

OUTLINE OF A NATIONAL JUSTICE PROGRAM FOR AFGHANISTAN AND OPTIONS FOR FUNDING (INCLUDING ARTF)

Draft Paper for Discussion at the Rome Conference

INTRODUCTION

Rule of law and justice are at the center of Afghanistan's state-building and development agenda. Translating as yet *de jure* institutions into *de facto* implementation across the country requires the agreement of a comprehensive action plan, including a financing strategy.

The experience of aid delivery mechanisms in Afghanistan points to two lessons: (1) the government's core budget is a more effective coordination mechanism than the external budget and (2) national priority programs (NPPs) are more effective coordinators of high-level policy development and dialogue and have delivered more results on the ground than isolated donor projects.

The Afghanistan Reconstruction Trust Fund (ARTF) is a mechanism that consolidates these lessons. To date, the ARTF has mobilized over US\$2 billion for the core budget's recurrent costs and sectoral investments including: community development, microfinance, rural access and education. ARTF donors have recently developed a new Performance Assessment Matrix (PAM) to introduce more accountability into the use of ARTF funds.

Broad pre-requisites for ARTF investment window financing are: a) development and adoption by the Government of Afghanistan of a comprehensive sector policy framework, including a long term strategy; b) this must be translated into a program of specific short- and medium- term interventions – i.e. clear commitment to prioritization; c) leadership, partnership and coordination arrangements within Government, between donors and between Government and donors; d) an expenditure framework to enable resources to be channeled through the Government's systems as well as ensuring fiscal sustainability; and e) harmonized implementation procedures in the areas of financial monitoring and reporting, and procurement.

This paper attempts to summarize elements of a strategic framework and outline what would be required for a credible National Priority Program for the Justice Sector in Afghanistan, namely a "National Justice Program" (NJP). It is proposed to use the Afghanistan Reconstruction Trust Fund (ARTF) mechanism for pooled donor funding and management to finance the priority interventions under a National Justice Program. In addition to ARTF, other sources of funds will be needed to support the National Justice Program, including Government budgetary resources and bilateral contributions. As well as the funding constraints and existing programmes of some donors, it is desirable that some activities, especially those involving civil society organizations, are not funded through the government budget

Having a strong strategic framework and National Justice Program is critically important both to reach consensus within the Government on the way forward, the key program elements, and priorities, and to provide a credible basis for sustained programmatic financial assistance from donors. It should be emphasized at the outset that this paper is not intended to provide a substantive National Justice Program. Instead, it is intended to provide an outline of the main elements of a credible National Justice Program that will be developed later in 2007.

STRATEGIC FRAMEWORK AND NATIONAL JUSTICE PROGRAM

The sections below would comprise the main elements of a National Justice Program, based on the reform strategies recently developed by the Supreme Court, Ministry of Justice and Attorney General's Office.

1. Situational analysis (Country Context and Challenges in) of the Rule of Law and Justice Sector

Since 2002 there have been significant achievements within the Rule of Law and Justice Sector; this includes rehabilitation of infrastructures and construction of integrated justice facilities in most provinces, work continues on reforming the institutions and special focus has been given to improve access to justice especially for women and children. This has been made possible by political will of the government supported extensively by donors and their implementing agencies. However there is still much work to be done before the *dream of Justice for All* can be achieved.

There are three justice institutions;

The Supreme Court

The judiciary is an independent organ of the state of the Islamic Republic of Afghanistan, separate from, and co-equal with the executive and legislative branches of the state. The Supreme Court acts as a final court of appeal and also plays a critical role in the administration of the court system. Its constitutional mandate is to protect the fundamental rights of all Afghan citizens, to resolve legal disputes in a fair and transparent manner, and to ensure justice through an independent, honest, and effective judicial system. In the discharge of this mandate, the Supreme Court is directly responsible for the administration of a court system consisting of 34 provincial courts and 408 primary courts throughout Afghanistan, and employing 6,126 persons, including 1,700 judges.

The Ministry of Justice (MOJ) has a broad mandate that includes drafting, publishing and distributing legislative documents, providing pre-trial mediation in civil cases, raising legal awareness, protecting state properties through the court system, and managing the prisons, detention centers, and juvenile rehabilitation centers throughout the country. The MOJ is also providing legal advice to the government, registering political parties and social organizations, and licensing attorneys practicing in courts. With close to 1,400 professional staff and 10 departments, the MOJ has offices and facilities in provincial centers and in 365 districts of the country. The Central Prisons Department (CPD), with about 5,000 personnel, is by far the largest department of the MOJ, which was transferred from the Ministry of Interior in 2003. In accordance with the Advocates Law passed by the Parliament, the MOJ is further required to assist with the establishment of an independent bar association and ensure availability of legal aid in criminal cases to indigents.

The Attorney General's Office (AGO) is a service composed of over 2,500 prosecutors throughout Afghanistan. It has the constitutional responsibility for any criminal "investigation and the case against the accused in the court."¹ While the AGO is "part of the Executive," it is constitutionally mandated to "be independent in its performance."² In a change from pre-war procedure, the Constitution limits police duty to "the discovery of crime,"³ and the police must submit a suspect and case-file to the AGO within 72 hours of the arrest.³ Prosecutors then direct and supervise activities of the police during the investigation,

¹ Article 134 of the 2004 Constitution.

² Article 134, para. 2.

³ 2004 Interim Criminal (Procedure) Code (ICPC) Article 31, amended by 2005 Police Law Article 25.

acting as a neutral magistrate or “investigating prosecutor,” and decide whether to file the indictment with the court to start the trial and appeal process.⁴

Overall, the justice system suffers an enormous deficit of resources (human and financial) and infrastructure. Other challenges include low level of legal education, competency and professionalism of lawyers, judges and prosecutors, poor capacity of court administrative staff and inefficient court procedures and record management. Most prisons and detention centres are in dilapidated conditions, overcrowded and lacking basic amenities, and in need of complete physical rehabilitation. Insecurity of justice officials in terms of personal safety and low salaries make justice officials prone to bribery and corruption as well as to politicization and undue interference by external powers. Non-transparent processes for appointing, career progression and transfer as well as a lack of credible mechanisms for accountability and discipline to enforce ethical codes of conducts also need to be addressed.

2. The Definition and Scope of the Rule of Law and Justice Sector

Administration of justice is complex machinery operated by a wide range of actors. Thus out of the three justice institutions one is a completely independent organ (the SC), and two (AGO and MOJ) are part of the executive although the AGO is “independent in its function” according to the Constitution. Each of the three has a different jurisdiction and constitutional mandate. An important interface between the SC and the AGO is the MOI that has the responsibility over the national police force. Civil society and legal organizations such as legal aid providers also play an important role.

For the scope of the National Justice Program (NJP) the justice sector will comprise justice institutions and officials with the exception of security services (national and penitentiary police). Despite the clear and evident linkages between the police and other justice institutions, it is believed that police capacity- building needs are of specific nature and require a different approach and methodology to be addressed. However a functioning prison system is a necessary to a functioning and fair judicial system and the rule of law. Coordination mechanisms to ensure effective and efficient working relationship between police and prosecutor as well as between the penitentiary police and the courts will be essential. In particular procedural safeguards and mechanisms will need to be developed to ensure cases are handled efficiently.

Corruption is endemic in the Afghan justice system and yet a strong justice sector is necessary as a tool to fight corruption in other sectors. Anti-corruption measures for the justice system will include prevention, prosecution, disgorgement and public awareness. Prevention is enabled through vulnerability assessment, improvement in the transparency and internal controls of governmental systems, increase of salary, disciplinary mechanisms, awareness raising, etc. Effective criminal prosecution also provides deterrence and thus results in prevention.

Although the focus of the NJP will remain on the formal justice institutions, a policy on informal dispute resolution mechanisms and setting defined boundaries will need to be developed. It is in the scope of justice sector reform to ensure that decisions of *shura* and *jirga* do not violate human rights standards and the laws of the state.

Legislative drafting is a very important component of the justice sector in Afghanistan. According to the Afghanistan Compact the necessary legal framework will have to be completed by 2010. The *Taqnin* is in need of support in relation to human capital, infrastructures and technical expertise. Parliament must also develop its capacity and

⁴ ICPC Article 29.

prioritize its agenda to meet the Afghanistan Compact Rule of Law benchmark. Efforts will be directed to create a transparent and systematic legislative process and strengthen the collaborative links between the legislative department of MOJ and Parliament bearing in mind that, given its independence, the legislative body does not form part of the justice sector.

Finally the role of the legal community and civil society will be strengthened by the NJP. The legal community has to be engaged in justice system reform. The soon to be established bar association as well as NGO legal aid providers including paralegals constitute a pool of resources. They make justice system more accessible and fairer to the citizens. They also play an important role and ensure better accountability of justice institutions.

3. Government's Medium Term Strategy for the Law and Justice Sector and Linkage with the I-ANDS (and ANDS under preparation)

All three justice institutions are driven by a common goal to improve professionalism, integrity and credibility resulting in accountable and competent institutions that deliver quality services to the people of Afghanistan.

To achieve this goal, the institutions have identified a number of common priorities, including:

- ***Integrity and professionalism.*** – Ensuring greater accountability and combating corruption, by providing adequate salaries for professional staff. This will be conditioned upon implementing codes of ethics with oversight and enforcement mechanisms to uphold professional standards linked to staff qualification and performance monitoring;
- ***Infrastructure and Equipment*** – Supporting basic and secure institutional operation through substantial improvements in infrastructure, from offices, courts and prisons to staff housing facilities as well as computers, communication equipment, transportation and related office materials;
- ***Institutional Reform*** – Strengthening the justice institutions including policy planning and project management to contribute in the development and implementation of a comprehensive justice sector and rule of law reform;
- ***Capacity building and training*** – Improving professionalism and credibility through increased quality and coordinated capacity building and training for professionals as well as support staff;
- ***Law Reform*** – streamline and harmonize all laws of Afghanistan to be consistent with Constitution, Sharia and Afghanistan's international obligations; and increasing capacity of the relevant institutions such as Taqin and Parliament; and
- ***Legal Awareness and Access to Justice*** - Increase access to justice and awareness of legal rights and obligations throughout the general population.

Overarching priorities

- **Transparency and accountability** – ensure that policies, mechanisms and processes are put in place at levels of the justice system to ensure impartiality, independence, due process, public accessibility and liability of justice sector officials; and
- **Provincial initiatives** – Ensuring that justice services and coverage are available to all Afghans by expanding presence and operations in the provinces, and by increasing public awareness of basic rights and services of the justice sector institutions.

Additional specific goals of importance for justice sector reform includes: improvements in legal education; greater compatibility between formal and informal justice systems; improvements in drafting legislation; advances in legal aid; establishment of the bar association; improvements in information management (data collection and case management) and greater coordination among and between justice sector institutions and other institutions (especially harmonizing the criminal justice procedures between the AGO and the MOI/police).

4. Program Objectives, and Outputs

In light of the strategies and above-described priorities as identified by the three justice institutions in their reform strategies, the following program components and objectives have been identified for the coming five years:

Objective 1 - Strengthened Professionalism, Integrity, Credibility of justice institutions through improved pay and working conditions, and reform of accountability mechanisms and oversight procedures relating to corruption, lack of due process, and miscarriage of justice.

Outputs:

- i) Improved institutional instruments (ethical codes, citizen’s charters⁵) and institutional arrangements (Judicial Service Commission, AGO Disciplinary Panel, bar association) to create and maintain professional standards and ethics;.
- ii) Increased professional proficiency and competency through improved pay and conditions;
- iii) Improved and transparent recruitment, retention and performance measures, mechanisms and structures which includes attaining a minimum of 30% female professional staff ⁶in accordance with ANDS ;
- iv) Established and sustainable institutional arrangements for monitoring and evaluating institutional and system-wide credibility & public perception;
- v) Establish sustainable performance criteria and monitoring mechanisms in relation to due process and fair trial compliance
- vi) Mechanism is in place to monitor performance, accountability and liability of justice professionals.
- vii) increased institutional capacity to prosecute and punish corrupt individuals and recover assets and proceeds of corrupt activity,

⁵ A citizen’s charter is a written public service declaration of standards of service that the public will expect from the institution, and publication of complaints procedures.

⁶ This is required by ANDS and National Action Plan for the Women of Afghanistan (NAPWA) and the Afghanistan Compact.

Objective 2 - Effective, secure and fully functioning institutions of justice through substantial improvements in infrastructure, from offices, courts and prisons to staff housing facilities as well as computers, communication equipment, transportation and related office materials in each province and at district level.

Outputs:

- i) Baseline of infrastructural, transportation and equipment assets at national, provincial and district level
- ii) Needs assessment developed and translated into a plan of action.
- iii) Number of Justice Sector Facilities (including specialized courts – family-children’s and commercial courts, - detention and rehabilitation centers and prisons) constructed, rehabilitated and functioning in line with geographical needs.
- iv) Improved performance and preservation of judicial and prosecutorial independence by providing secure facilities, including residences, transportation and equipment for justice sector professionals;
- v) Improved maintenance management capacity for equipment and transportation assets (including secure transportations for detainees and prisoners);
- vi) Number of transportation assets; and
- vii) Fully functional post-detention and/or transitional housing⁷ and referral centers⁸.

Objective 3 - Enabling institutional reform and strengthening, including the establishment of policy planning and project management units

Outputs:

- i) Fully implemented restructuring and administrative reform of institutions;
- ii) Institutions are able to meet changing national and international legal, policy and strategic obligations requiring structures and mechanisms to implement;
- iii) Established and sustained sector wide mechanisms facilitating cooperation and collaboration across the criminal justice chain;
- iv) Established and sustained institutional capacity to enforce judgments and orders of justice institutions;
- v) Improved mechanisms for prevention and public awareness related to corruption;
- vi) Institutionalized policy analysis, development and policy-making;
- vii) Improved institutional capacity to implement National Action Plan for Women (NAPWA) and Ending Violence Against Women (EVAW) strategies;
- viii) Enhanced legislative, structural and operational changes enable justice sector Counter narcotics more effectively contribute to reduction in size of role narcotics plays in the Afghan economy;
- ix) Effective policies and programs implemented to recruit, train and retain social workers, corrections officers, and juvenile case workers, and related professionals in support agencies e.g. transitional housing, referral centers and legal aid paralegals;

⁷ Transitional housing is a secure residential facility for women who have been released from detention or custodial sentences and who are unable to return to their families or are at risk to death or serious injury. This facility assists in transitioning women from life in detention to life in society bearing in mind the danger to their personal safety.

⁸ A reporting and support centre for women victims of violence or for those who are facing violence. It is run by female staff trained in providing professional assistance to women victims of violence and making referrals to other supporting stakeholders.

- x) Increased efficiency, uniformity, and accountability of justice administration through public access to information, transparent case management, and increased information management and data collection which is sex and age disaggregated;
- xi) Enhanced security, efficiency, effectiveness and transparency of case, witness, victim, accused management processes;
- xii) Improved institutional language translation and interpretation capacity; and
- xiii) Improved institutional capacity to request and receive international assistance in legal matters including extradition.

Objective 4 - Improve professional competence and credibility through increased quality and coordinated capacity building and training for professionals as well as support staff.

Outputs:

- i) Improved quality and quantity of graduates through revised academic curricula programming and activities (in all universities nationwide) with greater linkages to professional and career development, merit and discipline;
- ii) Established and sustainable institutional capacity to improve professional competence through professional induction training -- the Stage – and continuing legal education – advanced targeted training -- linked to merit, discipline and career development;
- iii) Established and functioning national and decentralized institutional mechanisms and facilities for advanced and continuing vocational training which also considers women candidates needs;
- iv) Improved quality and quantity of academic knowledge through foreign scholarships, exchange programs, and or internships, with special considerations for making such opportunities accessible to women; and
- v) Developed training programs and materials for litigation support, paralegals and court clerks.

Objective 5 - streamline and harmonize all laws of Afghanistan to be consistent with Constitution, Sharia and Afghanistan's international obligations; and increasing capacity of the relevant institutions such as Taqin and Parliament.

Outputs:

- i) Strengthened capacity of Taqin (Legislative Dept) for effective review and drafting of laws and regulations;
- ii) Improved capacity of Taqin to harmonize and regularize proposed laws and regulations with Sharia, Constitution and International legal instruments;
- iii) Improved parliamentary capacity to prioritize and schedule legislative activities and improved capacity for legislative process;
- iv) Publication and dissemination of all laws and all new laws to all stakeholders; and
- v) Laws enacted and implemented regarding competencies, jurisdiction and roles of justice sector institutions, including the informal sector.

Objective 6 - Increase access to justice and awareness of legal rights and obligations by people taking into account literacy levels, with a focus on rights of women and

children, and in close coordination with various non-governmental and governmental organizations.

Outputs:

- i) Improved publications and dissemination of information to the general public about available justice services;
- ii) Improved accessibility to justice sector institutions – including creation and maintenance of institutional mechanisms dedicated to public information requests/complaints management and responses;
- iii) Improved reporting of court, prosecution and enforcement decisions and activities;
- iv) Expanded coverage of the legal awareness programs implemented by different organizations in a coordinated fashion;
- v) Close and systematic evaluation of the legal awareness programs to determine effectiveness;
- vi) increased provision of legal services which includes an established legal aid department in Kabul and legal aid clinics in the provinces working closely with non-governmental organizations already providing services in this area legal rights; and
- vii) Justice officials and the public are aware of the right to defence and the importance of the role played by defence lawyers.

Objective 7 - Put policies, mechanisms and processes in place at all levels of the justice system to ensure impartiality, independence, due process, public accessibility and liability of justice sector officials to facilitate transparency and accountability.

Outputs:

- i) Mechanism is in place to monitor performance, accountability and liability of justice professionals;
- ii) Increased institutional capacity to prosecute and punish corrupt individuals and recover assets and proceeds of corrupt activity;
- iii) Improved institutional instruments (ethical codes, citizen's charters⁹) and institutional arrangements (for example the AGO Disciplinary Panel and the Afghan Bar Association) to create and maintain professional standards and ethics;
- iv) Improved public records-keeping and management;
- v) Enhanced security, efficiency, effectiveness and transparency of case, witness, victim, accused management processes; and
- vi) Improved performance and preservation of judicial and prosecutorial independence by providing secure facilities, including residences, transportation and equipment for justice sector professionals.

Objective 8 – Ensure expansion of justice services and coverage to all Afghans by expanding presence and operations in the provinces.

Outputs:

- i) Decentralized national training institutions and programs (e.g. NLTC) available nationwide, with particular reference to accessibility for aspiring women professionals;
- ii) Effective and extended reach of legal aid and paralegals providing services in all provinces and districts;

⁹ A citizen's charter is a written public service declaration of standards of service that the public will expect from the institution, and publication of complaints procedures.

- iii) Justice institutions infrastructure, transportation and equipment in place at provincial and district level; and
- iv) Qualified justice personnel delivering services at provincial and district level.

5. Program Costs, Financing and Coordination of Donor Assistance

A detailed costing exercise of the National Justice Program should be undertaken in September/October 2007 when the ANDS sector strategies will be costed.

The National Justice Program will be comprehensive and credible, including specific plans for short-, mid- and long-term implementation and a mechanism for reviewing progress and assessing results.

Specifically, it was proposed to use the Afghanistan Reconstruction Trust Fund (ARTF) mechanism for pooled donor funding and management to finance the priority interventions under the National Justice Program. In addition to ARTF, other sources of funds will be needed to support the overall program (e.g., Government budgetary resources and bilateral contributions). As well as the funding constraints of some donors, it is desirable that some activities, especially those involving civil society organizations, are not funded through the government budget.

6. Program Implementation, Monitoring and Evaluation

Though the exact scope of the program is yet to be agreed, *on the recurrent costs side* the Program is expected to help the Government pay salaries of certain categories of civil servants in the justice sector and operations and maintenance expenditures. However, simply paying staff more is not sufficient for a well functioning justice sector. Complementary reforms in organization, incentives, processes, fiduciary controls and human resource management (e.g. merit based appointments) are necessary to build a justice sector credible to Afghans. A model for public administration reform is being implemented in Afghanistan and these reforms can be extended to the justice sector. *Consequently, support for the justice sector should be closely linked to complementary reforms in public administration and to implementing the Pay and Grading exercise recently approved by the Cabinet.*

On the investment side it is expected to finance works, goods and consultant services to address the following issues common to the three justice institutions' strategies:

- Codes of Ethics and oversight mechanisms to be established for all legal professionals
- Infrastructure and office equipment: Subject to survey of essential work to be targeted.
- Transportation: Subject to survey of essential items/equipment to be procured.
- Capacity building and training: Establishment of formal qualification and continuing professional development requirements
- Strong information management and human resource management functions within the three entities to be established
- Public awareness: There is a need to develop tools and instruments which ensure access at all level of society, in particular when the target of legal education is the wider public. Various media tools should be discussed.
- Improvement of financial management. The justice sector is currently characterized by inadequate budgets and low budget execution rates, mostly due to serious capacity constraints in this area.

6.1 Institutional arrangements and programme implementation

The proposed National Justice Reform Program falls under the Pillar 2 “Good governance, Rule of Law and Human Rights” of the Afghanistan National Development Strategy, and will be developed with active participation and coordination of the ANDS Working Group on Justice and Rule of Law. The Working Group will be expected to contribute inputs to the Government on the scope of the program (e.g., identification and prioritization of activities), as well as on sequencing and coverage. This Working Group, which is chaired by the Minister of Justice, would remain the main vehicle for overall program coordination and oversight.

The proposed Program is expected to finance two types of expenditures – recurrent and investment costs. Expenditures funded by the Government from its own resources would follow normal government procedures. Components of the program funded by bilateral donors would be implemented according to the donor’s practices, and expenditures, outputs and project impacts would be reported by the donor and included in the overall monitoring and evaluation framework of the National Justice Program (see below).

For those expenditures financed by ARTF, the normal rules and procedures governing the operations of the Recurrent and the Investment Windows of the ARTF will apply to each respective portion of the Program (e.g., channeling of funds, projects processing, procurement, program monitoring, financial accountability and reporting). Below is a summary of the proposed implementation arrangements for Program activities that would be funded under the ARTF, with separate presentation of the methodology that would apply to the investment and recurrent portions of the Program.

I. INVESTMENT PORTION OF THE PROGRAM

Governance and Management Structure

The Program could be implemented following the agreements of a Project Agreement between the SC, MOJ and AGO and the Ministry of Finance. A National Justice Reform Steering Committee will be established, comprising senior SC, MOJ and AGO departmental managers, to maintain focus on results, good communications, a consolidated view of the reform, and any necessary policy and regulatory improvements. This committee would follow the progress on the National Justice Reform Program.

Daily operations of the projects under the Program would be organized and coordinated by a newly formed Program Implementation Unit. It is proposed to engage an implementing partner/consulting company to run the PIU, with the help of designated ministry counterparts. The Program Implementation Unit would report to the Supreme Court, Minister of Justice and Attorney General and assist as the “secretariat” for deliberations of the Steering Committee. The specific roles of the PIU would be to:

- prepare the overall plan of actions with the contributions of the various departments and participating donors;
- coordinate actions to assure mutual support and cross-functional efficiency;
- monitor progress; and
- evaluate the intended results.

This would cover all Program-supported activities including those implemented through the Supreme Court, MoJ and Attorney General’s Office and the, as well as activities financed by other donor partners and the Government budgetary resources. The objective should be to define and administer a truly integrated and well coordinated Program, irrespective of source of funding.

Specific Implementation Arrangements for Program Components

It is expected that once the scope of the Program is defined and agreed by all parties, distinct projects/components to be implemented by the three Program entities will be identified. For ARTF financed components, it is expected that donors would contribute funds for the National Justice Program either through general contributions to ARTF or to contributions that come with an expressed preference for the Program. Preparation and processing will follow the existing procedures and rules for the ARTF financed investment projects. These, in their turn are subject to the same fiduciary requirements that apply to all World Bank-financed or administered projects in Afghanistan. The World Bank's financial management and procurement specialists will initially assess the adequacy of the financial management and procurement arrangements and capacity and then monitor the performance during the life of the Program. To the extent possible, the investment projects will rely on the Government's normal fiduciary arrangements, with Program-specific arrangements to be put in place only where project activities are outside the scope of the usual government operations.

After the identification of discreet projects/components within the Program, each component would follow daily implementation arrangements specific to the needs of the entity/department being assisted and tasks to be performed. A sample matrix that could help monitor responsibilities of various implementing agencies is presented in *Table 1* below. The PIU will be responsible for the day-to-day procurement and financial management actions, while its Director would convene periodic meetings of the working level authorities to identify and resolve implementation issues that are outside the scope of their individual authorities.

The Supreme Court, MOJ and AGO, and would also be ultimately responsible for the performance of the projects/components assigned to them in the Program and the procurement and financial management for those steps not covered by the mainstreamed and centralized processes, as explained below.

Procurement and Financial Management Arrangements

Given the post-conflict situation, the emerging institutions and the low capacity, fiduciary risk in Afghanistan is generally viewed as high. To mitigate the prevailing risk in the country, the Government and the World Bank agreed to *mainstream* certain activities under World Bank financed and administered operations. That means that procurement is usually processed under *centralized systems* of the Afghanistan Reconstruction and Development Services (ARDS) under the Ministry of Economy, and financial management will be done using the systems of the Ministry of Finance. This implies that both the Government's own resources and all Bank-financed operations flow through the oversight of ARDS for procurement, while all accounting, payment and reporting actions are the responsibility of the Ministry of Finance.

Both the ARDS and the Treasury within the Ministry of Finance developed information systems to control and report on these operations. Moreover, the Government, with the assistance of the Bank, has engaged international consulting firms as operations advisors in Procurement, Treasury and External Audit functions to provide emergency support and to build capacity in the specified areas. These Advisors form the backbone of the fiduciary framework and control structure that has permitted the Bank to proceed with aggressive emergency operations and programs, in spite of the weak operating environment and limited administrative capacity in the executing entities.

These advisor arrangements which have been in place since 2003 contributed to the satisfactory fiduciary performance of donors funds. They are applied to all investment

operations in Afghanistan involving the World Bank and will remain in place at least until the end of 2010.

II. RECURRENT COST PORTION OF THE PROGRAM

Since the ARTF Recurrent Cost Window is limited to a fixed envelope of US\$ 270 million per annum, any additional financing to cover the recurrent costs portion of the National Judicial Reform program will have to be complemented by additional contribution from the donors, or an agreement needs to be reached on other acceptable modality (e.g., substitution of existing categories of financing, etc.).

Implementation

The part of the proposed National Judicial Reform that affects Government's recurrent expenses (payroll and operations and maintenance expenses) will be implemented using the existing implementation arrangements for financing of recurrent expenses (e.g., non-uniform and non-security related costs) through ARTF. Funds will be transferred to the Recurrent Cost Financing Trust Fund (RCFTF) within ARTF from where they will flow to provinces through the Government's single treasury account.

Corrections (uniformed) personnel and corrections infrastructure can probably not be financed through the ARTF, although the greater the resources donors make available to the ARTF for justice, the greater the Government's own resources are freed for financing of the corrections system. Concerned about the effects that low salaries have on professionalism and corruption in the Afghan justice sector, and recognizing that a World Bank/ARTF mechanism for justice system salary support would necessarily exclude corrections professionals, it has been suggested by some that the international community and Afghan Government consider recommending to the Law and Order Trust Fund of Afghanistan (LOTFA) board of directors that the LOTFA charter be amended to allow salary funding for uniformed corrections personnel, pending specific earmarked donations for that purpose.

Monitoring

As per the existing arrangements, a Monitoring Agent firm is in place to review Government's recurrent expenses before these are submitted to the World Bank as the ARTF Administrator for reimbursement. The monitoring of expenses is done by performing basic desk-reviews to sift out uniformed and security related expenses, and, where security permits, detailed site visits to assess compliance of expenses with Government and ARTF fiduciary standards. The Monitoring Agent adopts a risk-based approach, and techniques like statistical sampling, for monitoring expenses. The same arrangement will be applied for the monitoring of all expenses eligible for financing under the RCFTF, including for the recurrent portion of the proposed Program.

Reporting

The Monitoring Agent reports on a quarterly and monthly basis to the Administrator. Synopsis of these reports is shared with the donors on a quarterly basis in the form of the Quarterly ARTF Report to Donors. This report sets out the eligibility trends, break-down of expenses by cost categories (payroll and O&M, for example), distribution of expenditures between center and provinces, expenses by line ministries etc. The existing reporting arrangements will be extended to the reporting of additional eligible expenses being financed through RCFTF for the purposes of the National Judicial Reform Program. Basic information such as staffing numbers, salary costs and operating and maintenance costs for the three

justice sector institutions would be available. This would demonstrate that expenditures related to justice sector recurrent costs would be greater than or equal to incremental donor contributions preferred for this purpose.

6.2 Monitoring and Evaluation

It is suggested that the development of institutional statistical capabilities be a priority. The Supreme Court already has baseline data for most provinces. By rigorous tracking of court data, program partners will be able to monitor and evaluate trends in the system's development and progress towards the program's objectives, outcomes and outputs.

Consideration should also be given to supporting civil society on an annual basis to monitor and evaluate citizens' perceptions of the quality of justice service delivery.

7. Program Risks & Mitigation

There are a number of risks that will need to be managed. These risks include; political risks, country security risks, institutional risks. Detailed risk identification and mitigation is beyond the scope of this discussion paper and will need to be finalized. However, among the more pressing political risks include the role that provincial and sub provincial power networks play in the operations of the formal justice sector. Institutional risks may involve the capacity of justice sector institutions to properly absorb financial and technical assistance, particularly in relation to infrastructure and assets.