

## Helpdesk Research Report: Review of Justice Sector Support in Afghanistan

Date: 05.08.10

**Query:** Please provide a literature review analysing justice sector support in Afghanistan, its successes and its failures.

**Enquirer:** DFID

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### 1. Overview

There have been extensive efforts to support the justice sector in Afghanistan with different donors specialising in different areas. While some have argued that through such specialisation donors have produced positive outcomes others argue that efforts have been piecemeal and devoid of an overall strategy. Support has been donor-driven rather than locally-owned, has focused too often on short-term objectives, and has overlooked transitional justice and informal justice institutions.

#### Division of labour

The most common criticism centres on the piecemeal manner in which reform was undertaken and the lack of an overall strategy. Stone et al (2005) note that the German government led on police training (with the United States) while the UK helped to develop training curriculum and prioritised SSR based on UK government expertise. While commending this division of labour and arguing that the donors have had a generally positive impact on the justice sector, the authors also note a lack of coordination. Italy led work in justice, including prisons, and was expected by some to oversee strategy but was instead more narrowly focused on the implementation of its own projects. This resulted in one-off and sometimes costly projects which were not integrated into broader initiatives. Thus although they may have been successful in the short term, they were rarely sustained after project completion. The nomination of 'lead nation' did, however, ensure that major institutions received sizable financial and technical resources from at least one major donor. Ponzio (2005) concludes that there was poor coordination and coherence among the stages of development, with Afghan security sector reform de-linked from the country's broader peace building strategy. There was a lack of political consensus among the major international and local actors in Kabul. Tondini (2010) argues that success of justice sector projects in Afghanistan will depend in part on limiting the political interest of donor. In particular it is important to restrict bilateral project work and to establish a pooled financing mechanism for justice sector reform in its place.

Wilder (2007) argues that reform through such piecemeal initiatives has helped to increase corruption within the police and heighten the Afghan population's mistrust of the police. Recommendations include developing a shared vision and strategy for the ANP, an integrated and comprehensive rule-of-law-strategy and making donor assistance conditional on comprehensive reform of the Afghanistan Ministry of Interior. The low level of human capital (i.e. illiteracy, poor education) has been cited as one of the factors which limit justice sector reform. This has been noted in relation to the training of both police recruits and judges. Armytage (2007) argues that the level of 'de-professionalisation' of the judiciary is a result of a generation of war. He urges donors to review support to short-term, stand alone training assistance and extend support to long-term strategies.

### Short-term focus

A UK government Issues Note (Stabilisation Unit, 2008) documents the pressures to deviate from national and long-term justice sector support. There can be pressure to focus on the internal security function of the police (i.e. dealing with armed groups and state threats) at the expense of their criminal justice and public safety functions. Not all police forces have to perform both of these functions, and security threats may be localised or more complex. The need to reduce violence rapidly has led to quick-fix solutions such as the creation of the Afghan National Auxiliary Police (ANAP). ANAP were formed without plans for their future integration or financing as part of a national force. Bennett et al (2009) argue that though security and justice work could have been given greater priority UK DFID support to the National Justice programme and for police training has been very positive.

### Informal Justice and Local Ownership

Afghanistan has systems of informal justice which theorists (e.g. Smith and Lamey, 2010; Wardak et al., 2007) argue should be better integrated with formal systems. Smith and Laney (2010) argue that donors should work with each forum's strengths and weaknesses while recognising and enhancing the links between them. Tondini (2010) argues that donors should focus attention on the 'demand for justice' at the local level as opposed to the supply of assistance. Justice programmes need to be implemented through a multilateral approach but this must involve domestic authorities and other relevant stakeholders. On the other hand, Ponzio (2005) argues that ownership by the 'wrong' local actors can undermine long-term goals. He argues that the USA has compromised efforts to build a national democratically controlled force by collaborating with local commanders to pursue enemy units.

### Transitional Justice

Another common criticism relates to the bypassing of transitional justice and the creation of a 'culture of impunity'. Mani (2003) argues that the failure to address impunity in the Bonn Agreement and at the Emergency Loya Jirga (ELJ) meeting increased insecurity and undermined the rule of law in the long term. Winterbotham (2010) argues that the danger of putting "peace before justice" – i.e. bypassing transitional justice – is that this would contribute to ongoing insecurity. Human Rights Watch (2009) argues that such tolerance of impunity can contribute to renewed cycles of violence. Tondini (2007, 2010) criticises the acceptance of regional power structures in an attempt to maintain a fragile political stability, as demonstrated by the bypassing of a transitional justice phase.

## **2. Donor effort evaluation**

**Stone, C. et al., 2005, 'Supporting Security, Justice and Development: Lessons for a New Era', Vera Institute of Justice, New York**  
<http://www.qsdrc.org/docs/open/CON24.pdf>

The article noted three obstacles to sector-wide reform in post-conflict situations. These are:

- 1) Funding arrangements in post-conflict situations are more frequently short-term and poorly integrated with each other.

- 2) Civilian leadership in post-conflict situations is more tightly confined in separate silos and preoccupied with ending active conflict.
- 3) The project managers and advisors deployed by development agencies in post-conflict contexts have less training and expertise in sector-wide, development approaches to security and justice sector reform.

The paper also provided a set of 15 recommendations for developing UK policy on justice sector reform in Afghanistan.

Holistic, sector-wide approaches to justice sector programs in these conflict and post-conflict contexts have not yet proved possible. In Afghanistan different countries took the lead for different institutions within the sector but there was no overall strategy for institutional reform. No attempt was made to match sequencing of interventions in the justice sector despite division of responsibilities. At the same time division of labour between other donors allowed donor governments to play a leading role in their areas. For example, the prioritization of SSR by the UK makes a great deal of sense, given the UK government's expertise in this area, the evident needs on the ground, and the obvious gaps in funding and analysis.

The Conflict Prevention Pools may have contributed to the lack of a holistic, strategic approach. In Afghanistan, for example, the case study concludes that UK government's process of funding activities through the Global Conflict Prevention Pool (GCPP) is ad hoc and not strategic. Funding is not being used to lever change or reflect the demand side of policing services, but rather to respond to donor driven initiatives. There has been a tendency to provide a quick response to pick up projects which will have a quick impact and in the process ignore longer term thinking.

The authors comment that power is exercised through channels other than the formal bodies created by donors. It is highly personalized, draws on informal networks and ultimately is based upon access to the means of violence. Consequently though the National Security Council (NSC) Support Programme was initiated in September 2002 to provide Afghan ownership over security sector issues such ownership is not yet evident.

**Wilder, A., 2007, 'Cops or Robbers? The Struggle to Reform the Afghan National Police', Issues Paper Series, Afghanistan Research and Evaluation Unit, Kabul**

[http://www.areu.org.af/index.php?option=com\\_docman&Itemid=&task=doc\\_download&gid=523](http://www.areu.org.af/index.php?option=com_docman&Itemid=&task=doc_download&gid=523)

This paper provides an overview of the police sector and reforms so far. The authors argue that piecemeal initiatives undertaken by donors and the national government have resulted in corruption within the police and mistrust among the Afghan population. Despite some notable achievements, the overall result of police reform efforts during the past five years has been disappointing, and many Afghans still perceive the Afghan National Police (ANP) to be part of the security problem rather than part of the solution. The challenges are:

- Training has been complicated by high levels of illiteracy among recruits and the expense of mentoring projects by foreign trainers. Although policemen are better equipped now than in 2002, their kit is difficult to maintain and frequently stolen from ANP stores.
- Restructuring initiatives have succeeded in improving payroll administration. However, more meritocratic selection procedures were undermined by President Karzai's appointment of several ill-suited senior officers, who were eventually replaced.
- Tensions between international donors initially hampered the development of a coherent reform strategy, with Germany's vision of the ANP as a civilian force conflicting with the American emphasis on the force's role in the anti-Taliban campaign.
- Difficulties stemming from inadequate coordination among regional police units and between the ANP and other security actors have been compounded by corruption within the Ministry of Interior (MoI).

- The new Afghanistan National Auxiliary Police unit was hastily created to combat the Taliban insurgency. Inadequate training and vetting of recruits to the unit discredited the ANP as a whole.

If police reform is to succeed in Afghanistan, and the big increase in resources to reform the ANP is not to be wasted, the major actors will need to address five key issues:

- 1) Develop a shared vision and strategy for the ANP.
- 2) Replace Security Sector Reform (SSR) pillars with an integrated and comprehensive rule-of-law strategy.
- 3) Make donor assistance conditional on comprehensive Mol reform.
- 4) Prioritise quality of police over quantity.
- 5) Prioritise fiscal sustainability of the security sector.

**Ponzio, R, 2005, 'Public Security Management in Post-Conflict Afghanistan: Challenges to Building Local Ownership' in After Intervention: Public Security Management in 'Post-Conflict Societies - From Intervention to Sustainable Local Ownership', eds. Ebnother, A and Fluri, P., Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva**

[http://www.dcaf.ch/pfpc/after\\_intervention.cfm?nav1=4&nav2=2](http://www.dcaf.ch/pfpc/after_intervention.cfm?nav1=4&nav2=2)

This paper argues that Afghanistan needs basic open and accountable institutions of governance. The police, military, judiciary and other security institutions need to be brought under firm democratic control. The donor-led agenda allocated 'lead nation' responsibility in each of the five critical areas of security sector reform. These are: Military reform, police reform, judicial reform, counter-narcotics and the disarmament, demobilisation and reintegration of ex-combatants. This strategy has ensured that major institutions are receiving sizeable financial and technical resources from at least one major donor. On the other hand, the piecemeal approach has failed to foster effective coordination or coherence among the stages of development. There is a lack of political consensus among the major international and local actors in Kabul. Other factors obstructing peace include:

- The Afghan security sector reform agenda is de-linked from the country's broader peace building and reconstruction plan.
- The USA has compromised efforts to build a national force that submits to democratic, civilian control by collaborating with local commanders to pursue enemy units.
- The main political factor is the power and political influence of regional and local militia commanders.

Building sustainable local ownership is difficult. Basic principles include: Respecting local counterparts, investing seriously in their skills and institutions, transferring core responsibilities over time, and accepting mistakes. Additional lessons specific to Afghanistan are:

- Invest heavily in public security management reform from the beginning, and not risk the need for a more costly and time-consuming intervention later. Accommodate select militia commanders in democratic governing institutions to pre-empt efforts to subvert reforms.
- Ensure coherence among the various components of a public security management reform strategy. Wherever possible, invest in local leadership and the coordination of the reform components.
- Establish a credible and appropriately sized international security presence. This is to bridge the gap between a limited or non-functioning security sector and the eventual deployment of effective local security forces.
- Ensure ethnically balanced, non-sectarian and de-politicised staff recruitment. Promote community policing and other measures to improve relations between local populations and public security institutions.

- Extend the Disarmament Demobilisation Recruitment Program to illegal armed groups outside the Afghan Militia Forces.
- Promote principles of democratic governance in the security sector immediately following an intervention.

**Tondini, M., 2010, 'Statebuilding and Justice Reform: Post-Conflict Reconstruction in Afghanistan' Volume 26 of Cass Series on Peacekeeping, Taylor & Francis Group**

This book examines the reform of justice in Afghanistan. The author stresses the need for development programmes in the field of justice to be implemented through a multilateral approach, involving domestic authorities and other relevant stakeholders. Success is therefore linked to limiting the political interests of donors (who should abandon the idea of gaining 'political dividends' from their assistance); establishing functioning pooled financing mechanisms for the sector reform; restricting the use of bilateral projects; improving the efficacy of technical and financial aid; and concentrating the attention on the 'demand for justice' at local level rather than on the traditional supply of financial and technical assistance.

**Armytage, L., 2007, 'Justice in Afghanistan: Rebuilding Judicial Competence After the Generation of War', Heidelberg Journal of International Law, vol. 67, no. 1, pp. 185-210**  
[http://www.mpil.de/shared/data/pdf/armytage-justice\\_in\\_afghanistan.pdf](http://www.mpil.de/shared/data/pdf/armytage-justice_in_afghanistan.pdf)

This paper outlines the findings of a national study undertaken for the Supreme Court in 2006. It analyses deficiencies in judicial quality, competence and professionalism resulting from the degradation of institutional and human capacity. Research revealed foundational deficiencies - the direct legacy of a generation of war - which have de-professionalised the judiciary and eroded public confidence:

- A significant minority of judges have not completed any university education in sharia or law. A significant minority have also not completed any systematic practical induction training, known as 'the stage'.
- There are mounting concerns about judicial corruption and the lack of judicial standards and disciplinary procedures.
- There is a system-wide lack of fundamental competencies in legal knowledge, professional skills and judicial outlook.
- The needs and priorities for judicial training are substantial and may be classified as foundational, institutional, professional and related in nature.
- It is necessary to strengthen, restructure and modernise standards of judicial qualification. There are also a range of institutional needs to strengthen the organisational integrity of the courts.
- The judiciary's professional needs require development of training on: the constitution; criminal, civil and commercial laws; the principles and practices of judicial independence; judicial ethics; and human rights, including the barrier of access and biases against women.

In Afghanistan the goals of judicial education and training are two-fold: rebuild the judicial capacity of judges to administer justice and modernise judicial know-how and outlook. This requires both familiarity with and respect for Afghan sharia and legal jurisprudence and a forward looking vision of the justice needs of the post-war Afghan people. The authors outline initiatives to develop long-term education and training strategies to rebuild these capacities:

- Existing short-term training programmes for the judiciary are indispensable to improve day-to-day performance. However, they are not designed to address the identified underlying professional deficiencies.
- Longer term strategies are needed to focus on strengthening: pre-qualifying sharia and legal education; admission standards to the stage; quality of stage training; examination standards; and admission to the judiciary.
- These strategies should also focus on in-service training, monitoring performance and administering discipline.

- Donors should review support to short-term, stand alone training assistance and extend support to long-term strategies.
- The cycle of model practice for judicial education builds on the principles of adult education and professional development. It includes needs assessment, curriculum, delivery and evaluation.
- Monitoring and evaluation is required to ensure that training programmes deliver intended results and provide a mechanism to review and refine activities.

### 3. Short-term focus

#### **Stabilisation Unit, 2008, 'Security Sector and Rule of Law', Stabilisation Issues Note, UK Stabilisation Unit**

<http://www.stabilisationunit.gov.uk/resources/securitysectorlaw.pdf>

This study draws lessons from the experiences of UK-funded policing and justice programmes in seven countries including Afghanistan. Focusing on an organisation without situating it in its broader context can risk a distortion of its role towards local and immediate priorities rather than national priorities, e.g. too much of a focus on the internal security function of the police at the expense of their criminal justice and public safety function. In most stabilisation environments, the police will be required to help achieve internal security (dealing with armed groups and other threats to the new state) and criminal justice and public safety (preventing and responding to actions that break the law, in conjunction with courts, prisons, etc.). Not all police units or agencies necessarily have to perform both of these functions. The internal security threat may be localised (for example, southern/eastern Afghanistan or northern Uganda) or more complex (as in Iraq).

It is important that support is outcome-based, focusing on multiple organisations and their interaction where necessary. The urgency of the need to reduce violence and achieve law and order or counter insurgency often creates a pressure to do 'something' yesterday. In the past this has led to quick fix initiatives, some of which have had a limited or negative impact over the longer term. For example, the creation of the Afghan National Auxiliary Police or the Facilities Protection Force in Iraq. These were both undertaken without plans for their future integration or financing as part of a national force.

#### **Bennett, J. et al, 2009, 'Country Programme Evaluation, Afghanistan' Evaluation Report EV696, DFID**

[http://www.dfid.gov.uk/Documents/publications1/evaluation/afghan\\_eval.pdf](http://www.dfid.gov.uk/Documents/publications1/evaluation/afghan_eval.pdf)

This evaluation includes observations and recommendations for DFID work in Afghanistan. The evaluation notes that support to the National Justice Programme has been very positive and DFID has had a 'comparative advantage' in relation to other donors. Support for police training was well received and DFID support through line ministries (particularly Ministry of Rural Rehabilitation and Development) was seen as being effective. At the same time different choices within given resources could have been made. Greater priority could have been given earlier to security and justice work, given that the rule of law sector was consistently highlighted as one of the most critical areas for addressing state fragility, and where progress was sorely lacking. Corruption remains a fundamental challenge. DFID has contributed incremental improvements through, for example, the Tax Administration Reform Project, but the problem is more profound. Justice institutions remain the least developed among formal oversight organisations. New work is planned on linking informal and formal justice systems in order to enable improved functioning of the informal system. DFID Afghanistan is also intending to expand work on corruption alongside other government departments in the new country plan.

DFID should give greater attention to rule of law and justice. Support to National Justice Programme (NJP) has been very positive; DFID has a comparative advantage in relation to other donors. Traditional justice systems will need to be considered, though with caution in respect of human rights issues. DFID should draw on its experience in other fragile states.

Options to gradually extend the reach of formal systems into communities should be considered. The division of labour agreed among donors in Afghanistan was driven largely by political bargaining among donor countries. As a result, the security and justice sector – arguably the most crucial sector – has performed badly. DFID should develop effective ways of communicating lessons learned at ministerial level and try to ensure that these lessons inform future engagement in other fragile states.

#### 4. Informal Justice

**Smith, D and Lamey, J, 2010 'A Holistic Justice System for Afghanistan' Policy note from Afghanistan Research and Evaluation Unit, 2010, 'Speaking from the Evidence: Governance, Justice and Development: Policy Notes for the 2010 Kabul Conference' Afghanistan Research and Evaluation Unit**

[http://www.humansecuritygateway.com/documents/AREU\\_SpeakingFromTheEvidence\\_PolicyNotesForThe2010KabulConference.pdf](http://www.humansecuritygateway.com/documents/AREU_SpeakingFromTheEvidence_PolicyNotesForThe2010KabulConference.pdf)

This policy note suggests that donors should not conceptualise state justice and Community-based dispute resolution (CBDR) dichotomously as “formal and informal” and potentially split programmes between. They should instead aim for a more holistic approach to justice sector efforts. Donors should work with each forum’s strengths and weaknesses while recognising and enhancing the links between them. The authors suggest a formal mechanism of state endorsement of CBDR outcomes. Programmes must be flexible to respond to the context with contextual research being carried out beforehand. In wishing to reform CBDR practices it is essential that this is done within an Islamic framework and keeping in mind gender dynamics in each context.

**Wardak, A., Saba, D. and Kazem, H., 2007, 'Bridging Modernity and Tradition: The Rule of Law and the Search for Justice', Afghanistan Human Development Report 2007, Center for Policy and Human Development, Kabul University, and Army Press, Islamabad**

[http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/RMOI-793N8P-full\\_report.pdf/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/RMOI-793N8P-full_report.pdf/$File/full_report.pdf)

This report makes the case for a 'Hybrid Model' of Afghan justice involving a collaborative relationship between formal and informal justice institutions. The failure of state and non-state institutions to work together is inhibiting improvement to justice delivery in Afghanistan. A model that allows traditional justice institutions to cooperate with state institutions is required. This would harness the positive aspects of non-state dispute settlement institutions while ensuring that decisions are compatible with the Afghan Constitution, Afghan laws, and international human rights standards. The proposed 'Hybrid Model' would establish institutional links between formal and informal justice in Afghanistan.

The report explores the current traditional and state justice institutions:

- Human development requires a deep commitment to social justice by the government and its citizens, based on the rule of law and the democratic empowerment of all Afghans
- Informal and non-state institutions of dispute resolution are prominent in Afghanistan as well as the main formal justice and law enforcement institutions
- Traditional justice systems are more accessible, more efficient (in terms of time and money), perceived as less corrupt, and are more trusted by Afghans than formal state courts decisions
- The judicial system, the Ministry of Justice, the central prison system and the police all suffer from a lack of adequate human resources, equipment and physical infrastructure
- The formal justice system suffers from 'institutionalised corruption'.

- The expanding narcotics trade and pervasive corruption undermine the rule of law and can potentially erode the legitimacy of the government and international assistance

Tensions between the formal and informal justice systems need to be reconciled by fostering the respective strengths of these competing and conflicting approaches to the rule of law. Further recommendations include:

- The formal state institutions of justice require a renewed and more coherent strengthening and restructuring effort.
- Assessments of the efficacy of the rule of law should go beyond the content and application of laws and determine how they enhance citizens' capabilities and freedoms
- A holistic response is required, given that many of the challenges faced to strengthen the rule of law and promote human development are interrelated
- The government needs to develop and implement a comprehensive anti-corruption strategy in order to make significant progress in this area
- Increased investments in human development and corrective policy actions must be undertaken immediately if Afghans are to succeed in reaching their MDG targets.

## 5. Transitional Justice

**Mani, R., 2003 'Ending Impunity and Building Justice in Afghanistan', Issue Paper Series, Afghanistan Research and Evaluation Unit**

<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN016655.pdf>

The central argument of this paper is that the political process of peacebuilding in Afghanistan is inherently unstable and unsustainable because it is based on impunity, which was neglected at the Bonn Conference and entrenched at the Emergency Loya Jirga (ELJ). The failure to address impunity in the Bonn Agreement and at the ELJ meeting has had several consequences for political reform and peace in Afghanistan:

- **Insecurity:** Commanders aligned with the Northern Alliance and included in the power-sharing agreement have acted with impunity in pursuing their own factional, ethnic and economic interests. Due to the limitations of DDR, disenfranchised, marginalised people faced with a government that offers them little protection or means of livelihood are finding no alternative to misusing guns as a way of life.
- **Human Rights Violations Tolerated:** Impunity has led to a tolerance of human rights violations, due to a fear that calling attention to them will lead their perpetrators to withdraw their cooperation from current political arrangements. Addressing human rights violations has come to be seen as a threat to security rather than a necessary component of dealing with insecurity. Despite a steep rise in violations over the past two years, there has been very modest monitoring of human rights across the country by the United Nations Assistance Mission in Afghanistan (UNAMA) and the Afghan Independent Human Rights Commission (AIHRC).
- **Delayed Security Sector Reform:** The three principal and interlinked tasks of security sector reform – building a new Afghan National Army (ANA) and Afghan National Police (ANP), and undertaking disarmament, demobilisation and reintegration (DDR) – have faced obstacles that stem directly from decisions made at the Bonn and ELJ meetings. All three tasks have been delayed and undermined due to the intransigence and rivalry of warlords and commanders, their control over police stations and militias across the provinces and their refusal to disband militias as required by the Bonn Agreement. The Ministry of Defence is a major obstacle to DDR and the creation of the ANA.
- **The Rule of Law Undermined:** The work of the Judicial Reform Commission, established in accordance with the Bonn Agreement, has been undermined by two consequences of the Bonn Agreement and the ELJ. First, Northern Alliance commanders, allowed by the Bonn Agreement to maintain their de facto control over the areas won in removing the Taliban from power, established authority over the



courts in their areas. The factional control of courts has led to intimidation of centrally appointed judges and attorneys. Moreover, corruption and incompetence are endemic as unqualified personnel loyal to a specific faction are installed as court officials. Secondly, at the ELJ, Fazal Hadi Shinwari, a loyalist of the Ittihad-e-Islami party, headed by Abdul Rasul Sayaf, was reconfirmed as the chief justice of the Supreme Court. The chief justice has defiantly asserted the Supreme Court's independence from the judiciary and executive, and sought to extend the influence of his particular faction and view through numerous appointments of often unqualified persons.

- The “Securitisation” of the Rule of Law: The priority given by national and international decision makers to security has led to rule of law reform being treated as a subset of security sector reform. The decision by UNAMA and international donors to approach rule of law reform as part of security sector reform may stem from a positive desire to lend strategic coherence to their work, especially at this critical time of volatility. Subordinating rule of law to security connotes a hierarchy of needs established according to the priorities of the international community and the ATA, rather than the majority of the Afghan population. Treating the rule of law as a tool to deliver on security carries the risk that justice and rule of law may be subordinated to security considerations and that police will be trained primarily to provide order rather than to protect citizens according to the law. The “securitisation” of rule of law suggests that as long as courts follow the rules of legality and are physically rehabilitated to conform to minimal standards, their deep and dangerous politicisation will not be addressed.

The authors argue that the first step to restoring security and stability in Afghanistan will require replacing peacebuilding based on impunity with peacebuilding based on accountability.

**Winterbotham, E, 2010, 'The State of Transitional Justice in Afghanistan: Actors, Approaches and Challenges' Afghanistan Research and Evaluation Unit, 2010, 'Speaking from the Evidence: Governance, Justice and Development: Policy Notes for the 2010 Kabul Conference' Afghanistan Research and Evaluation Unit**  
[http://www.humansecuritygateway.com/documents/AREU\\_SpeakingFromTheEvidence\\_PolicyNotesForThe2010KabulConference.pdf](http://www.humansecuritygateway.com/documents/AREU_SpeakingFromTheEvidence_PolicyNotesForThe2010KabulConference.pdf)

The authors note that the current emphasis of the government is on reconciliation with the Taliban and the reintegration of fighters – i.e. “peace before justice”. Some governments – specifically the Norwegian and Dutch – have at times used international platforms to highlight the importance of transitional justice. However, many of Afghanistan's partners remain conspicuously silent on issues of accountability for war crimes. The authors argue that the failure to address the legacy of impunity in Afghanistan is contributing to ongoing insecurity. They argue transitional justice needs to be brought back onto the agenda.

**Human Rights Watch, 2009, 'Selling Justice Short: Why Accountability Matters for Peace', Human Rights Watch, New York.**  
[http://www.hrw.org/sites/default/files/reports/ij0709webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/ij0709webwcover_1.pdf)

This report argues that the impact of justice is too often undervalued when weighing objectives in resolving a conflict. Various actors have argued that pursuing accountability can hinder peace negotiations and that justice, while important, should take a back seat to peace. In the short term, it is easy to understand the temptation to forego justice in an effort to end armed conflict. However, the pursuit of justice does not necessarily have a negative impact on peace negotiations, while foregoing accountability often does not result in the hoped-for benefits. The report argues that:

- Indictments of abusive leaders and the resulting stigmatisation can lead to the marginalisation of a suspected war criminal.

- Amnesties may effectively sanction the commission of grave crimes without bringing peace.
- Incorporating suspected war criminals into governments in order to consolidate peace carries a high price.
- Tolerance of impunity can contribute to renewed cycles of violence by creating an atmosphere of distrust and revenge that can be manipulated to foment violence.
- Fair trials help to create a historical record that protects against revisionism.
- International justice can have a positive impact on domestic enforcement.

**Tondini, M., 2007, 'Rebuilding the System of Justice in Afghanistan: A Preliminary Assessment'. *Journal of Intervention and Statebuilding*, 1(3), 333-354.**  
<http://dx.doi.org/10.1080/17502970701592272>

This evaluation describes the role of international assistance in the reconstruction of the Afghan judicial system. The research conducted suggests that international policy in this area has done little to reinforce the central administrative control of the centre. First, regional power structures have been pragmatically accepted, as highlighted in the bypassing of a transitional justice phase, in an attempt to maintain a fragile political stability. Second, the fragmented nature of the Afghan justice system has been reinforced by the lack of coordination between the relevant international actors, which have generated a large number of projects in the area, each advancing independently.

## 6. Other relevant material

### GSDRC Helpdesk Reports

Gender Issues in Afghanistan: What are the key issues relating to gender in Afghanistan? Please include information on key trends and current issues; statistics; relevant government policies; and high profile messages and statements.  
<http://www.gsdrc.org/go/display&type=Helpdesk&id=382>

Reintegration Best Practice: Please provide authoritative resources on best practice / lessons learned from reintegration programmes (resources focusing on countries in-conflict other than Afghanistan would be particularly useful).  
<http://www.gsdrc.org/go/display&type=Helpdesk&id=570>

SWAps and Justice: What are best practice and lessons learned in SWAps, particularly relating to the justice sector?  
<http://www.gsdrc.org/go/display&type=Helpdesk&id=346>

## 7. Additional Information

### **Author**

This query response was prepared by **Sumedh Rao**: [sumedh@gsdrc.org](mailto:sumedh@gsdrc.org)

### **Contributors**

Livingston Armytage (Centre for Judicial Studies)  
 Matteo Tondini (VU University, Amsterdam)

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