

## **Rome Justice Conference (July 2-3, 2007)**

### **Panel on the Afghan Legislative Process**

#### **Discussion Paper**

*In preparation for the Rome Conference and the panel discussion on the Afghan Legislative Process, this paper describes achievements, gaps and challenges in the legislative process, which includes the Ministry of Justice's Legislative Department, the National Assembly, and national and international input through the Law Reform Technical Working Group (LRTWG). This paper is prepared by the LRTWG and does not attempt a comprehensive assessment; rather it identifies key impediments and possible action points for donor and political support at the Rome Conference.*

The Ministry of Justice's Legislative Department (*Taqnin*) chairs the LRTWG, which has met periodically since the Afghanistan Compact was signed in January 2006. The LRTWG is organized into two Committees: the Criminal Law Committee and the Civil Law Committee. The LRTWG has permanent members representing the main government justice and rule of law institutions as well as international members, including a number of UN agencies and donor organizations. The focus of the LRTWG has been to analyze and recommend ways to improve the legislative drafting and review process in Afghanistan. Further, the LRTWG also provides technical assistance through each Committee by providing legal and policy commentary and proposed revisions of legislation pending before the *Taqnin*. However, much more work needs to be done to streamline and improve the process for drafting, revising and enacting laws and regulations in Afghanistan.

The participants at the Rome Conference may consider the following issues and action points as strategies are formed and resources committed.

#### **1. Legislative Process**

Laws and procedures, including the statutorily-defined law-making and revision processes (stated in the Law on the Publication and Enforcement of Legislative Documents in the Islamic Republic of Afghanistan, 1999 Official Gazette no. 787), which also covers regulations and other legislative documents, as well as the National Assembly Rules of Procedure, should be updated to meet Afghanistan's current needs. Clearer definition of the roles, rights and obligations of each government entity in the legislative process should be developed, and methods should be devised to ensure that procedural requirements are followed. Some issues that also need consideration include, but are not limited, to the following:

- a) Creation of a formal consultation process through the establishment of a permanent liaison/coordination committee and regularly scheduled meeting days to improve the institutional relations among those involved in the legislative process (particularly among the *Taqnin*, the Council of Ministers and the National Assembly Legislative Committees).

- b) Promulgation of more specific and effective procedures for outreach to Civil Society and appropriate stakeholders for expertise and input on drafts before they are finalized by the Council of Ministers and/or National Assembly.
- c) Clearly defined rules outlining the hierarchy of different legislative documents in Afghanistan, the definition and role of these different documents and the procedures and type of review necessary for their adoption (e.g., the relation and differences between *muqararat* – a regulation promulgated by Council of Ministers - and *tarzelamal* – a rule promulgated by the relevant Ministry or Agency).
- d) The Taqin’s limited authority to make spelling and stylistic changes to signed and approved documents prior to publication in the Official Gazette; and if so, the necessity for consultation with the relevant institutions when making such changes.
- e) The availability of adequate and suitable office space for the staff of the Taqin where they are able to perform their every day work, hold their daily drafting meetings, workshops, seminars as well as conduct their academic and legal research.
- f) More efficient and effective dissemination of laws.

### ***Action Points***

- Provide technical assistance in the drafting of new laws and rules, and provide subsequent training of various government officials to ensure the rules are implemented and are effective.
- Conduct training courses for legislative drafters on various international instruments and standards to enhance the technical capacity of governmental officials in dealing with treaty obligations as well as other Government priorities.
- With the establishment of the National Assembly, the law-making process requires greater and closer coordination of efforts by the Executive and the Legislative branches. While the Constitution provides the framework for the passage of laws, several key issues remain unclear that must be addressed to improve the legislative process.
- New laws sometimes create uncertainty about the status of other laws on the same or similar topics—steps need to be taken to ensure it is well-understood what laws and provisions of laws are currently valid and enforceable.

## **2. Translation Capacity**

The legislative process is often delayed due to lack of professional legal translators, lack of access to legal material in Afghanistan’s official languages and the lack of long-term training programs.

- a) Although international agencies have been providing support in translation of English and Dari documents, the capacity of the Taqin and others is limited for translation. Afghan law requires that all official documents be published in the two major national languages. Thus, it is necessary to translate into both Pashto and Dari (sometimes from English).
- b) Where international agencies provide technical assistance, or when Afghan institutions need to perform research in English, Afghan institutions must have both translators and attorneys with English knowledge. Accordingly, their English language capacity should be increased.
- c) Ideally, drafts will be prepared initially in either Dari or Pashto, but often, donors submit suggested drafts to the government in English. Donors and their implementing partners often underestimate the time and cost involved in ensuring English language drafts are translated properly to both Dari and Pashto. In some instances, highly complex draft laws have been submitted to the Government in English with unreasonably short time frames for review.
- d) Resources should be provided so that drafts can be initially prepared in the local languages, rather than English with outside experts explaining various options and models used in other jurisdictions and explaining the potential costs and benefits to various policy choices adopted in different model laws.

### ***Action Points***

- Provide the Taqin with a comprehensive legal and reference library to facilitate access to comparative models and laws, international standards and norms, legislative drafting models and tools, interpretation methods and analysis.
- Provide the Taqin with Internet access to facilitate research of comparative models and laws, international standards and norms.
- Provide Pashto, English, and computer lessons for Taqin attorneys and translators.
- Provide out-of-Afghanistan English/translation scholarships, conditioned upon the trainee/scholarship recipient agreeing to continue employment with the Taqin or other relevant government agency for a number of years.
- Development of legal terminologies in Dari, Pashtu and English to ensure consistency and expedite high quality translation.
- Over the long term, the English-language capacity of Taqin attorneys and translators should be increased to allow access to internationally-available drafting exemplars and materials.

- Substantial resources should be devoted to translation needs when drafts are first prepared in English, and then during exchange of comments and proposed revisions between Afghans and international advisors.
- Provide adequate time to translate English documents to the country's two official languages.
- Assess legal translation needs of government entities outside of the Ministry of Justice and provide adequate resources to meet those needs.

### **3. Legislative Agenda**

The Government of Afghanistan is required to adopt certain laws due to provisions of the Afghan Constitution of 2004. Further, the Government of Afghanistan has committed to adopting certain other laws pursuant to the Afghanistan Compact, the National Development Strategy and international treaty obligations. There are often strong and competing pressures on various government entities, including the Taqin, to prioritize different laws, both while the annual legislative agenda is developed and after its adoption.

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

- The donor community must work with the Afghan government to ensure that legislative priorities are set transparently, that draft documents meet the needs of the country and that officials responsible for drafting, reviewing and adopting such documents have a sound understanding of their underlying policies and the meaning and intention of the various articles.
- Donors should target resources to assist the Government in preparing legislative documents in accordance with the Afghanistan's official legislative agenda.
- Provide support to the Government to analyze the legislative needs of Afghanistan, taking into account, the Constitution, international treaty obligations, the need for economic growth and the rise of criminal activity.