



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

Draft summary of
ANDS Justice Sector Strategy

January 2008

SUMMARY OF JUSTICE SECTOR STRATEGY

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ ﴿٧﴾
أَلَّا تَطْغَوْا فِي الْمِيزَانِ ﴿٨﴾
وَأَقِيمُوا الْوَزْنَ بِالْقِسْطِ وَلَا تُخْسِرُوا الْمِيزَانَ ﴿٩﴾

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).

Justice is the final destination of the *Daira-yi’-Adalat* or ‘the Circle of Justice’. 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.*

I ROLE OF THE JUSTICE SECTOR IN THE ANDS: MISSION STATEMENT

The role of the Justice Sector in the government’s development strategy is to ensure improved integrity, performance and infrastructure of Afghanistan’s justice institutions; to ensure that functional justice institutions are fully operational in each province of Afghanistan; to streamline administrative structures and establishments and to ensure professional integrity within these establishments. The sector further aims to ensure improved coordination and integration within the Justice system, between government and civil society institutions.

Moreover the Justice Sector outlines planned improvements in justice practices and procedures such that professionals within the judicial sector and the public have greater confidence in and sufficient knowledge of the justice system to access it.

The Justice Sector Strategy’s goals for the short and medium term are therefore to professionalize the justice sector in order that it may deliver credible, competent and predictable justice practices. It will further develop accessible and practical procedures and monitoring systems and practices, eliminating susceptibilities to corruption in order to achieve results efficiently and fairly. Thirdly, the Justice sector will invest in education for future lawyers and students pursuing legal studies, both for the bar and bench; it will focus on professional development for bench and bar, and develop private legal services. The Justice Sector will upgrade justice assets and infrastructure to enhance accessibility. In the longer term the sector will seek to increase specialization and diversification of justice practices to meet more complex demands – including the interaction and relationship with informal justice systems while expanding justice services throughout the country.

II CONTRIBUTION OF THE JUSTICE SECTOR STRATEGY ECONOMIC GROWTH, EMPLOYMENT AND POVERTY REDUCTION AND SECURITY/ STABILITY

Economic Growth, Employment and Poverty Reduction: Justice Institutions are essential developmental actors in promoting rule of law and good governance as a means for poverty reduction. A fair, predictable justice system which the public has confidence in is an essential precondition to create an enabling climate for investment and increased economic activity. The essence of this strategy (and in particular the Commercial Law, outlined below in section 3 in the Afghanistan Compact Justice Sector benchmarks) is to improve the quality of services delivered and the quantity in terms of geographical availability as a prelude to increasing the complexity and scope of justice services. At present, for example, as mentioned below in point IV (see weaknesses, challenges and constraints), the combined result of delays in charging, indicting, prosecuting and conducting trials is that business transactions are stymied, and economic development is hindered. Economic development and good governance go hand in hand. The development of an economy requires investment. Investors must accept risk and they seek to minimize risk for a given return on their funds. The higher the risk, the higher is the return on funds that the investor will require. That risk can be minimized if there is a stable, predictable governance system and where the rule of law is widely understood, accepted and complied with. Investors look for assurances that the principles of good governance are being observed. Open and transparent government means that investors can make decisions with full knowledge and fair expectation of equitable government decision making. Investors need to have the confidence in and right to participate in government and must know that they will be fairly represented. They must know that government will be held accountable for its actions and that they too will be held accountable under equitable application of rule of law. A strengthened Justice sector, in conjunction with good governance, allows efficient allocation of resources through reliance on market forces and only applies government solutions when the free market fails to create efficient solutions. A strong and reliable Justice system is transparent and enables investors to make decisions with confidence by providing a solid and trustworthy legal framework to do so. A government backed by a strong Justice sector that relies on rule of law and meets broad social needs provides for sustainability in development. The Government commits itself to such accountable, effective, coherent, consistent and rule based governance through this strategy.

Security / Stability: Poor security in certain parts of the country makes service delivery difficult or impossible. In particular law enforcement in those areas are further compounded when Police devote most of their resources to maintaining security. Thus a strong Justice sector will greatly contribute to enhancing stability in Afghanistan.

III CONTRIBUTION OF THE JUSTICE SECTOR TO IMPLEMENTATION OF THE AFGHANISTAN COMPACT AND MDGs

Afghanistan Compact: By the end of 2010 (1391), in accordance with the four Rule of Law Compact benchmarks, the Justice Sector will (i) put in place the legal framework required under the constitution, including civil, criminal and commercial law and distributed to all judicial and legislative institutions and made available to the public; (ii) ensure that functioning institutions of justice are fully operational in each province of Afghanistan, and the average time to resolve contract disputes will be reduced as much as possible, (iii) carry out 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); and 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); (iv) ensure the rehabilitation of the justice infrastructure (prisons will have separate facilities for women and juveniles).

Millennium Development Goals (MDGs): The Afghanistan National Development Strategy (ANDS) has been formulated to move Afghanistan towards the achievement of the Millennium Development Goals (MDGs) by 2020 (1401). Although justice and the rule of law are not among the eight plus one MDG's, they form the necessary preconditions and provide the enabling environment for poverty reduction and economic development.

IV CURRENT SITUATION IN THE JUSTICE SECTOR

Six years on from the beginning of the reconstruction process in restoring the rule of law, much progress has been made in terms of reconstituting basic institutions, reconstructing or rehabilitating infrastructure in a number of provinces and districts, building the capacity of professionals, and embarking on institutional reform. However, much remains to be done.

Challenges, Constraints, Weaknesses

The following challenges, constraints and weaknesses to the successful implementation of the National Justice Sector Strategy have been identified as the following:

Weak infrastructure: The achievements outlined above when put in the context of the state of Taliban era justice institutions demonstrate substantial and measurable progress. Although many justice facilities, including courts, have been constructed and or rehabilitated in the last six years, the overall state of infrastructure is still poor and in some districts no facilities exist at all. While, in some cases, this may be evidence of a lack of sustainability given the resources available, it is nevertheless evidence that such a system was present and functioning at a point in time.

Lack of trained staff: The majority of the court and AGO technical and professional staff are, outside Kabul, not as qualified as they are required to be. Indeed, 80% of prosecutors in the provinces have no formal qualifications, and 40% of all judges have not completed the compulsory stage induction training and exams before taking office. The result is that many of the existing staff occupy positions that may well be beyond their education and capabilities.

Delays and backlogs of appeals: Moreover, delays in the trying of criminal and civil cases are not uncommon. This occurs for a number of reasons including: (i) in criminal cases, only 1 file exists in current practice that rests with the prosecutor (ii) court files are not easily found, because of the low quality of security, the inefficiency of the filing procedures, and outdated case management systems; (ii) inadequate noticing procedures for litigating parties, attorneys, witnesses, and the police; and (iii) the dearth of qualified prosecutorial, *Huquq* and court case management staff, and finally (iv) administrative capacity deficiencies. As a consequence, there are backlogs of cases and appeals. The Supreme Court has largely cleared the backlog of appeals, but requires more judicial advisers to deal with this issue in the future. Further challenges include delays in charging, indicting, prosecuting, conducting trials and completing judgments. Weak enforcement of civil judgments together with a fee structure imposed on judgment creditors completes the chain of compromised links retarding justice sector progress as well as credibility. The combined result of delays is that, often, innocent persons serve long periods in jail before trial, some spend longer periods in jail than their sentence, business transactions are stymied, and economic development is hindered.

Lack of information technology and capacity: Afghanistan's courts, prosecution service and ministry of justice are not supported by modern information technology. While computers have been

introduced in the last six years, websites developed and updated with laws, the ability of justice institutions to communicate with provinces and districts electronically is virtually unknown, in an age where cell-phones and satellite phones connect the remotest parts of the country. Asset management capacity is poor. This gives rise not only to incompetence but to rent seeking. Providing infrastructure and equipment resources requires commensurate capacity to maintain these resources. This includes the resources not only to maintain but to sustain and replace them. These skills and competencies; procurement, maintenance, planning and budgeting are currently very weak in all justice institutions. In addition, the organizational structure of the administration which manages the judicial system is of Communist era design.

Uncompetitive salaries: The low salaries paid to justice sector technical and administrative staff is the single most important reason for the lower than expected performance results in delivering justice services. Attracting the best and brightest requires improving personal compensation and benefits, personal security and job related security.

Poor education and vocational training: The state of legal educators and legal education both academic and vocational requires updating and systemization; legal research and law libraries do not possess basic reference documents and reports, and are not kept up-to-date.

Public confidence: Public confidence, the foundation that sustains any justice system, though improving¹, is still low. Survey evidence suggests that people prefer to use informal systems of justice to the formal system. This in itself is not indicative of a public aversion to using the formal justice system. In fact, in most countries more than 90% of total cases or controversies are resolved before trial. Afghanistan's *jirga* and *shura* systems can contribute, with assistance and oversight from the formal system, to resolve disputes fairly, efficiently and according to constitutional principles. Only in this way can they begin to help to add to the integrity of justice service delivery and strengthen the rule of law. Unless the public can view the administration of justice as predictable and unbiased, enforcement of the law by justice officers, including police, as respectful of the rights of every man, woman and child, judicial officers as not prone to graft, bribe-taking and rent-seeking; and justice officials as not being incompetent agents of the wealthy and powerful, the Courts in particular and other justice institutions will be unable to acquire the necessary support and patronage of the average Afghan to be able to maintain their independence in interpreting and enforcing the law.

Resource constraints: An issue common to all justice institutions is resource constraints. However, budget allocations of the SC, MOJ and AGO in the last two budget cycles have increased. The lack of absorptive capacity to utilize resources effectively is demonstrated by the difficulty these institutions, particularly the AGO², have in disbursing the money appropriated to them within the budget cycle.³

Security situation: Security constraints in certain parts of the country make service delivery difficult or impossible. In particular law enforcement in those areas are further compounded when the police must use most of their resources to maintain security. While surveys indicate that most people will report crimes to the police,⁴ the image of the police is still largely negative. Police are viewed as unnecessarily violent, prone to abusive conduct towards detainees, and prone to irregularities in conducting criminal detention and investigative processes.

¹ Asia Foundation – report crimes to Police, more court

² The construction of the AGO Headquarters in Darullaman has been hampered by delays and late disbursements. The allocation in the development budget for Fiscal year 1385 was largely unspent.

³ This issue comprises various factors. One factor is the low skills level of administration and budgeting personnel, another factor is the external assistance rendered by donors that may be duplicating line items budgeted for. A further issue involves changes in budget preparation and procurement by the Ministry of Finance. In all this contributes to the lack of absorptive capacity.

⁴ Asia Foundation

It is evident, therefore, that this strategy must aim to increase salaries, put in place administrative structures which would ensure that the independence of judicial, prosecutorial and legal officers. It is also essential to strengthen human resource development for recruitment, training, retention and development of technical and administrative staff. Finally, it is necessary to improve management and information systems, modernizing practices and procedures, constructing and refurbishing premises and acquiring appropriate transport and equipment.

V POLICY FRAMEWORK: JUSTICE SECTOR STRATEGY

Justice Sector Vision

The government's vision for justice is of an Islamic society in which an impartial and independent 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.

Justice Sector Goals

(i) Goal 1: Improved integrity, performance and infrastructure of Justice Institutions: Integrity, performance and infrastructure will be achieved; with improvements in quality of justice and preservation of the constitutional independence of judges and prosecutors as actively supported by MOJ, when human resources attracts and retains the best and the brightest to serve in the justice system to deliver quality services; organizational and administrative structures and systems are rationalized, planning and fiscal management capacity enhanced to sustain reforms, transparency mechanisms effectively prevent corruption and unethical practices, and justice infrastructure developed and expanded throughout the country provides sustained and efficient services.

(ii) Goal 2: Improved Coordination and integration within the Justice System with institutions of government and civil society: Integrating and coordinating justice reform will be achieved when government and civil society supporting the justice sector contribute to reform process and increased public confidence in the accessibility, competence and fairness of justice institutions. These include, enhancing and expanding the quality and range of academic and vocational legal education and its graduates that provide the justice system with sustainable supply of entry, mid-level and specialized professionals, improving access, in particular to women, to academic and vocational legal education, improving scholarship and research capacity, raising awareness of rights and legal policy development to inform legislation. Improving capacity to propose, analyze, draft and pass legislation efficiently and proficiently. This is sustained through improved working relationships with government, and non-government agencies. Finally, it also requires engaging all stakeholders in the development and administration of justice.

(iii) Goal 3: Improved Quality of Justice: The quality of justice is improved when the poor and underprivileged have access to and confidence in more open and understandable practices and procedures, including case-management systems to resolve their criminal and civil disputes, with reasonable predictability and efficiency. Justice institutions have the capacity to continuously monitor and assess performance and compliance of justice practices and processes with basic constitutional rights and citizen's needs.

Justice Sector Priority Policies

The justice sector strategy covers the following policies reform areas under its main three goals:

(i) Goal 1: Integrity, performance and infrastructure: Administrative reform and restructuring of justice institutions in order to redefine the structure of justice institutions, including correcting and eliminating duplication; ensure transparent and merit based professional career development of legal professionals, i.e. competitive salaries and remuneration to recruiting procedures, retaining and developing skills of the best and brightest; continuing legal and administrative education to provide each justice official the opportunity to reach their potential; Moving towards better and more systematic records systems for information based operations to increase efficiency and transparency; Enhancing administrative capacity for planning, budgeting and maintenance to sustain assets, improve institutional memory and enhance policy development capacity; Completion of assessments to eliminate institutional vulnerabilities to corruption in practices, procedures, procurements and other systems; Improve integrity through promulgation of ethics codes, enforcement through disciplinary mechanisms, and engagement of public through complaints systems; and lastly, expansion of justice services through infrastructural development, procurement of transportation assets and equipment, synchronized with the deployment of trained personnel in areas where demand through legal awareness for justice has been stimulated.

(ii) Goal 2: Coordination and integration with other government institutions and civil society: Efficient and well prepared legislation and legislative processes through enhanced capacity of drafting and parliamentary personnel; Improved and expanded distribution of legislation and legal materials to justice sector officials and to the public; Legal education that expands and improves access to academic legal education in all five faculties of law, especially to women; Updated curriculum for both *Sharia* and Law faculties; Establish and promote capacity for legal research and scholarship including Masters Program, foreign scholarships, and a legal research institute; Establish and develop existing institutional mechanisms, including the National Legal Training Centre for vocational education and vocational excellence at induction (stage), remedial (transitional), practitioner and specialized levels; Increase opportunities for external stakeholders and civil society to contribute to legal policy development in policy analysis and legislative drafting.

(iii) Goal 3: Improved Justice Practices and Processes: Holistic approach to determine causes of delays in criminal justice system and lack of representation for the accused in most cases and rectify them; Sentencing Policy developed for both custodial and non-custodial; Juvenile Justice Policy implemented; Specialization to address cross-cutting and emerging issues in criminal justice – including violence against women, transitional justice, national security, counter narcotics and corruption; Enhanced and improved case-management systems for criminal and civil cases; Enhanced and improved civil court case administration and jurisdictional structures in major litigation categories – family, land, inheritance, commercial, and obligations; Increasing nationwide access to legal information and legal representation through expanded legal aid providers and implementation of legal aid policy; an Investigating appropriate policies for improved links between formal and informal justice sectors and oversight by of the informal by the formal;

Outcomes and Expected Results

Goal 1: Integrity, performance and infrastructure

1. Streamlined and restructured organizations more capable of delivering quality justice services;
2. Information systems based operations that result in more efficient operations, with timely records keeping and adequate storage, and information-based decision-making and planning;
3. Human resource development resulting in better paid, better motivated, better trained and more productive justice professionals with probity and integrity;

4. Integrity based upon ethics, ethics training and professional standards enforcement mechanisms that produce more accountable, transparent and credible justice institutions as measured by public perceptions and justice professional surveys and assessments; and
5. Infrastructure and transportation that expands justice presence to ensure access across the country thereby extending the rule of law.

Goal 2: Coordination and integration with other government institutions and civil society

1. Capable Taqin and parliamentary professional staff who, within the life cycle of this strategy, will eliminate the backlog of pending legislation, improve efficiency and the percentage of legislation passed on-time, and improve the quality of legislative products coming out of Parliament and the Taqin
2. Undergraduate and graduate academic legal education that better prepares justice professionals for life in the legal, judicial and academic professions.
3. Public involvement in justice sector development that results in more responsive justice institutions.

Goal 3: Improved Justice Practices and Processes

1. An increasingly specialized criminal justice system that is person-oriented and well coordinated (at national and sub-national levels). The result is a Criminal justice system, by the end of this strategy, that routinely determines with reasonable efficiency and certainty the guilt or innocence of accused persons, while protecting victims and witnesses (including victims and relatives of victims of past or historic abuses), as well as criminal justice professionals (particularly judges and prosecutors). In addition, it improves treatment of prisoners through a comprehensive sentencing policy.
2. Civil justice system that is more people centered with improved user friendly court case management systems.
3. Access to justice that results in measurably greater demand by identified poor and disadvantaged groups for formal justice services, and improved perception by these target groups of ease of access to free or affordable legal services and to the justice institutions.

Integration of the PDPs

The National Justice Program (NJP) has integrated the Provincial Development Plan (PDP) priorities at the programmatic level of the Justice Sector. Seventeen out of the thirty-four PDPs cited security as the main obstacle to development and stability, and cited it as the priority sector in their provinces. As a result, many of the projects requested during the Sub-National Consultation process (during which the PDPs were developed in consultation with stakeholders at the community, district and provincial levels) indicate the need for justice sector infrastructure (such as the building of prisons and police/guard check points) and a law enforcement presence at the district level.

VI INTEGRATION OF THE CROSS CUTTING ISSUES

Capacity Building: A significant component of the Justice Sector Strategy is building up the capacity of technical and professional legal staff throughout the country. As noted above in section 5.ii, one of the sector's main goals is to focus on vocational training and enhance and expand the quality and range of academic and vocational legal education.

Anti-Corruption: The SC, MOJ and AGO will collaborate and coordinate in effective anti-corruption investigative and prosecution measures across all sectors, including specialized anti-corruption agencies, police, prosecutors, courts, and a unit at the Ministry of Finance. This also requires a review of existing operating models and the development of a single law enforcement approach, and single investigative approach⁵, to execute the government's anti-corruption strategy. The justice institutions individually or in collaboration with partners will:

- Complete, in consultation with the Parliament and with the assistance of UNODC, the MOJ Taqin will by 2008 (1387), the prioritization of all relevant domestic Afghan laws that need to be harmonized with international anti-corruption standards, including the UN Convention Against Corruption (UNCAC). This prioritization shall state the expected dates by which each identified law will be harmonized;
- 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 a select number of prosecutors gain international exposure to anti-corruption best practices in other countries;
- Provide through NLTC auspices, bilateral technical assistance training programs and "in-house" on-the-job training, in S.C. for judges, MOJ and AGO, specialized training in anti-corruption detection, investigation, prosecution and adjudication. For example, the AGO has recently initiated instruction by international experts on anti-corruption within its Stage Prosecutor's Training Course;

In detection and investigation, the police and AGO will develop practices and procedures to collaborate with the Financial Intelligence Unit of Da Afghanistan Bank and the NDS economic crimes unit to combat money laundering and terrorism financing. This is essential if significant progress is to be made in combating drugs, terrorism, and corruption.

Gender: Through the National Action Plan for Women, the Government is committed to eliminating violence against women. The three justice institutions have a role in this strategy and have adopted a five-level approach as follows:

- Requiring 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
- Re-orienting prosecution strategy toward investigating the underlying causes behind such charges as "home escape;"
- Pro-active prosecution of violence against women with the interests of the victim and vulnerable family members as the principle focus of prosecution strategy;

⁵ This will require harmonizing the 2003 (1382) GIACC decree with the 2004 (1383) Constitution's Article 134 that mandates the AGO have exclusive jurisdiction for corruption investigations.

- Reviewing laws and practices to ascertain any that are discriminatory to women, and to make remedial recommendations as to legislative and practice reforms;
- Developing the necessary criminal infrastructure and referral mechanisms to ensure safety and security of victims of violence against women as well as all other vulnerable witnesses and victims.

To achieve these aims, the SC, MOJ and AGO each require relevant capacity building and development in handling domestic violence cases, including extensive training in interviewing victims and family witnesses, and providing support to victims of domestic violence during all phases of the justice process. This will require referrals to shelters, transportation, medical, psychological and social services, and security inside the court facilities, and in their communities.

Counter-Narcotics: Despite significant progress in improving law enforcement interdiction and prosecution of drug traffickers, the CJTF lacks an effective presence in key geographic areas. Thus, it requires further development of a long-term plan for geographic expansion of CJTF. This plan will include three levels of intervention: addressing sentencing and treatment options, in consultation with the Ministry of Public Health, for drug users and addicts; linking the government's anti-corruption strategy by increasing investigation and prosecution of public officials associated with the drug trade; and improving cross-border cooperation in combating trafficking and narcotics money laundering.

Regional Cooperation in Criminal Matters: The justice institutions will increase their capacity to participate in cross-border and international investigations and prosecutions to enhance anti-corruption, counter narcotics and trafficking in human beings. This may include establishing divisions devoted to international assistance and cooperation. The AGO has already approved such a division but is awaiting funding and international donor support through direct and expert assistance.

END