

**Rome Justice Conference (July 2-3, 2007)**  
**Panel on Access to Justice, Legal Aid and Human Rights**

**Rapporteur's Presentation (Charles Briefel UNAMA)**

Your excellencies, ladies and Gentlemen;

It gives me pleasure to present the finding of the Panel on Access to Justice, Legal Aid and Human Rights

Access to Justice means considerably more than improving peoples' access to courts. It includes ensuring the means and capacity to seek and obtain justice, ensuring that legal and judicial outcomes are just and equitable, timely and free from corruption. It means ensuring the right to legal representation, the right to a fair trial. Ensuring that people are not arbitrarily detained and have adequate redress when they are illegally detained. It means ensuring that court procedures are simple and clear enough for citizens to be able to use the courts. It means empowering women, the poor and others who are disadvantaged. It means ensuring that women and girls are able to seek protection and legal redress from domestic violence and forced marriage and are able to exercise their property and inheritance rights. It means that the victims of gross human rights violations, the families of those who were murdered or disappeared are able to find out the truth, get reparation and obtain justice.

Participants of the Panel universally supported and endorsed the key actions for donor and political support as outlined in the Background Paper but also made additional recommendations.

The following outlines the key action points as outlined in the discussion paper and during the panel discussions

### **1 There was full support for An independent bar**

A functioning justice system requires a strong and independent legal profession supported by an independent bar association. The Government of Afghanistan, particularly the Ministry of Justice, is committed to establishing an Afghan Independent Bar Association to support, lead and regulate the legal profession. The bar association will regulate and administer entry into the profession, licensing and disciplinary procedures. It will also promote and protect the professional interests of lawyers, organize continuing legal education,.

The Advocates' Law which establishes the independent Afghan Bar Association has been passed by the lower house of the Parliament and is waiting for the scrutiny by the upper house at earliest.

#### ***Action Points***

- International donor assistance is required to establish an independent and professional Bar Association as follows:

### **2 Legal Awareness and Access to Laws**

The majority of Afghans in rural areas are illiterate and uneducated. They have little or no understanding of their rights or the legal and justice system. Rights awareness programs are therefore an essential component to any justice programme.

Access to laws has been identified by local authorities as another critical problem. Many judges are unfamiliar with the law and make decisions without any reference to legal codes.

#### ***Action Points***

Increased donor support to further expand legal awareness and dissemination of laws is required as follows:

- Strengthen the capacity and resources of the Ministry of Justice and also engage NGOs to conduct effective legal awareness campaigns, through both financial and technical assistance;

- Coordinate legal awareness activities and promote information sharing among the providers;
- Ensure that justice officials and the general public in every province and district have adequate and easy access to laws and legal texts.

### **3 Access to justice for women and girls**

Violence against women and girls and lack of access to justice for women is a significant problem in Afghanistan.

The Panel Participants emphasised the need to ensure that the laws of Afghanistan protect women and children from forced marriage, from honour killings, domestic violence, and ensure their right to property and inheritance rights. Paralegal services should be expanded as should safe houses for women, referral centres and transitional houses for women after they are released. Judges prosecutors and police who fail to respect the rights of women should be held accountable

#### ***Action Points***

To ensure effective access to justice for women, international donor support is required in the following areas:

- Promote the provision of legal aid services in criminal and civil cases, particularly those affecting women in conflict with the law;
- Assist the Government of Afghanistan to adopt a policy and relevant legislation on rape and forced marriage;
- Support the Government of Afghanistan in tackling the systematic failure by justice officials to investigate and effectively prosecute perpetrators of violence against women and ‘honour killings’;
- Build the capacity of Afghan Police to establish mechanisms for receiving and registering cases of domestic violence;
- Expand to other police stations the “Family Response Unit” initiative established in Kabul District 10 Police Station;
- Strengthen the mediation and arbitration role of the MOJ Huquq department in family dispute
- In the development a National Justice program, the Technical Advisory Group for Women and Children should play a key role

### **4 Traditional Dispute Resolution Mechanisms**

A number of panel participants commented in relation to informal justice mechanisms. The formal system needs to clarify the linkages

and define the boundaries for the scope of the informal sector. A possible role for local courts could be to supervise decisions of informal mechanism, possibly the registration of decisions. Government policy on this issue still needs to be defined and elaborated upon. There remains a continuing need to monitor the decisions of local *Shuras* and *Jirga* to assess compliance with national and international human rights standards, particularly women and children's rights and ensure redress for those whose rights are violated.

## **5 Legal aid**

A vibrant legal aid community is growing in Afghanistan and legal aid efforts to date are proving to be increasingly effective. Currently around ten NGOs provide effective access to legal aid services in several regions and the number is expected to increase in the future. 20 provinces are now covered by NGO legal aid providers. In provinces where legal aid organizations are active a significant improvement has been noted in the application of national legal standards in court rooms and a reduction in the incidence of arbitrary detention.

Promotion of legal aid is to be an important part of a national justice program. There will be an ongoing need to provide donor support for NGO legal aid providers

But sustainable legal aid scheme needs to be developed to effectively ensure access to legal defence for all those requiring legal aid.

### **Action Points**

International donor assistance is required to support the provision of an effective quality legal aid service, as follows:

- Assist the government in designing the foundations of a state-funded legal aid scheme;
- Financially support national legal aid organizations;
- Promote the delivery of legal aid for civil cases, particularly property disputes.

## **6. Juvenile Justice System Administration**

Even though the Government of Afghanistan has shown a particular interest and commitment in the reform of the juvenile justice system, the first major step being the adoption of the Juvenile Code in early 2005, access to justice and rule of law for Afghan juvenile offenders is critically limited.

A specialized juvenile court as foreseen in the Juvenile Code has only been established in the limited area of the capital Kabul, specialized juvenile judges and prosecutors have only been appointed there.

### ***Action Points***

International donor assistance is required to support the Judiciary and the Ministry of Justice in developing an efficient and fair juvenile justice system, as follows:

- Foster the implementation of the Juvenile Code;
- Establish juvenile courts, staffed with specialized juvenile judges in each province and establish the juvenile prosecutor department at provincial level;
- Ensure that deprivation of liberty is applied only as a measure of last resort and for the shortest possible period of time, ensure that sentencing is proportionate to the crime and takes into consideration the age and best interests of the child;
- Training of juvenile rehabilitation center staff on the new principles stipulated in the Juvenile Code and on the new duties that they have to perform in accordance with the legal principles;
- Ensure that expert legal representation is provided for all juveniles under trial and to guarantee to them immediate access to family/guardians and medical care;
- Development of non-custodial sentencing options and introduction of alternative measures to confinement and a system of community-based treatment for juvenile offenders as stipulated in the Juvenile Code.

## **Human Rights**

### **7 Arbitrary arrest and due process standards:**

UNAMA and the AIHRC continue to receive and verify complaints of illegal and arbitrary detention in which a significant proportion of cases pre-trial detention timelines are breached, suspects are not provided with defence counsel and ill-treatment of detainees and prisoners raises serious human rights concerns while judicial guarantees are largely absent.

The Panel emphasized the need for greater cooperation between courts, prosecutors and police to prevent arbitrary detention to ensure timeline are complied with. It seems that mechanisms of oversight and accountability do not function effectively

### ***Action Points***

To improve the condition of detainees awaiting sentencing and promote respect of judicial guarantees on pre-trial detention, international donor support is required in the following areas:

- The establishment in all detention centers of a bound registration book with numbered pages in which shall be entered in respect of each prisoner received: (a) Information concerning his identity; (b) The reasons for his commitment and the authority therefore; (c) The day and hour of his admission and release.
- The establishment in detention centers of enough facilities in order to allow different categories of prisoners to be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.
- The establishment of mechanisms to allow prisoners to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
- The establishment of the necessary conditions for persons kept in detention to be given an effective opportunity to be heard promptly by a judicial authority which shall be empowered to review as appropriate the continuance of detention.
- The establishment of the necessary conditions for detainees to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel including by being allowed adequate time and facilities for consultation with his legal counsel.
- Full access to detention facilities by independent monitoring mechanisms such as the AIHRC, the ICRC and UNAMA. These visits to detainees should be allowed without delay or censorship and in full confidentiality.
- The NDS law shall be fully disclosed and made public to all citizens through publication in the official gazette.
- Establishing clear understanding on the mechanisms of oversight and accountability of the NDS.

## **8 Access to Justice for victims of past gross human rights violations**

There is a need for sustained efforts to address the legacy of the past as part of a long-term strategy as described in the Action Plan for Peace, Justice and Reconciliation, which will require continuing attention and support from both the Afghan government and the international community.

**Action Points**

The International Community should support the implementation of the Action Plan for Peace, Justice and Reconciliation by:

- Fully supporting the establishment of the task force foreseen in key Action 5 of the Action Plan;
- Support the documentation of past human rights abuses
- Call upon governments to strengthen their efforts to arrest and prosecute those deemed to be responsible for serious crimes under the doctrine of universal jurisdiction as took place in the UK and Netherlands
- Fully Implement the work of the advisory panel for senior appointments

**Conclusion** - The process of formulating strategies for enhancing access to justice legal aid and human rights could usefully engage relevant NGOs which have valuable experience in capacity building, awareness raising, legal aid and mediation. The panel were unanimous in the view that Access to justice must be a key component of the forthcoming National Justice Program