditions in which the newly trained professional is expected to deploy the new skills may even be wasteful. To address some of these concerns, the government requires a coordinated approach to training justice sector personnel. Currently, materials used for training are being compiled and uploaded onto a website [www.afghanistantranslation.com](http://www.afghanistantranslation.com). This and the INLTC as a central facility for continuing legal education and training will ensure greater coordination of all training.

### **P. Legislative Processes**

#### **1. Legislative Processes: Expected Results**

*Within five years,*

- a) The MOJ and Parliament will increase cooperation to strengthen and enhance the efficiency of the legislative process and clear the current backlog of legislation; and systems will be improved so as to ensure increased efficiency and the prevention of future backlogs;
- b) Taqin will be strengthened through reforms and restructuring to enable it to more effectively carry out its legislative duties;
- c) Translation capacity of the justice institutions will be enhanced and regular English language classes will be provided to relevant staff so that they can communicate and make use of legal resources in English;
- d) Taqin will review the provisions of all submitted drafts and revisions from the perspectives of international human rights instruments applicable to Afghanistan;
- e) MOJ will ensure timely publication and distribution of laws to all state institutions and ensure their availability to the public;
- f) Relevant institutions will conduct a comprehensive and gender oriented review and prioritization of civil, criminal, and commercial laws that are required to be enacted or amended to complete the legal framework required by the Constitution;
- g) All laws will be fully harmonized with the implementation requirements of the United Nations Convention Against Corruption, and other applicable international treaties and conventions, including the:
  - International Covenant on Civil and Political Rights, and the Optional Protocol;
  - Convention on the Elimination of All Forms of Discrimination against Women;
  - United Nations Convention against Transnational Organized Crime;
  - International Convention on the Elimination of All Forms of Racial Discrimination; and

- International Covenant on Economic, Social and Cultural Rights.
- h) By 2009 (1388), the new criminal procedure code will be enacted and published, and for its implementation training with written commentary will be provided to all legal professionals, as well as community legal education for citizens;
- By 2010 (1389), all laws, regulations, and other legal instruments will be compiled, indexed, uploaded and maintained on government websites, will be published and distributed to state institutions at all levels, and will be made available to the people nationwide; and
  - All government agencies and ministries will have improved technical capacity to draft and propose non-discriminatory legislative and regulatory instruments.

## **2. Legislative Processes: Strategies to Achieve Expected Results**

### ***a) Removing Back-Logs, Eliminating Delays and Keeping Legislative Agenda on Schedule***

The Government and Parliament shall conduct a comprehensive review of the legislative process, clarifying where necessary the roles and responsibilities of the relevant authorities as follow:

- The review will include assessments of areas where delays are occurring in passing legislation, and the reasons for the legislative backlog;
- Based on the findings of the review the Government and Parliament will develop procedures for clearing the backlog of legislation and review classification of legislation for agenda setting; and
- Practice manuals will be developed to improve awareness of the legislative process, including the mechanism for agenda setting and tracking of legislation.

### ***b) Enhance Capacity of Taqin***

Efforts will be made to ensure that Taqin and the relevant Standing Committees of the two houses of the Parliament have a smooth exchange of information on draft legislations. To improve Taqin's capacity to review and revise draft and current laws, the MOJ with relevant national and international partners will:

- Conduct regular trainings for all professional staff of the Taqin in, among others subjects, legislative drafting and provide them with study-tours and scholarships abroad to get comparative experience in legislative drafting;
- Establish a well-equipped legal resource center within the Taqin to improve its access to national and international legal materials and resources; and
- Review Taqin's organizational structure (Tashkeel) and, if necessary, make changes to meet its expanding legislative and advisory demands.

### ***c) Enhance Technical and Translation Resources of the Taqin***

Since draft laws are usually drafted within Government ministries and agencies, with the assistance of international partners, Taqin experts will conduct courses in cooperation with the INLTC to train and assist other government institutions to streamline the legislative drafting process. To enhance the technical and translation capacity of the Taqin, the MOJ with the assistance and support of the SC and AGO will:

- Establish one or more training facilities for translation and will engage in cooperative arrangements with the international community to develop Afghan legal translation capacity for Taqin, Parliament, SC, and AGO;
- Establish one or more facilities and recruit qualified language instructors in English and other languages to develop Afghan language trainers' competency in legal translation and interpretation;

- Publish a compilation of legal terminologies in Dari, Pashtu and English to ensure consistency and expedite high quality translation;
- Consider potential strategic partnerships with the Ministry of Foreign Affairs and Kabul University's Language Training Institute; and
- Support a shared long term goal to increase the English-language capacity of the three justice institutions to allow access to internationally-available materials.

***d) Improve Publications and Dissemination of Laws and Regulations***

The MOJ will develop publications capacity to disseminate and distribute legislation and legal instruments throughout Afghanistan. The MOJ will also develop its printing capability (either in-house and/or through out-sourcing) and build the necessary logistics and supply management needed to distribute legislation nationwide. This strategy has three components to be carried out by the MOJ:

- Ascertain the government printing requirements for legislation, and determine sustainability of printing all government legal and legislative documents;
- Assess the adequacy of current distribution practices and resources with recommendations for improvement; and
- Develop a detailed plan and costing of printing and distribution resource requirements, including staffing.

**Q. Legal Education and Training**

**1. Legal Education and Training: Expected Results**

*Within five years:*

- a) A harmonized core curriculum for both Shari'a and Law faculties will be completed and launched;
- b) A masters' program in law will be developed;
- c) All new entry level prosecutors, judges and government lawyers will have legal qualifications from universities or other institutions of higher education and have completed Stage (induction) vocational training offered in coordination with the INLTC;
- d) Afghan law professors and law students will have access to legal scholarship materials and resources and will have updated and modern (including technological) research and teaching facilities in all university law and Shari'a faculties;
- e) The percentage of female professors and female students will be raised to 30 percent at faculties of Law and Shari'a, and provide them necessary facilities and remedial courses as necessary; and
- f) Formal arrangements and procedures for partnerships, scholarships and other linkages with foreign academic and vocational training institutions will be concluded and operational.
- g) INLTC will have expanded its activities to fulfill its duties under the Presidential decree and, in addition to conducting the judicial stages, will have developed, in consultation with the justice institutions:

- Curricula and promoted continuous education for judges, prosecutors and legal officers; and
- A national law library and legal archive for legal research.

## **2. Legal Education and Training: Strategies to Achieve Expected Results**

The strategy for legal education and training is informed by the sector strategy of the Ministry of Higher Education. The justice institutions aim to transition from a professional workforce of mixed qualified and lay judges and prosecutors to a fully legally qualified workforce. Remedial legal education will continue to be provided to raise the competence of under-qualified officials.

### ***a) Developing Law and Shari'a Faculties***

A twofold strategy will be used by the Ministry of Higher Education and Kabul University, in collaboration with the INLTC and justice institutions, to further develop the curricula of the faculties of Shari'a and Law as follows:

- Completing the development of the new curriculum of the faculties of Law and Political Sciences and Shari'a in Kabul University in collaboration with relevant faculties of other universities in the country; and
- Developing core curricular subjects for both Shari'a and Law and Political Science faculties.

### ***b) Enhancing Law Teachers' Capacity***

To improve the capacity of Law teachers and students, the justice institutions will work with the Ministry of Higher Education and the INLTC to:

- Upgrade resources and facilities at the faculties of Law and Shari'a at Kabul University to improve the knowledge base of academics and students;
- Introduce the changes to other faculties of Law and Shari'a throughout the country;
- Design and implement a new post-graduate masters program in law in accordance with the strategy of the Ministry of Higher Education;
- Carry out student development by establishing and sustaining law journals;
- Develop internship programs for law students and career advisory services, including job fairs and other activities designed to introduce students to the practice of law; and
- Link academic staff of the faculties of Law and Political Sciences and Shari'a with similar international academics to expose them to international best practices and international peers.

### ***c) Participation of Women in the Legal Profession***

Consistent with the National Action Plan for the Women of Afghanistan (NAPWA) and the Ministry of Higher Education's strategy, the participation of women students and teachers in both Law and Shari'a faculties will be increased through:

- Development of incentive mechanisms, such as foundation courses for women and providing female dormitories for women coming from provinces;
- Designing and implementation of affirmative action programs by SC, MOJ, AGO and Ministry of Higher Education to encourage women's entry into and retention in the legal profession, including a special Stage for women judges, prosecutors, lawyers, and special remedial training programs; and
- Creating linkages of formal legal education to career development for government legal professionals.

Capacity of future Afghan academics and vocational trainers will be enhanced by exposure to foreign professionals, legal education and legal institutions in other countries.

The justice institutions will implement this strategy by:



- Exploring relationships with a view to technical and exchange partnerships with foreign legal training establishments – for example, in France and in Egypt.
- Developing a policy of academic and vocational exchanges to secure and promote scholarships and exhibitions/fellowships for promising Afghan legal professionals, in conjunction with the Ministry of Higher Education, and the justice institutions. Special attention will be paid to provide opportunities for women to participate in study abroad.

***d) Establishing Institutional Capacity for Legal Research***

To improve and enhance the knowledge of the legal system, the justice institutions will create mechanisms to establish institutional capacity for legal research. In particular, the MOJ will expand its library while the INLTC will establish a modern library with internet research capabilities to provide facilities to legal professionals and the public to conduct legal research. Further, examples and best practices in other countries will be taken into consideration to provide legal research facilities in provincial capitals.

*(For detail please see Annex I Policy actions Matrix)*

**Goal 3: Improved Quality of Justice**

This goal seeks to improve processes and practices in the justice institutions, and will facilitate citizens' access to quality justice services. Victims, witnesses, accused persons, civil litigants and other constituents of the justice system should also have sufficient knowledge of basic legal information to access quality justice.

**R. Criminal Justice**

**1. Summary of the Current State of Criminal Justice:**

Since 2001, the criminal justice system has made tremendous progress. Some of the major achievements include: reconstituting the AGO, promulgation of an interim criminal procedure code, police law and counter-narcotics law, creating the Criminal Justice Task Force (CJTF) to combat narcotics, specialized and on-the-job training for judges, prosecutors and defense attorneys, re-establishing the induction "Stage" vocational courses for judges and prosecutors, reforms in prisons and juvenile rehabilitation centers, and the Ministry of Interior. The Ministry of Interior/Attorney General's Office Commission has been established to facilitate and implement police-prosecutor collaboration and coordination in investigations. At least ten non-profit organizations now provide legal services for the defense of indigent suspects and accused persons.

In spite of these achievements, however, many challenges remain. One major challenge is the lack of clarity about the roles and responsibilities of and among the institutions, and the relatively weak coordination mechanisms between them. Another challenge is the many cases of arbitrary and illegal pre and post trial detention. Many Afghans are detained without charge others are detained in violation of mandatory statutory timelines requiring release if they are exceeded, while many more remain incarcerated after their sentence has been completed. Women, in particular, are detained and prosecuted for alleged offenses like "home escape" that are not provided for in the Penal Code. A further challenge is that the detection, investigative and prosecution tactics most often utilized by police and prosecutors tend to rely on illegal confessions and police reports as the principle evidence produced before the court against the accused person. In addition, the applicable criminal procedures, including advisement of rights, provision of counsel to the indigent and defense presence and questioning of investigation witnesses and experts, are in many cases not followed in trials. Most importantly, in most cases the accused person is not represented by counsel.

Given this situation, the key challenge for the justice institutions is how to put in place an effective, fair and efficient criminal justice system with the limited resources available that puts the people involved -- men, women, and juveniles as suspects, accused, victims, and witnesses -- at the centre of the process.

## 2. Criminal Justice System: Expected Results

*Within five years:*

- a) **Protection of the Rights of the Accused:** No suspects or accused persons will be in detention or incarceration without lawful charge and being informed of the charges against them, and never without authorization of a competent authority.
- b) **Administrative Reform and Transparent Process:** The SC, MOJ, AGO, police and NDS will take necessary measures to implement information management systems to better coordinate their functions and activities. This will include strengthening and fully integrating case management, tracking, and operating system with efficient reporting components deployed in at least eight major provinces;
- c) **Full Implementation of Juvenile Justice Reform:** Juvenile Justice Code implementation will have resulted in regulations being promulgated and applied, juvenile justice professionals being trained in all justice institutions and juvenile justice facilities in at least eight major provinces;
- d) **Sentencing Reform:** A comprehensive review of sentencing laws and policies will have been completed and recommendations for improving penal and sentencing system prioritized;
- e) **Victim/Witness Protection and Enhanced Security:** Efficient and effective systems will be in place for protecting and assisting victims and witnesses, and managing evidence, in at least eight major provinces; and
- f) **Media Access and Public Information:** Effective public awareness campaigns will have been conducted across the country to improve the knowledge of victims, witnesses, defendants, and the general public regarding their rights and responsibilities and how to access the criminal justice system.

## 3. Criminal Justice System: Strategies to Achieve Expected Results

Victims of crime, witnesses, suspects, accused, civil litigants, or simply ordinary citizens need to know which governmental agencies are responsible for protecting their safety and their constitutional rights. This strategy aims to build a criminal justice system that will be accessible to all citizens equally and fairly; and function reliably, promptly, and honestly. In order to achieve this goal, the quality of justice provided by the Government of the Islamic Republic of Afghanistan must be improved in specific ways.

### *a) Necessary Preconditions for Provision of Access to Quality Justice*

A professional and competent prosecution and judiciary will:

- Provide the necessary laws and legal instruments effectively to conduct trials and deliver justice;
- Publish and disseminate the criminal laws and procedures, and prosecutorial and judicial practices and procedures, including specific information regarding individual cases;
- Provide professional development of the prosecution and judiciary by improved and comprehensive “stage” courses and continuing professional education through specialized training of experienced judges, prosecutors and attorneys;

- Develop administrative tools to clear the backlog of cases and increase efficiency with improved case management systems (both manual and automated) and improved training for judges, court officials and prosecutors in investigative, trial, and appellate case management;
- Improve oversight and monitoring of case management to ensure that crime is promptly investigated, accused are provided with prompt and fair trials, convicted persons serve their lawful sentences, and are released when their sentence is served.
- Increase public access to trials of criminal cases by ensuring that judges and prosecutors comply with the Constitutional requirements for public proceedings.

***b) A Coordinated and Well-Structured Criminal Justice System***

To provide for greater coordination within the criminal justice system overall, the justice institutions will:

- Improve policy and operational coordination by expanding formal inter-institutional coordination mechanisms such as the joint MOI-AGO Commission at national and sub-national levels;
- Strengthen and integrate centralized criminal justice information and management systems at all levels.
- Develop and adopt standard operating procedures to standardize operational practices within and between justice institutions.

***c) A Victim and Witness - Sensitive Approach***

To further the protection of the individual within the justice process, justice institutions will adopt a victim and witness-sensitive approach to improve public confidence in the system. This approach includes:

- Reviewing and reforming Afghan criminal procedure, to incorporate modern victim/witness protection and support practices and to facilitate victim and witnesses in coming forward and giving evidence;
- Establishing a special division at the AGO to support victims and witnesses, and to provide information and assistance;
- Encourage the establishment of nongovernmental organizations engaged in the support of and assistance to victims of crime and vulnerable witness;
- Assisting, in particular, victims of crimes of violence (including domestic violence), through collaboration by the AGO with the Ministry of Women's Affairs and the MOI to provide security during all phases of the process;

***d) Increased Public Confidence in Criminal Justice Institutions***

The SC, MOJ, and AGO will develop the following capacity to increase public confidence in the justice system:

- Support and protect witnesses and victims of crime throughout the criminal justice process. The AGO and the police, in particular, will support shelters and safe houses for victims of domestic violence and other serious offenses;
- Encourage press coverage of justice proceedings, public attendance at those proceedings, and general public understanding of the process at each stage of such proceedings. The justice institutions should encourage and participate in the

development of outreach programs within civil society including curriculum for public education at all levels.

- Provide timely and regular public notice of judicial proceedings and widely disseminate the results of those proceedings;

#### **4. Sentencing and Corrections<sup>3</sup>**

The SC, MOJ, and AGO, with the support of the MOI, and the National Directorate of Security will develop corrections policies for male and female adults and for juvenile detainees and convicted offenders. Such policies will incorporate international standards for the treatment of prisoners and maintenance of humane conditions of confinement.

##### ***a) Detention, Juvenile Rehabilitation and Prisons Reform***

To build upon the successes in corrections over the past six years, the following actions will be undertaken to achieve reform. Led by MOJ, the justice institutions will:

- Conduct a comprehensive survey and assessment to determine the frequency of detainees being held unlawfully without charge or indictment;
- Conduct a comprehensive survey and assessment to determine the frequency of convicts who remain incarcerated unlawfully after having served the entirety of their prison sentence;
- Implement inter-institutional policies that will prevent unlawful detention;
- Classify and segregate prisoners according to appropriate risk and security factors;
- Review and improve regulations and standard operating procedures governing the treatment of prisons and the maintenance of human conditions of confinement;
- Train corrections professionals on prison regulations and standard operating procedures. In addition, establish a monitoring and evaluating system for implementation of those procedures;
- Assist and support the Afghan Independent Human Rights Commission to fully enable it to report on prison conditions and the humane treatment of prisoners;
- Conclude protocols and arrangements with Ministry of Social Affairs to provide appropriate assistance to offenders from the early stages of their confinement through to their re-integration into society;
- Strengthen prisoner rehabilitation programs throughout the prison system; and
- Develop and implement policies and regulations to optimize the use of Open and Closed Centers with the aim to promote an effective rehabilitation of children in conflict with the law regardless of their charges, and with special attention to non-custodial measures such as community based interventions.

##### ***b) Non-Custodial Sentencing and Penal Reform***

The justice institutions as coordinated by MOJ with other stakeholders<sup>4</sup> will examine options for longer-term penal reform alternatives to detention and imprisonment. In the interim, existing alternatives to prison will be enhanced as follows:

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<sup>3</sup> Overhauling the detention and sentencing system will necessarily take time and may be beyond the timeframe of this strategy.

<sup>4</sup> Ministry of Finance, Ministry of Interior and National Directorate of Security.

- Establish simplified sentencing guidelines for minor offenses;
- Develop new options and improve existing mechanism for enforcement of non-custodial sentences; include systematic collection of fines, confiscation of assets, non-custodial supervision, and court ordered destruction of contraband such as narcotics;
- Develop appropriate and Constitutional methods, in addition to the public appropriations process, to fund justice operations (particularly courts and legal aid), and to create and finance a victim's compensation system; and
- Develop a program to implement the provisions of the Juvenile Code on non-custodial sentences for juveniles.

## S. Civil Justice

Improving access to quality civil justice requires making the courts and MOJ easier to use for litigants and witnesses, with particular concern for:

- Illiterate persons, the poor, women, and others with disabilities who need judicial resolution of civil disputes;
- Providing simplified access to the courts for citizens wishing to challenge the exercise of authority by government agencies;
- Providing simplified access to courts for citizens seeking resolution by simplification of legal documentation. Such documentation is critical to the exercise of a citizen's constitutional rights from birth, to identity, to marriage and beyond.
- To organize and regulate decisions of informal justice mechanism through drafting a policy and determining rules and principles governing the decisions.

### 1. Summary of Current State of Civil Justice

The Justice Sector in Afghanistan has made significant progress in civil justice over the past six years. In addition to the passage of major commercial legislation and the training of judges and Huquq officers, a new case management system (ACAS) has been developed for the courts to administer criminal and civil cases. More than 300 judges have completed at least one of a number of special training courses on civil and commercial law since 2003. Various legal identification document reforms have been completed, most notably a new marriage certificate approved by the Supreme Court.

Challenges in the civil justice system include the complexity of the system for users, the length of the process before a judgment is rendered and the difficulty in enforcing judgments. The most significant challenge for the justice institutions in the delivery of civil justice is how to provide civil justice dispute resolution and documentation services in a cost effective, fair and sustainable manner.

### 2. Civil Justice System: Expected Results

*Within five years:*

- a) **Implementation of Administration Reform:** The Supreme Court will implement a more efficient court case administration and management and updated regulations will be introduced in the eight major regions. (In particular land, commercial and family cases will be easier to file, litigate, track, and enforce);
- b) **Reforming the Traditional Dispute Resolution Mechanisms:** The government will develop a policy to reform the traditional dispute resolution mechanisms;

- c) **Updating of Laws, Practice and Procedures:** Laws, judicial practices and practices for enforcing judgments will be updated and standardized to conform fully with Constitutional requirements and international commitments;
- d) **Simplification of Processes:** Simplified processes for production, certification, storage and dissemination of documents for legal identity and entitlement, including deeds, birth and death certificates, marriage contracts and certificates will be promulgated by the courts and Government; and
- e) **Commercial Courts:** The commercial court system will be expanded, modernized and staffed with adequately trained judges and ancillary service providers such as bailiffs and receivers.

### 3. Civil Justice System Strategies to Achieve Expected Results

The SC and the MOJ will:

- Strengthen and simplify the respective roles of the Huquq and Courts through development of regulations and greater public awareness;
- Establish mechanisms to enable the efficient and effective transfer of files, evidence, responsibility, and decision-making authority between the Huquq and primary courts by:
  - Clearly defining the transfer of authority and responsibility for custody of files; and
  - Simplifying the protocol system for efficient daily relations between the Courts and MOJ, and between justice institutions and other agencies.
- Improve mechanisms to promptly enforce judgments to maintain confidence in the formal civil justice system.

#### a) *Judicial Case Administration Reform*

The Supreme Court will reform its courts' case administration system by:

- Strengthening and updating its case management and filing system;
- Developing a pilot computerized database based on the paper-based system, as the system strengthens;
- Simplifying operating procedures for case intake, management and disposition to ease access to the process for all citizens;

Investigating the feasibility of deploying mobile courts in areas where there is currently no effective judicial presence.

#### b) *Court Case Administration: Commercial Courts*

*The Law of Organization of Courts* mandates that primary commercial courts be established in every provincial centre. Currently, primary commercial courts function in only two of the eight zones in the country, namely Kabul and Mazar. The Supreme Court will therefore implement the law in two phases:

- The first phase will introduce six additional commercial courts, one in each of the remaining zones;
- The second phase will increase the number and capacity of qualified commercial court judges with specialization in the areas of banking, energy, corporate and bankruptcy law. In addition, the courts will develop practical and efficient procedures for resolving small commercial claims.

### ***c) Court Case Administration: Land Disputes***

The SC and the MOJ will develop the capacity of the courts to resolve land disputes through the following steps that will facilitate the formalization of rights to and over land:

- The Supreme Court will develop judicial capacity in property dispute resolution and increase the number of judges trained in this area, initially in the eight major regions and thereafter in other provinces;
- The Courts and MOJ will encourage *jirgas* and *shuras* to record decisions in disputes related to land to facilitate the formal resolution of land disputes;
- The MOJ will improve the capacity of its Government Cases Department to litigate cases involving government land through training and improved procedures.

### ***d) Court Case Administration: Family Courts***

Strategies for improving the competence of family courts shall include:

- the development of judicial procedures to address the special needs of families and family disputes, including preserving the property and inheritance rights of women and children;
- The Government including representatives from the Ministry for Women's Affairs and interested national and international stakeholders will review the provisions of civil procedure and the civil code relating to divorce, child custody, and conditions for marriage to eliminate bias and discrimination against women as provided by the Constitutional and international standards and conventions applicable to Afghanistan.

### ***e) Civil Processes and Procedures***

#### **1) Dispute resolution by the courts. The courts will:**

- Review the civil justice process including the Civil Procedure Code with a view to simplification, gender sensitization and modernization;
- Modernize the *Law on Obtaining Rights* (enforcement of judgment procedure) that may necessitate some changes in civil procedure that takes into consideration the article 22 of the Constitution (equality before law).

#### **2) Disputes Resolution outside the Court**

##### **1) Formal Dispute resolution by the Huquq department of MOJ, it will:**

- Enhance its capacity to conciliate and mediate private disputes through training and the production of manuals on conciliation and mediation;
- Expand its conciliation and mediation services;
- Increase its presence and performance in provinces and districts in close relationship with recruitment and infrastructure development.

##### **2) Informal Dispute Resolution**

Traditional (Informal) dispute resolution mechanism is one of the ways of access to justice. This mechanism, which is known as Jirga and council, has a historical background in Afghanistan and currently people refer to this system to handle their disputes. At the same time, informal justice has caused to violate individuals' rights also; so, in order to respect rights, litigants should abide by some standards and principles while proceeding their cases; it means, proceeding a case through council should take place with the agreement of litigants without any kind of discrimination and should not be criminal issues and decisions of Jirgas/councils should not be inconsistent with Islam, Constitution and Human Rights.

To better utilize the informal justice mechanism, the Supreme Court, Attorney General's Office and Ministry of Justice, as coordinator, will assess the informal justice mechanism and by drafting a policy, they will determine the priorities of using this mechanism. These priorities are consisted of the followings:

- To widely conduct public legal awareness programs to explain working framework, limitations and standards that should be abided by in the informal justice mechanism proceeding;
- To provide manual explaining standards fair proceeding, constitution principles, Islamic Rights and International Human Rights for decision makers of Jirga and councils.
- To collect information about balance and way individuals have access to the Jirga and council with gender recognition.
- Besides Jirga and council, other institutions like provincial council, district council, local development council and council of religious leaders are also permitted to handle informal disputes resolution.
- To assess decisions of Jirga and council so that should not be inconsistent with Islam, Human Rights and Constitution.

#### ***f) Enforcement of Judgments***

The MOJ will, in conjunction with Parliament:

- Update the *Law on Obtaining Rights* to enhance and streamline processes for enforcement of judgments. Enforcement procedures need to include, among other methods, a mechanism for freezing bank accounts and conducting post-judgment discovery of assets;
- Assess how the law is currently applied, including the roles played by the MOJ and other relevant authorities with a view to increasing efficiency.

#### ***g) Legal Documentation***

The courts and the Government will provide a critical public service of legal documentation, certification and authentication and seek to improve these services as follows:

- The Government will assess these services to provide increased value and greater access to legal identity documents for citizens;
- The courts will standardize and index legal identification documents and procedures, including:
  - Simplifying the process of certifying and registering such documents;
  - Developing special services specifically to help non-literate users access legal identity documentation;
  - Establishing a sex and age disaggregated pilot electronic storage and retrieval system.
- Justice institutions will coordinate and collaborate in producing, printing, and disseminating all public documents, forms and other instruments required, issued by or registered with justice institutions to be easily available to the public in at least eight major provinces.

#### ***h) Commercial Courts***

Published and accessible judicial decisions, consistent and predictable judicial decision making, enforcement of judgments, and the availability of ancillary service providers, such as bailiffs and receivers, either require creation or strengthening. In addition, Afghan commercial court judges do not receive the necessary training or acquire the necessary commercial expertise to adequately deal with the myriad of commercial transactions and potential legal disputes that may come before the commercial courts. An assessment of the commercial courts system has been completed, and training programs for commercial courts judges will commence in the coming weeks. However Article 45 of the Law of the Organization and Authority of the Courts of the Islamic Republic of Afghanistan provides for the establishment of a commercial court in every province. Currently, only four



commercial courts are functioning in Afghanistan, including two courts located in the national capital. Accordingly, as the first phase, six additional commercial courts will be constructed and professionally staffed in order for the Afghan commercial courts to begin functioning with the efficiency, transparency, and predictability required by the international private sector.

## **T. Legal Aid and Legal Awareness**

Access to justice information, materials and advice is integral to citizens' proper use of the criminal and civil justice system.

### **1. Summary of Current State of Legal Aid and Awareness**

A variety of legal aid and legal awareness programs have emerged since 2001. There are now at least 170 legal aid lawyers working for approximately ten legal aid organizations. Moreover, a department of legal aid provides legal aid in criminal cases through 19 staff lawyers. Pursuant to the new Advocates Law, this department is in the process of being transferred from the SC to the MOJ. Legal awareness programs and supporting systems – such as shelters for victims of domestic violence – are a welcome development. The creation of Family Response Units at the Ministry of Interior to facilitate and encourage intake and reporting of crimes against women and children are among the proactive developments in improving community based policing and legal awareness. The recently enacted *Advocates Law* demonstrates the government's commitment to improving access to justice by expanding legal aid and establishing an independent bar association.

Despite these achievements, much remains to be done. Legal aid organizations, though active in 20 of the 34 provinces represent only a small fraction of those accused of crimes. The Family Response Units experience difficulty recruiting women police officers and other qualified staff. There are too few shelters for women victims. The legal aid system needs to include civil representation to ensure that women and children's economic and social rights are protected as required by the Shari'a, constitutional and international human rights law. The challenge for the justice institutions is to provide access to justice for indigent, vulnerable and disadvantaged persons.

### **2. Legal Aid and Awareness: Expected Results**

Within five years, the justice institutions in conjunction with other justice-related institutions, such as the Ministry of Women's Affairs, Afghan Independent Human Rights commission and civil society will:

- a) Establish a fully operational Independent Bar Association (IBA);*
- b) Establish a comprehensive administrative system for legal aid, with special attention to ensuring women's access to legal aid;*
- c) Fully establish a unit in the MOJ responsible for monitoring human rights across the Government;*
- d) Continue and expand current legal awareness and legal literacy programs alongside expansion of resources and deployment of personnel. This will include development of legal awareness programs on:*
  - rights and responsibilities of the women, men and the justice institutions, and*
  - how the formal justice system works for Afghan citizens;*

### **3. Legal Aid and Legal Awareness: Strategies to Achieve Expected Results**

#### *a) Establishing the Independent Bar Association*

As required by the *Advocates Law*, the MOJ will support the establishment of the Bar Association within three months of the December 2007 (1386) enactment of that law to enhance the professionalism, competence, and credibility of the legal profession. The MOJ, with the support of

international partners, will provide interim support to the Bar Association during its inception as follows:

- Drafting provisional by-laws, which will include provisions for the IBA's organizational structure and operating procedures;
- Helping to develop accreditation procedures, licensing requirements, and a code of professional conduct for members;
- Enhancing awareness of the *Advocates Law*, and encouraging unregistered advocates, especially those living in the provinces, to register.

***b) Establishing the Legal Aid System***

To implement the *Advocates Law*, the MOJ will establish a legal aid system to provide legal representation for indigent defendants in all provinces. This will require the MOJ to:

- Review existing legal aid needs assessments, consult with national and international partners involved in legal aid, and evaluate and select the most suitable legal aid system for the country;
- Coordinate with the Ministry of Higher Education to ensure the supply of qualified defense lawyers;
- Implement public awareness campaigns to promote legal aid services as they become available throughout the country. The campaigns will especially target justice officials emphasizing the key role of defense lawyers in the justice system.

***c) Establishing a Human Rights Unit in the MOJ***

Despite recent progress in efforts to promote human rights throughout the country, many problems remain. Protection of the human rights of individuals remains weak. Poor governance, insufficient government compliance with legal rules, and widespread lack of transparency endanger human rights. To promote consistent protection of human rights and the rule of law, the MOJ will establish a human rights unit, which will be responsible for monitoring human rights across the government.

***d) Coordinating Legal Awareness Programs and linking them with Institutional Presence***

The MOJ will develop and coordinate a legal awareness strategy by:

- Identifying those who use the justice system and the particular access to justice needs of each user;
- Improving legal awareness by tailoring messages to the intended audience using all appropriate national and local media;
- Providing low-cost or free legal services to indigent defendants;
- Bringing justice institutions to the people by making information available about locations of justice institutions to improve access.

The legal awareness program will:

- Be designed to reach illiterate or semi-literate persons, using various means of communication, such as radio and television broadcasts, educational movies, billboards, and workshops;
- Target local elders involved in informal dispute resolution to raise their legal awareness;
- Provide Afghans with information pertaining to their legal rights and obligations and with an emphasis on human rights, particularly as they pertain to women and children;

- Publish important decisions and directions from the courts, AGO and Ministry of Justice;
- Be regularly monitored and evaluated for effectiveness and coverage.

#### **e) Transitional Justice**

The Government's Action Plan for Peace, Reconciliation and Justice in Afghanistan acknowledges that any mechanism for building peace and justice must be carried out with the active and meaningful participation of all national stakeholders, including the justice institutions. In relevant sections, the Action Plan for Peace and Reconciliation requires:

- Development of an inclusive strategy for the general reform of the justice sector (judges, prosecutors, police, corrections and defense counsel), to ensure the establishment of a fair and effective justice system and to prevent patterns of human rights abuses of the past from being repeated;
- Draft legislation on the recommended truth-seeking mechanism to be presented to the National Assembly;
- Appropriate measures be taken to implement the objectives contained in the Action Plan; and
- Conditions for fair and effective justice procedures be established in accordance with the principles of the sacred religion of Islam, international law and transitional justice.

The justice institutions are fully committed to peace, justice and reconciliation. The justice institutions in general and the MOJ in particular will take measurable steps, including developing specialized capacity, to implement the Action Plan for Peace and Reconciliation as follows:

- Screening applicants during the recruitment and appointment process for judges, prosecutors and MOJ professionals for prior abuses of human rights; and providing oversight and interpretation of the law concerning appointments to public office;
- Assisting other agencies and civil society organizations, notably Afghanistan Independent Human Rights Commission, in the collection and preservation of evidence of past and or continuing abuses;
- Assisting victims of abuse to access their rights in the justice system;
- Assisting, where appropriate, investigations and prosecutions being conducted outside Afghanistan on abuses committed in Afghanistan or by Afghans; and
- Drafting legislative documents, as necessary