



## UNITED STATES INSTITUTE OF PEACE

An independent institution established by Congress to strengthen the nation's capacity  
to promote peaceful resolution to international conflicts

### **Symposium on Afghanistan and the Rule of Law**

February 2-6, 2003

Washington, DC

### CONCLUSIONS AND RECOMMENDATIONS

*Under the auspices of the United States Institute of Peace, a broad cross-section of Afghan legal officials and experts met in Washington from February 2-6, 2003 to explore options to rebuild and reform Afghanistan's system of justice. Participants included representatives of Afghanistan's Supreme Court, Ministry of Justice, Ministry of Interior, Office of the Public Prosecutor, Judicial Reform Commission, Human Rights Commission, Constitutional Drafting Committee, and the University of Kabul Law Faculty and Sharia Law Faculty. International experts from nine countries provided comparative national perspectives on approaches to criminal justice and the development of an independent and fair system of justice.*

*Following four days of open dialogue, the participants at the symposium adopted by consensus the following conclusions and recommendations:*

Afghanistan possesses an extensive body of law and a rich legal tradition. The challenge facing the country today is not the absence of law, but its reform and implementation.

International standards on human rights need to be integrated into the law and practice of all aspects of the Afghan justice system.

Disarmament and demobilization are prerequisites to building respect for the rule of law in Afghanistan. The proposals that follow must apply not only to the capital but to all parts of the country. In order to extend the rule of law to all parts of country in shortest possible time, ISAF forces should be expanded both territorially and in the functions they perform to all parts of the country.

#### STANDARDS FOR JUDICIAL OFFICIALS

Judicial appointments made in the past and during the transition that do not comply with the qualifications or procedure provided for under the current law of Afghanistan are invalid. Recruitment should be based on merit and education. The

existing law should be revised to specify the following minimum qualifications for all judges:

- A law degree at the university level
- Satisfactory completion of a qualifying examination that tests knowledge of both *sharia* and civil law
- A minimum age to be established
- No political party affiliation
- No criminal record
- Ethical standards

Judges should hold no other profession. Adequate salary should be provided for all officials of the justice system, to ensure their security and independence.

## POLICE

Advancement of the rule of law requires demilitarization of the police forces in Afghanistan. Law and order in Afghanistan must be maintained by professional and well-trained police. Ad hoc policing by other non-police groups, including intelligence or religious police, should be ended and replaced by such professional policing. The use of several specialized professional police forces and their efficiency should be studied. Interference in investigations by security police should be eliminated.

## DEFENSE COUNSEL

It is essential to encourage and provide appropriate resource support to ensure the participation of defense counsel in all the phases of criminal proceedings. The role of defense counsel and rights to the same should be established by law. A national association of advocates should be established.

## LEGAL EDUCATION AND TRAINING

In the short term, quick-impact training programs should be developed and implemented, to be organized for members of the judiciary, defense attorneys, prosecutors, and law enforcement officers. These programs, which should incorporate international human rights standards, should be structured in a manner that facilitates integration and cooperation between these various components of the justice system.

Law library facilities should be established to provide improved access to legal research tools and equipment.

Judicial training should ensure competence in both *sharia* and civil law, with enhanced coordination of curriculum between the two respective university faculties. Education of judicial officials should also include training in human rights, both in general and with respect to the practical application of human rights norms to the

actual day-to-day functions of judges, prosecutors and other judicial officials. Training should include a practical operational component, including a possible one-year on-the-job phase. Training should also include exposure to all component parts of the justice system, including the courts, prosecution, law enforcement, corrections and legal defense. A new program of legal training should build on and re-establish the program previously established in conjunction with the George Washington University.

## PUBLIC EDUCATION AND ACCESS TO JUSTICE

Programs will be designed for public access to information regarding the law. A comprehensive program should be launched, including the use of regular features in newspapers, radio and television to educate the public regarding the law and their rights. A Legal Publication and Information Center for lawyers and the public should be established.

Explanatory notes should be developed to accompany publication of key codes and laws, including an incorporation of the international norms that should guide the application and implementation of these laws.

## INFORMAL JUSTICE SYSTEM

Afghanistan's informal system of adjudication, such as local reconciliation committees, has both important positive and negative aspects. The informal system can play a valuable role in resolving minor non-criminal disputes, leaving criminal cases to the exclusive jurisdiction of the formal justice system. The informal system needs to be brought in accordance with the law of Afghanistan. The Judicial Reform Commission will work with appropriate partners from Afghan government and society to review the informal system of justice and develop a proposal to implement this recommendation.

## ADDRESSING ABUSES

Whoever has violated human rights should be investigated – regardless of position – prosecuted, and barred from political party leadership.

War crimes should be investigated in accordance with national and international rules and standards. The international community should actively assist in this effort.

In cooperation with the international community – including financial institutions and law enforcement agencies – steps should be taken to freeze and return illicit assets and profits from money laundering and related crimes, and to facilitate the return of artifacts stolen from Afghanistan.

It is the responsibility of the Judicial Reform Commission, the Human Rights Commission, and the Constitutional Commission to study and propose solutions to the problems of corruption and abuse of authority in Afghanistan.

#### INTEGRATION WITHIN THE JUSTICE SYSTEM

The relationship between the Ministry of Justice, Public Prosecutor, police and the courts requires reform within the context of the work of the Judicial Reform Commission and the Constitutional Commission.

To effectively advance the rule of law, allocation of sufficient financial and technical resources is required for reconstruction of all components of the Afghan justice system, ensuring a comprehensive and integrated approach to the issue.

#### ROLE OF WOMEN

Efforts should be undertaken to expand the role of women in the area of law and justice, to participate equally in the development of legal institutions and implementation of the law.

#### STATISTICS

Efforts should be undertaken to develop and maintain reliable crime statistics, to provide a better understanding of the problem and to facilitate a more efficient allocation of resources.

#### FOLLOW-ON EFFORTS

Further information and research on the experience of other countries with respect to the reforms under consideration in the Afghan justice system are welcome and useful.

It is the consensus of the participants that officials of the various ministries and entities represented at the Washington symposium should meet in Kabul on a regular basis of one or two times per month, to continue the discussion begun at the symposium and to strengthen the process of integration and collaboration between the various components of the Afghan justice system.

Future follow-on seminars in conjunction with the United States Institute of Peace will be held in Afghanistan in the coming months.

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## Participants

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