

Overview



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Bridging Modernity and Tradition: The Rule of Law and the Search for Justice

Human development refers to the freedom of people to exercise real choices and enhance their capabilities to live healthy, long, and meaningful lives. For Afghans, human development means government institutions and a society that educates its young, offers medical services to all, facilitates sustainable livelihoods, and ensures peace in a manner consistent with Islam. Achieving this requires a profound commitment by the Government of Afghanistan and its citizens to social justice based upon the rule of law and democratic empowerment of all Afghans.

The *2007 Afghanistan Human Development Report: Bridging Modernity and Tradition - the Rule of Law and the Search for Justice* builds on the *2004 Afghanistan Human Development Report*. The human development conceptual framework and associated indicators were applied to better understand how justice and the rule of law can be strengthened to advance human development in Afghanistan. In addition to providing conceptual and other analytical tools for measuring and comprehending the linkages between human development and the rule of law, this Report presents bold policy alternatives to strengthen the rule of law in Afghanistan, including through formal and informal systems of justice.

Before delving into these pivotal issues, the broader human development agenda is introduced, and progress made towards meeting the country's Millennium Development Goals (MDGs) is presented. Despite decades of war and suffering, Afghanistan continues to make progress in achieving its development goals. The GDP per capita (in purchasing power parity terms) has increased from US\$683 in 2002 to US\$964 in

2005. An additional 132,000 square kilometers of land was cleared of landmines in 2006 (1385). The number of telephone users has shot up to 2.5 million (or 10% of the population). School enrollment has grown in the past five years from approximately 900,000 to nearly 5.4 million, and the prevalence of malaria and tuberculosis has dropped dramatically.

The human development index (HDI) for Afghanistan has a value of 0.345. It remains far behind neighboring countries with a rank of 174 out of 178 countries on the global HDI (a composite indicator that measures education, longevity, and economic performance). A number of factors contribute to the low HDI value for Afghanistan: 6.6 million Afghans do not meet their minimum food requirements. Gender discrimination remains widespread. To compound these negative trends, 2006 witnessed a significant rise in terrorist attacks and a 59% spike in the area under poppy cultivation, making the country a world leader in the production of illegal opium (90% of global production).

A first line of defense to many social ills in any democracy, but particularly in war-ravaged societies, is a country's judicial system. Institutions such as the courts, police, and the legislature play a critical role in protecting citizens' rights. In Afghanistan, rebuilding the justice sector in a manner that bridges modern with traditional justice institutions holds the key to a successful political transition. This is a central theme of the *2007 Afghanistan Human Development Report*.

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delivery of justice in war-affected Afghanistan. This report presents the case for "a hybrid model of Afghan justice" that articulates, in detail, a collaborative relationship between formal and informal institutions of justice. According to this model, traditional justice institutions will cooperate with and work alongside the state justice institutions. Such an arrangement will harness the positive aspects of non-state dispute settlement institutions while ensuring that their decisions are compatible with the Afghan Constitution, Afghan laws, and international human rights standards. Utilizing such an approach to transform Afghanistan's justice system may offer Afghans a more efficient, effective, and fair outlet to resolve disputes peacefully.

Although Afghans have made tremendous advances in human development since 2002, the country is not progressing fast enough in many sectors to achieve the Afghanistan Millennium Development Goals by 2020, with dire consequences for the poor and most vulnerable.

Afghanistan's development challenges demand immediate attention, especially given the connected formidable security concerns that remain prominent throughout the country. The Report evaluates progress and challenges towards achieving Afghanistan's nine Millennium Development Goals. The Afghan MDGs commit the Government and international community to work together to meet twenty-five concrete, time-bound development targets by 2020. These targets are measured against specific baseline indicators (see **chapter one**).

The two major vehicles for championing and monitoring the Afghan MDGs are the Afghanistan Compact and Interim Afghanistan National Development Strategy (I-ANDS), which were both presented to the January 2006 London Conference. The Compact is a political agreement between the Government and the international community to work together to achieve

specific five year benchmarks of progress across the three pillars of the I-ANDS: 1) security, 2) governance, rule of law and human rights, and 3) economic and social development. The Afghanistan National Development Strategy (ANDS), scheduled to be finalized by mid-2008, will be a comprehensive national action plan to promote progress towards achieving the Afghan MDGs and all dimensions of human development. Three distinguishing features of the ANDS are the highly consultative process being utilized for its preparation—including consultations in all 34 provinces, a detailed costing, and a robust monitoring framework to track development outcomes.

Although still attainable, the nine Afghan Millennium Development Goals require accelerated action to ensure their successful and timely completion over the next thirteen years. The economy has maintained a steady growth rate since 2002, setting the stage for the achievement of goal one (*Eradicate Extreme Poverty and Hunger*) by 2020. The increase in school enrollment rates, particularly for girls, indicates that Afghanistan can reach its targets for goal two (*Achieve Universal Primary Education*). The country continues to face daunting challenges that must be tackled through the Government's new National Education Strategy.

Despite tremendous strides, Afghanistan still has an enormous gender gap to bridge to meet goal three (*Promote Gender Equality and Empower Women*). Only 12.6% of female adults are literate, their economic opportunities are limited, and they remain victims of discrimination and violence. Yet women constitute 25% of the National Assembly, exemplifying a growing window of opportunity for women in Afghanistan. Significant progress is underway toward meeting goal four (*Reduce Child Mortality*). The infant mortality rate has fallen from 165/1,000 to 135/1,000, resulting in 40,000 more successful births each year. Low literacy and a lack of access to safe drinking water, food, and sanitation contribute to the

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still relatively high child mortality rate. With the maternal mortality ratio estimated at 1600 deaths per 100,000 live births, Afghanistan maintains one of the highest maternal mortality rates in the world. To achieve Afghanistan Millennium Development Goal five (*Improve Maternal Health*) female access to maternal health care and education must be improved and cultural barriers overcome.

Though Afghanistan maintains a low prevalence of HIV/AIDS, it is at high risk of an epidemic spread of the virus. It also ranks 17th out of the 22 countries with the highest tuberculosis levels. Although the incidence of malaria and tuberculosis have dropped, to meet the goal six targets (*Combat HIV/AIDS, Malaria, Tuberculosis, and other Diseases*), increased technical and financial assistance are required to implement the Government's strategic plans in response to these critical health issues.

The soil, water, and the forests—the basis of livelihood for most Afghans—have been degraded severely due to excessive demands from agriculture and household energy use. From 2000-2005 alone, forest cover has dropped from 10,150 to 8,670 square kilometers. To reverse this trend and achieve goal seven (*Ensure Environmental Sustainability*), a comprehensive Environment Law was ratified recently. To emerge from prolonged violent conflict and to realize goal eight (*Global Partnership for Development*), Afghanistan also needs regional and international partnerships to connect to global markets. To attain this target, more efforts are needed to reduce the large gap between donor pledges, amounts disbursed, and the time that elapses between disbursements and actual implementation. In accordance with the 2005 Paris Principles on Aid Effectiveness, the amount of aid disbursed outside of the Government's core budget should also lessen steadily as national capacity grows.

Goal nine (*Enhancing Security*) is unique to Afghanistan. It addresses what many Afghans view as their greatest problem.

Particularly in the South and South-Eastern regions, the armed opposition is a major threat that undermines all facets of human development. Substantial progress has been made toward reforming and professionalizing the Afghan National Army and Afghan National Police. Yet concerns still abound regarding the quality of these security forces. The MDGs represent a positive vision for Afghanistan in the 21st century. Although announced only in 2005, increased investments in human development and corrective policy actions must be undertaken immediately if Afghans are to succeed in reaching these ambitious targets.

The movements for rule of law and for human development have had distinct traditions and approaches. When stronger linkages are forged, these mutually reinforcing concepts can unleash human freedoms and peace across Afghanistan.

A rich, multi-faceted concept that forms an integral part of democratic governance, the rule of law is defined by legal philosophers, sociologists of law, development specialists, and policy makers in different ways (see **chapter two**). Those adopting a formal approach to the rule of law emphasize transparent and consistent processes and procedures rather than final outcomes. Others see the rule of law as an ideal that ensures that 1) citizens are protected against arbitrary state power; 2) they are subject to clearly written laws (rather than the rule of one man) adjudicated by an independent judiciary; and 3) laws are enforced equally among all individuals and societal groups, including the state.

To re-establish effective rule of law and build sustainable peace in a conflict-affected society, four major dimensions of justice need to be embraced: legal, transitional, distributive, and restorative justice. Legal justice refers to the formal, state rule of law institutions designed to maintain law and order and deliver justice. Transitional justice

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typically refers to the short-term and often temporary judicial and non-judicial mechanisms and processes that address gross human rights violations, war crimes, and crimes against humanity committed in armed conflict. Distributive justice seeks to address the underlying causes of conflict, which often lie in real or perceived forms of socio-economic, political, or cultural injustice. And restorative justice involves a community based model of justice that places a strong emphasis on the restoration of dignity, peace, and relationships between offenders and victims. These forms of justice are highly interconnected within the Afghan context.

For Afghans, the rule of law refers to *all those state and non-state institutions that promote justice and human development through the application of public rules that are deemed fair, applied independently, enforced equally, and consistent with human rights principles*. This definition of rule of law in Afghanistan consists of four major dimensions: 1) independence of rule of law institutions, 2) public and fair laws, 3) equal enforcement, and 4) consistency with human rights principles. The main formal justice and law enforcement institutions in Afghanistan include the judiciary, Attorney General's Office, the Ministry of Justice, the Police, and the National Assembly. Informal and non-state institutions of dispute resolution are also prominent and include *jirgas/shuras* (local traditional/tribal councils), Community Development Councils (CDC), other civil society groups, and individuals that provide mediation and arbitration services. Educational and watchdog organizations, such as the Afghanistan Independent Human Rights Commission (AIHRC) and those within the media and civil society, also play a vital role in promoting the rule of law. Most of these institutions are active in providing alternative dispute resolution (ADR) services in Afghanistan.

The Afghanistan formal legal system, enshrined in the Constitution, is based

mainly on *sharia* (Islamic law) and positive law traditions. In remote, rural parts of the country, where the far majority of Afghans still reside, *orf* (customary laws) serves as the framework for the delivery of justice by *jirgas/shuras*. To improve the rule of law and access to justice in Afghanistan, a central challenge is how best to reconcile the inherent tensions between the formal and informal justice systems, while nurturing the respective strengths of these sometimes competing and conflicting approaches to the rule of law.

The *Afghanistan Human Development Report 2007* is the first report of its kind to define the distinct traditions, yet firm linkages between the rule of law and human development. The strengthening or establishment of well-functioning justice institutions does not automatically lead to human development. Strengthening the rule of law can, nonetheless, serve as an important means to advance the freedom of people to exercise choices and enhance their capacity to live meaningful and healthy lives. From a human development perspective, an examination of the efficacy of the rule of law should extend beyond an assessment of the content and form of laws and how they are applied in practice. Rather, the legal and justice systems should be evaluated to determine whether and how they enhance people's capabilities—and their freedoms—to exercise the rights and entitlements associated with legal progress. When the level of human development increases, efforts of key state and non-state rule of law institutions to promote justice are reinforced and enhanced.

Multiple problems threaten the expansion of the rule of law in Afghanistan. A holistic response to the inter-related challenges to strengthen the rule of law is required for justice and law enforcement institutions to promote human development for all Afghans.

Key challenges to the rule of law, such as

1) personal insecurity, 2) past human rights violations, 3) injustice towards women and children, 4) the growing narcotics trade, 5) institutionalized corruption, and 6) land disputes, threaten both Afghan livelihoods and regional stability (see **chapter three**). Personal security is a prerequisite to the rule of law which, in turn, creates an environment conducive to human development. In 2006 alone, more than 4,400 Afghans, including 1000 civilians, have died in anti-government related violence. The number of deaths is twice as many as in 2005 and more than any year since the *Taliban* regime was toppled in 2001. Vested criminal interests exploit the high levels of personal insecurity to acquire more resources and power. They also preclude the Afghan judiciary from operating independently, free of intimidation, and in accordance with the Constitution and international human rights standards.

Despite documented evidence of war crimes, crimes against humanity, and other rights violations committed over the past 30 years, a climate of impunity still prevails in Afghanistan. In response to popular demands for justice, an "Action Plan on Peace, Justice and Reconciliation" was adopted by the Government in December 2005. It recommends undertaking initiatives aimed at realizing peace and national reconciliation, restoring co-existence among and between former combatants and affected civilians, healing the wounds and pains of victims of past injustice, and reintegrating all citizens back into society. Political resistance within the Government and other state institutions to address past human rights violations and war crimes persists.

Injustices towards Afghan women and children, which are reflected in the Report's human development indicators, represent another major challenge to ensuring the rule of law for all. Afghan women and children lack sufficient healthcare, education, and livelihood opportunities. New Constitutional provisions and the expanded reach of

primary and secondary education present two examples of major steps to reverse past trends. The full development of Afghan society is impossible when half of the productive population is denied many of their rights, including the right to judicial recourse. Women in Afghanistan constitute an estimated 48.8% of the population. Enforcing Constitutional provisions and laws that guarantee equal rights for women provide double dividends; they directly benefit women and the children they raise, who together make-up a majority of Afghan citizens. Conversely, domestic violence and discrimination against women is often shown to lead to the mistreatment of their children through practices such as child marriage.

Another major challenge to the expansion of the rule of law in Afghanistan is the ever-expanding narcotics trade. Opium production was estimated at approximately 6,100 tons in 2006, representing an increase of about 49% from 2005. Opium in Afghanistan is worth around US\$ 3.1 billion or almost 50% of Afghanistan's legal GDP. The Afghan economy is far more dependent on the production, refinement, and export of narcotics than any other in the world, with per capita income from narcotics exceeding official development assistance. Anti-government elements are likely reaping financial benefits from opium, with threatening implications for security throughout the country and the region.

Pervasive corruption in Afghanistan is a symptom of poor governance and severely undermines the rule of law. If unchecked, it can erode the legitimacy of both the Government and international assistance. Abuse of political and military power, the misuse of public funds, the non-transparent privatization of state owned enterprises, kickbacks from the sale of narcotics, and other criminal activities are all major concerns of Afghans. Such acts fuel feelings of injustice and distrust towards the Government and internationally supported reconstruction efforts. In terms of the rule of

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law, regulatory quality, and control of corruption, Afghanistan ranks among the bottom one-eighth of countries with serious governance problems. Public perception surveys further indicate that Afghans perceive the courts as among the most corrupt institutions in Afghanistan. Although the Government has committed itself to a number of time-bound benchmarks under the Afghanistan Compact, it must develop and implement a comprehensive anti-corruption strategy to begin making noticeable progress within this sphere.

Land entitlement and secure property rights also remain key roadblocks towards the establishment of the rule of law in Afghanistan. Current high population growth, coupled with the return of refugees, has diminished the availability of usable land—the main source of livelihoods for Afghans. At the same time, the country's complicated and confusing land registry exacerbates the potential for land disputes, which lead regularly to violence between communities. A comprehensive land use policy, based on the principles of good land stewardship and environmental sustainability, is urgently needed. Besides the development of a new legal regime to regulate land use, new formal and informal mechanisms for resolution of land disputes merit consideration.

The judiciary, police, and legislature are failing in their mission to meet the changing needs of Afghan citizens. Under-resourced with a limited reach, the formal state institutions of justice require a renewed and more coherent strengthening and restructuring effort.

The judiciary is central to the provision of justice in Afghanistan. It consists of the *Stara Mahkama* (Supreme Court), *Mahakem-e-Estinaf* (Court of Appeal), and *Mahkam-e-Ibtadaia* (Primary Courts). Specialized courts were created to administer particular offences, including those concerning

national security, property issues, and narcotics. With 1107 judges, Afghanistan's estimated ratio of citizens per judge is 19,962 (see **chapter four**).

The judiciary suffers from manifold deficiencies. Most judges cannot access legal text books, procedures and practices, written decisions of the Supreme Court, or receive professional support from experienced mentors. Despite some rehabilitation and construction of courts, the physical infrastructure of most is hardly conducive to holding a trial. Stage training and a university degree in law or *sharia* are pre-requisites for judicial appointment. Yet, according to one recent survey, only a little more than one-half of 157 randomly selected judges hold university degrees in law or *sharia*, and only approximately 60% of the Afghan judges interviewed completed stage training prior to their appointment. The lack of citizens with the proper educational and training background has led to severe impediments for merit based appointments of judges and judiciary personnel. Yet, new appointments within the Supreme Court, who are deemed to be honest and have high professional standards, lend new hope to progress within the judiciary.

Afghan judges suffer from a lack of economic and physical security. Independence and neutrality in judicial decision making are affected adversely because judges receive low salaries and do not necessarily have secure places to live and work. Allegations of corruption within the formal justice system have tarnished its legitimacy and made the informal justice sector more appealing in the eyes of many citizens. There is a back-log of 6,000 cases awaiting adjudication. These trends indicate that the Afghan judiciary is not well-prepared to deliver justice.

Similar problems exist within the Ministry of Justice, the Attorney General's Office, the central prisons system, and within the Police. They lack adequate human resources and physical infrastructure. Inmates are often treated inhumanely

in Afghanistan's prisons. Equally troublesome is the failure of the various justice institutions to cooperate and work together as components of an integrated justice system, so essential to the effective delivery of justice.

The Bonn Agreement contained provisions mandating the establishment of an Afghan Judicial Reform Commission (JRC) to review the structure and functions of the justice system, facilitate law reform, strengthen technical, logistical and human resources, expand legal aid, and promote access to justice more generally. As an interim body, the role of the JRC was limited to proposing reform strategies and facilitating international assistance for the Afghan rule of law institutions. Its success was tied closely to the cooperation of Afghanistan's key rule of law institutions—the Supreme Court, the Ministry of Justice and the Attorney General's Office—in implementing its proposed reforms. The poor coordination between these institutions, coupled with limited managerial experience to drive reforms, limited the success of the JRC and its associated Justice Sector Consultative Group. One notable exception was the approval by the Cabinet, in October 2005, of the comprehensive framework for justice sector reform known as "Justice for All: A Ten Year Strategy for Justice Reform in Afghanistan."

The establishment of the National Assembly marked a significant step forward in Afghanistan's democratic development. Yet, the National Assembly is also held back in its law-making, representative, and oversight functions due to several operational constraints. Professional vetting of draft laws is required by the Ministry of Justice's *Taqnin* department to ensure consistency with the Constitution, *sharia*, and international agreements to which Afghanistan is a party. With its current staff constraints, the *Taqnin* is only able to draft and process about 40 legal documents per year. Delays in drafting laws within the *Taqnin* further inhibit the timely passage of

laws by the National Assembly. Since its formation in December 2005, the National Assembly has faced a backlog of 433 Presidential decrees and pieces of legislation. On the other hand, during its first year, the *Wolesi Jirga* (lower house) and *Meshrano Jirga* (upper house) of the National Assembly successfully established their rules of procedure and committee structures, reviewed legislation introduced by the executive branch, and vetted the approval of all members of the Cabinet of Ministers and the nine judges on the Supreme Court.

Afghans have relied on traditional institutions of dispute settlement, such as *jirgas* and *shuras*, for hundreds of years to apply customary laws. In combination with other actors, such as the Afghanistan Independent Human Rights Commission, civil society organizations, and the media, informal institutions of dispute settlement can complement formal state institutions to enable more Afghans to access affordable justice that is viewed as legitimate and can progressively do more to meet national and international legal and human rights standards.

Traditional and modern civil society institutions continue to play an important role in local dispute settlement in Afghanistan (see chapter five). Traditional decision-making assemblies are estimated to account for more than 80% of cases settled throughout Afghanistan. The particular form and composition of a *jirga/shura* are determined by the dispute at hand, but typically a body of esteemed *marakachian/rishsafidan* (elders and leaders) typically weigh customary laws and institutionalized rituals to reach a settlement that is socially and morally binding on the parties involved. A variety of other local collective decision-making bodies perform community governance and resource management tasks in different parts of the country, while the National Solidarity Program (NSP) has introduced elected Community Development Councils

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(CDCs) based on these forms in much of Afghanistan.

Dispute resolution *jirgas/shuras* address issues ranging from minor bodily harm and agricultural land boundaries to serious and sometimes violent conflicts concerning communal lands and murder. They employ various dispute settlement mechanisms, including 1) *solh* or peacemaking and reconciliation between disputants, 2) *ratal* or a collective communal boycott of a wrongdoer, 3) compensation for the victim, and 4) *baad* or the marriage of a woman from the side of the accused to the victim's close relative. Three-quarters of the respondents to a national survey commissioned for this Report based on a random sample of more than 2000 people spread over 32 of the 34 provinces said that *solh* was always or sometimes the final outcome of a *jirga/shura*. Half of the respondents said that compensation for the victim was always or sometimes the final result. The overwhelming majority of the respondents reported that *ratal* and *baad* were only sometimes or never the final outcome, and that the burning of an offender's house was even less frequent. Unlike the state justice system, which creates losers and winners, *jirgas/shuras* reach community-led decisions that promote restorative justice, helping to restore peace and dignity between the victims, offenders, and other key stakeholders. They also aim to reintegrate the offender back into the community after holding him or her responsible for a wrongdoing. As a kind of Alternative Dispute Resolution (ADR) mechanism, such practices can also reduce strain on a capacity-deficient formal justice system.

There are many aspects of *jirgas/shuras* that suggest their utility relative to formal justice institutions. *Jirgas/shuras* are shown to be more accessible, more efficient (in terms of time and money), perceived as less corrupt, and more trusted by Afghans compared to formal state courts. These findings have important implications for the enforcement of their decisions: an individ-

ual's trust in and sense of fairness towards a justice institution enables him or her to accept its legitimacy and moral validity. This is an important reason why the decisions of *jirgas/shuras* are often accepted more easily as binding (socially and morally) compared to decisions made by the state courts. Rarely do decisions need to be enforced through the use of force.

On the other hand, women are almost totally excluded from participating in the decision-making of *jirgas/shuras*, resulting in serious consequences for their status and the protection of their rights. Male elders (*rishsafidan/marakachian*) tend to dominate gatherings of these bodies. Another serious concern is that while exceptional, some settlements made by *jirgas/shuras* include *baad* and other practices that violate Afghan state laws, *sharia*, and fundamental human rights. Contrary to public perception, however, regional commanders and local militia do not often dominate decision-making within *jirgas/shuras*.

Given corruption and weak capacities across Government, and in the state court system, Afghans also depend on independent accountability mechanisms to monitor and investigate government actions and affairs. These include non-state actors, such as civil society, media, and human rights groups. There are an estimated 2,500 national civil society (non-governmental) organizations in Afghanistan. Among these, the expanded outreach of new legal aid providers over the past two years is a particularly welcome development. Nevertheless, civil society in Afghanistan has yet to be firmly established, despite high expectations for it to contribute to accountability. The elected Community Development Councils (CDCs) cover 16,502 of Afghanistan's estimated 24,000 villages, and they have the potential to play a central role in promoting justice locally.

A free and vigorous media is an essential element of a well-functioning democratic system. There are currently more than 400 newspapers and magazines, 50 privately

owned radio stations, six television stations, and five news agencies within Afghanistan. The media within Afghanistan serves as a powerful education and advocacy tool for preventing individuals and institutions from standing above the law. Yet conditions for journalists have deteriorated in large parts of the country over the past two years, undermining the potential for the media to play such a role. Deteriorating levels of personal security, threats from warlords and conservative religious leaders, and signs of Government censorship all inhibit the ability of the media to promote the rule of law and uphold democracy.

A key, but as yet underdeveloped, independent accountability mechanism is the Afghanistan Independent Human Rights Commission (AIHRC), an independent agency of the state, identified in the Bonn Agreement and the Constitution. As the country's primary institution for carrying out judicial monitoring activities, the AIHRC's Monitoring and Investigation Unit made 1137 monitoring visits to prisons and detention centers in all 34 provinces between 2005 and 2006. The AIHRC is already mandated to monitor the performance of administrative, legal, and judicial systems. Given the AIHRC's progressive success, the extension of its monitoring and human rights training activities to include the local dispute resolution activities of *jirgas/shuras* merit serious consideration. Such activities could contribute to ameliorating the negative justice characteristics of *jirgas/shuras* while recognizing these institutions' roles in local justice throughout the country. This would require at least one human rights officer for every province.

The Afghanistan National Development Strategy (ANDS) offers unprecedented opportunities for Afghan citizens to make their voices heard to policy-makers. In developing the ANDS, special attention should be afforded to deliberating upon and adopting a hybrid model of justice that realistically combines the features of all

relevant systems-old and new, Islamic and positivist-for the promotion of the rule of law and human development.

The full Afghanistan National Development Strategy will provide the roadmap to attain the Afghanistan Compact benchmarks and will meet the requirements of a Poverty Reduction Strategy Paper (PRSP). The full ANDS will be finalized in mid-2008, following a series of extensive sub-national consultations in all 34 provinces. (see **chapter six**). With more than 48 benchmarks, the Afghanistan Compact identify priority national reforms in eight sectors: 1) security; 2) good governance and the rule of law; 3) infrastructure and natural resources; 4) education, culture, media and sport; 5) health and nutrition; 6) agriculture and rural development; 7) social protection; and 8) enabling private sector development. Both are also designed to address five cross-cutting issues: 1) gender equity; 2) counter-narcotics; 3) regional cooperation; 4) environment; and 5) anti-corruption.

The first line of the I-ANDS refers to the ancient concept of the *Daira-yi-adalat* or "Circle of Justice", implying that the rule of law weaves through every fibre of the strategy and will, ultimately, permeate throughout the Afghan state and society. The I-ANDS acknowledges that good governance, justice, and the rule of law are preconditions for development and lay the foundation for legitimate government, the protection of citizens' rights, and a competitive market economy. The strategy also commits the Afghan Government to making state-sponsored justice available to all Afghans; a functioning justice system is described as an essential component for confronting the country's violent past and for building a secure and prosperous future.

The challenge for the full ANDS will be to synthesize the strategies of the various justice institutions into one sector strategy. This process will include determining how strategies for the Ministry of Justice, the Attorney General's Office, and the Supreme

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Court intersect and compliment each other. This task is compounded by the many areas of potential overlap and confusion, as well as the need to integrate cross-cutting issues such as gender, anti-corruption, and counter-narcotics.

Based on analysis presented in chapters three, four, and five of this Report, modifications are proposed to the four rule of law benchmarks within the I-ANDS. Specifically, timelines require revision (with medium-term milestones to be achieved well before *Jaddi 1389/end-2010*), indicators are needed for new benchmark components, and, most importantly, Afghan institutions and donor partners critical to the achievement of the benchmarks should be identified to ensure accountability. For example, the second rule of law benchmark calls for "fully operational" institutions of justice in each province without providing concrete criteria for such a classification. Similarly, benchmark component indicators would help to measure progress toward building the professionalism, credibility, and integrity of justice institutions mentioned in the third rule of law benchmark: "by end-2010 reforms will strengthen the professional credibility and integrity of key institutions of the justice system." These suggested changes are intended to help shape a more coherent and effective strategy for the justice sector.

Access to justice and the rule of law is critically limited for Afghans under the age of 18, which represents over 50% of the population. Cases against Afghans in this age group must be considered in accordance with applicable laws and international standards. Beyond separate prison facilities for juveniles, targeted investments should be made towards protecting, rehabilitating and reintegrating young offenders back into the care of their families and communities, where they maintain the highest chance of becoming productive, law-abiding citizens. The Report, therefore, introduces a new benchmark that reads:

By Jaddi 1387 (end-2008), a fully costed

restorative justice based strategy for juvenile offenders will be prepared that specifies the responsibilities of all relevant state and non-state institutions.

As recognized in the Government's 2005 "Justice for All" strategy, Afghanistan's justice institutions should be inclusive and engage constructively non-state informal institutions, such as *jirgas* and *shuras*. Despite the significant influence of *jirgas* and *shuras* within local communities relative to state courts and their potential for buttressing the legitimacy of newly democratic institutions, the I-ANDS does not adequately address the need to develop a more pluralistic justice system that includes non-state ADR mechanisms. The hybrid model proposed in this Report recommends the creation of cost-effective ADR and Human Rights Units alongside the state justice system. ADR Units would be responsible for selecting appropriate mechanisms to settle disputes outside the courtroom. This would include *jirgas/shuras*, Community Development Councils, and other civil society organizations. ADR mechanisms would handle minor criminal incidents and civil cases, while giving people a choice to have their cases heard at the nearest state court. All serious criminal cases would fall exclusively within the jurisdiction of the formal justice system. When ADR decisions are not satisfactory to the disputants, they can be taken back to the formal, state justice system.

The Human Rights Unit would be staffed by officials from the AIHRC, or by specially trained law graduates. It would be mandated to monitor decisions made by ADR bodies to ensure their consistency with human rights principles. The Human Rights Unit would also carry out educational and training activities and would maintain investigative powers to examine past human rights abuses, domestic violence, and war crimes.

In support of this reform initiative, a further ANDS rule of law benchmark is proposed:

By mid-2008, a pilot project will be initiated in at least five provinces to test the applicability of the Hybrid Model of Afghan Justice. By mid-2009, a comprehensive review of lessons learned will be conducted. By 2010, based on the conclusions reached from the review, a national rollout of the model could be undertaken.

This proposed collaborative interplay between the state justice system, ADR mechanisms, and the Human Rights Units would make justice more widely accessible, efficient, cost-effective, and humane. It would also provide an important channel of communication between the state and ordinary Afghan citizens, reinforcing the new political order initiated in December 2001. In an effort to carefully test the viability of this new model, it is recommended that it first be piloted—with active international support—in a few select Afghan provinces. The cost of the pilot study for ten districts in five provinces is estimated at US\$ 515,000 for a year. A national rollout would cost approximately US\$ 40,000,000 over a period of five years.

The *Afghanistan Human Development Report 2007* shows that (re) establishing the rule of law in Afghanistan is a daunting task. Central to this massive initiative is the rebuilding and reform of the state justice system—a long-term endeavor that faces a multitude of complex obstacles. These include the lack of professional capacity and resources, inadequate physical infrastructure, institutionalized corruption and nepotism, lack of security, and the lack of a single, coherent long-term vision for building the justice system.

Many of these shortcomings in the search for justice and human development in Afghanistan can be overcome by bridging modern and traditional justice institutions. Engaging traditional rule of law institutions should not be viewed as a panacea to resolve immediately the multitude of complex problems discussed in this Report. It should be viewed as an appropriate and integral component of the over-arching strategy to transition, in a slow yet determined fashion, toward an effective, modern system of Afghan justice. In the true spirit of human development, the reform agenda presented places a premium on empowering Afghans pragmatically to chart their own destiny. Only when Afghans secure their rights and uphold their responsibilities will justice prevail and the country and region be able to build the foundations for a durable peace.

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