



CONCEPT NOTE

Criminal Justice Sector in Afghanistan

Time Frame: June 2010 – July 2012

Background

Afghanistan's formal justice system continues to suffer from severe and systemic problems, despite the many and significant improvements that have been made in the last years. More than thirty years of conflict and civil wars largely obliterated the country's justice system. UNODC's Criminal Justice Reform Programme (CJRP) was launched in 2002 as the first, immediate response to the needs of Afghanistan's formal justice system which lacked the most basic material (i.e. complete sets of national legislation), qualified legal and judicial personnel as well as infrastructure. Re-establishing the rule of law, addressing impunity, and developing a professional judicial culture is an essential pre-requisite for peace and stability, particular attention was given to the recent history of Afghanistan, its traditions, culture, and social mores, along with the other elements which are peculiar of any country in transition.

The situation has somewhat improved in recent years with an emphasis on infrastructure, but the conflict did not only negatively affect the physical backbone of the judicial system, it also adversely impacted on the rule of law culture. Especially but not exclusively within the provinces. The virtual non-existence of judicial training facilities, limited numbers of (competent) judicial personnel in service, lack of communication and coordination among institutions, rampant corruption, and the influence that money derived from narcotics and warlords are able to exert on the country's structures, compounded together to create a situation which can only be remedied by working on both facilities and people at the same time.



UNODC now adopts a comprehensive "software and hardware" approach, where provision of infrastructures goes hand in hand with revision and development of laws crucial to the strengthening of the Afghan criminal justice system. A particular focus is given on our mandated areas such as countering narcotics, terrorism, trafficking in human beings, and legal aid/access to justice and juvenile justice, together with capacity building in the form of training. Provincial outreach is an important element in this new approach, by constructing Justice Support Centres (JSCs) for selected provinces, and conducting capacity building for legal professionals and legal staff.

Proposed Areas of Intervention

- **Support to the legislative reform process:** As part of UNODC's mandate to implement the UN Convention Against Corruption (UNCAC), the Transnational Organized Crime Convention (TOCC)

and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, we provide support to national institutions as Lead drafter/revision proposer and co-chair of the Criminal Law Committee of the Law Reform Working Group (CLRWG), **a permanent consultative process involving Afghan institutions and major experts within the international community.**

UNODC supports law reform efforts aimed at harmonizing national law with the UNCAC and implementation of these reforms through the CLRWG. UNODC also provides training and mentoring on newly adopted laws. Some specific areas of UNODC support in upcoming UNCAC-related law reform will include: (a) adoption of a revised version of the Criminal Procedure Code which includes modern investigation techniques and asset freezing as specified in the UNCAC; (b) revision of the Penal Code to fully incorporate corruption-related offenses specified by the UNCAC; (c) advocacy for adoption of proposed revisions to the pending Law on Extradition and Mutual Legal Assistance to align with the UNCAC; (d) support for anticipated revision of the law that created the High Office (Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy); (e) drafting of a proposed revision to the Law of Courts to create a specialized anti-corruption court; and (f) training of justice actors, following adoption of UNCAC-related legislative reforms, on the relevant changes and how legal and police practices should change as a result.

- ***Strengthen the capacity of Afghanistan to fight terrorism:*** Afghanistan faces a formidable threat from domestic and international terrorism fuelled by insurgency, extremism and the drug trade. Over recent years, terrorist attacks have increased dramatically, undermining human security, the rule of law and good governance.

The Law still lacks compliance with a number of international obligations and standards as established by the international legal instruments against terrorism ratified by Afghanistan and Security Council resolutions. The Law needs to be integrated with other relevant legislation especially the 1976 Penal Code, and the 1987 Law on Crimes against Internal and External Security, and requires the issuance of controlling regulations and standard operating procedures for its full implementation. There remains an increased need to integrate rule of law in Afghanistan's counter-terrorism legislation and practice.

Afghanistan has demonstrated its willingness to undertake counter-terrorism legal reform through the ratification of a number of international conventions and protocols and the enactment of implementing legislation. However, Afghanistan still requires development of legal expertise and capacity to enhance this process.

UNODC proposes to provide support to:

- 1) Develop training material and curriculum on the detection, investigation, consideration and adjudication of terrorism offences and applicable Afghan laws for Judges, Prosecutors and Law Enforcement officials;
- 2) Develop training material and curriculum on skills for the defence of alleged terrorist offenders and applicable Afghan laws for registered Lawyers/Legal Aid Providers;
- 3) Develop human rights training material and curriculum on specific counter-terrorism issues for Judges, Prosecutors and Law Enforcement officials (Convention against Torture, International Covenant on Civil and political Rights, etc.), in consultation with the Human Rights and Rule of Law Units at the United Nations Assistance Mission in Afghanistan (UNAMA);
- 4) Conduct training programmes for Judges, Prosecutors, Law Enforcement officials and Lawyers/Legal Aid Providers in Kabul as well as in selected provinces;

5) Mentoring programmes for Prosecutors, Law Enforcement officials and Lawyers/Legal Aid Providers in Kabul, using national and international mentor teams with judicial experience.

- **Establish international judicial cooperation in criminal matters:** Cross-border operational issues such as intelligence exchange, controlled delivery, border liaison offices, joint operations, and money laundering, require effective legal administration. Effective Mutual Legal Assistance (MLA) and later Extradition is necessary to implement controlled deliveries, discovery of assets and recovery, as well as investigation and prosecution of cases involving cross-border evidence, witnesses, illegal acts and assets. This includes cases of narcotics trafficking, corruption, human trafficking and terrorism. Crucially, Afghanistan lacks the legal framework, standard operating procedures and judicial capacity for MLA as required by conventions to which Afghanistan is a party, including the UNCAC and the UN Transnational Organized Crime Convention.

To enhance regional cooperation in Afghanistan through promoting international cooperation in criminal matters, with particular emphasis on combating terrorism on a regional level, UNODC proposes to provide support by:

- 1) Conducting a desk review and mapping of existing bilateral (and multilateral) legal instruments among the seven countries, selected laws and treaties with other States as well as UN and other international documents related to mutual legal assistance;
 - 2) Organizing technical workshops and training sessions for a selected number of Prosecutors, Judges, Law Enforcement officials, and justice and foreign affairs ministry officials of selected countries on international legal instruments and practical session including case studies, mock exercises, role plays, lessons and good practices. Main areas of focus could be extradition, joint investigations, police-prosecution cooperation, establishment of identity and criminal records, seizure and confiscation, disposal and recovery of proceeds and property derived from transnational organized crimes, and overcoming practical and tactical obstacles to International judicial cooperation and extradition.
 - 3) Supporting the establishment of a Central Authority responsible to deal with international judicial cooperation in criminal matters and extradition.
- **Reform of the Juvenile Justice System:** Since 2002, Afghanistan has taken steps to strengthen the legal system for children. Of significance have been the adoption of a Juvenile Code¹ (2005) and a Regulation on Juvenile Closed and Open Rehabilitation Centres (2007). The Government of Afghanistan has shown clear interest and commitment to continue to reform the juvenile justice system, within the framework of the Afghan Compact under the Rule of Law.

UNODC will continue the improvement of the juvenile justice system through a series of capacity building activities aimed at reform. This will be achieved through:

- 1) Fostering the implementation of the Afghan Juvenile Code and of the reform of the Juvenile Justice Department within MoJ at the central and provincial-level;
- 2) Developing a training program on the Afghan Juvenile Code, Juvenile Justice principles, alternatives to imprisonment and criminal justice system (including standard operating procedures, user-friendly implementing guidelines, etc.) and selection of trainees (Juvenile Judges, prosecutors, police, defence lawyers) within Juvenile Justice Departments, Juvenile Justice Courts and Prosecutors' offices (see also earlier - Justice Support Centres);

¹ The Juvenile Code raised the age of criminal responsibility from 7 to 12 years, recognized the definition of a child as being anyone under the age of 18 and set out a number of measures to improve the protection of children in contact and in conflict with the law, as well as children at risk and in need of care and protection.

- 3) Delivering training courses aimed at juvenile justice personnel from selected Afghan provinces (Herat, Kandahar, Jalalabad and Mazar-e-Sharif);
 - 4) Organising study tours for selected participants (Judges, Prosecutors, social workers etc.) to visit countries with similar legal and cultural backgrounds that have experienced implementation of juvenile justice reform and alternatives to imprisonment;
 - 5) Development of training material on the Regulation on Closed and Open Rehabilitation Centres, overall management of juvenile facilities and rehabilitation of children in conflict with the law (including filing system as an essential and effective policy making aimed to identify trends).
- ***Measures to prevent and combat trafficking in persons in Afghanistan:*** Trafficking in human beings has become one of the most profitable activities of crime groups within Afghanistan. As in many countries, in Afghanistan both a lack of adequate legislation and a general lack of awareness of human trafficking within law enforcement agencies and the judiciary are major obstacles in combating trafficking.

Carried out in line with the requirements of the Trafficking Protocol and the UN Convention against Transnational Organized Crime, UNODC proposes to create a comprehensive legal framework and an effective institutional structure to prevent and combat human trafficking in Afghanistan. Establishing a pool of national experts of the Judiciary, Prosecutors, Law Enforcement and civil society to make up a National Commission to Combat Human Trafficking, UNODC will support this Commission to deal with all human trafficking related issues and to coordinate all project activities among the key stakeholders of the project. In particular the following activities are to be undertaken:

- 1) Provision of technical assistance to the National Commission to Combat Human Trafficking to develop and launch the National Action Plan to Combat Human Trafficking to be reviewed and endorsed at a National Forum;
- 2) Conducting workshops in selected provinces with the purpose of disseminating the draft action plan and briefing participants regarding its underlying rationale and strategy;
- 3) Designing and conducting specialized multi-disciplinary training programs for law enforcement and the judiciary in selected provinces, with emphasis on prosecution of human trafficking cases (protection of the rights of the victim of trafficking, enforcement and investigative techniques, exchange of information, international co-operation and methods used by criminal groups to traffic persons);
- 4) Conducting regional workshops with appropriate counterparts in relevant source, transit and destination countries of the trafficking of persons to and from Afghanistan to promote cooperation among Law Enforcement, Prosecutors and Judiciary.

Activities proposed for funding under this concept paper

| Activities | Timeframe | Estimated Cost (\$) |
|--|------------------|----------------------------|
| Support to law reform efforts aimed at harmonizing national law with the UNCAC, TOCC, and other relevant international instruments. | | \$ 400,000 |
| High-level seminars and conferences convened on revising criminal law and procedural codes. | | \$300,000 |
| Develop training material and curriculum on skills for the detection, investigation, consideration and adjudication of terrorism offences and applicable Afghan laws and for Judges, Prosecutors and Law Enforcement officials. | | \$400,000 |
| Develop training material and curriculum on skills for the defence of alleged terrorist offenders and applicable Afghan laws for registered Lawyers/Legal Aid Providers. | | \$120,000 |
| Develop human rights training material and curriculum on specific counter-terrorism issues for Judges, Prosecutors and Law Enforcement officials (Convention against Torture, International Covenant on Civil and political Rights, etc.), in coordination and consultation with the Human Rights and Rule of Law Units at the United Nations Assistance Mission in Afghanistan (UNAMA). | | \$120,000 |
| Undertake training programmes for Judges, Prosecutors, Law Enforcement officials and Lawyers/Legal Aid Providers in Kabul as well as in selected provinces. | | \$600,000 |
| Review and mapping of existing bilateral (and multilateral) legal instruments among Afghanistan and neighbouring countries, selected laws and treaties with other States as well as UN and other international documents related to mutual legal assistance. | | \$80,000 |
| Organize technical workshops and training sessions for a selected number of Prosecutors, Judges, Law Enforcement officials, and justice and foreign affairs ministry on international judicial cooperation and extradition. | | \$600,000 |
| Support to the establishment of a Central Authority responsible to deal with international judicial cooperation in criminal matters and extradition. | | \$800,000 |
| TOTAL | | \$3,320,000 |

