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LITERATURE ON RULE OF LAW IN AFGHANISTAN

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LITERATURE ON RULE OF LAW IN AFGHANISTAN

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ABSTRACT: This list is a resource for documents pertaining to rule of law, governance and security sector projects and studies in Afghanistan.

Evaluations, assessments and quarterly reports from USAID, the World Bank, DFID, SIDA and other donor agencies are included.

Academic articles and policy papers are also included.

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SUMMARY

When implementing rule of law program approaches, USAID and other development donors have leveraged traditional justice systems extensively over the past as a way to resolve local level conflict. Funds to the *Afghan Social Outreach Program (ASOP)* support the Independent Directorate of Local Governance while establishing district community councils that can address dispute resolution through their legal sub-committees.¹ The broader U.S. government strategy has traditional justice actors in a role that links the central government and local institutions, encouraging dispute resolution and community-based reconciliation of legacy issues between different parties.²

Some 80% of Afghans fall under community-based dispute resolution processes (CBDR) (or traditional/informal justice systems that consist of community-level institutions) including *Shuras* (sitting bodies that address general disputes) and *Jirgas* (bodies that oversee specific disputes), that are criminal or civil in matter.³ The CBDR model attempts to “promote social harmony within the community” even if it does violate human rights guarantees as written in Afghan law.⁴

Many rural Afghan citizens see CBDR as a viable alternative to Western legal models or to the Taliban court system and CBDR can easily be employed among villages where there is weak justice capacity and where illiterate or semiliterate citizens (and future jurors) live.⁵ Villagers and formal justice actors, especially tribal elders, see CBDR as very helpful, inexpensive, and generally fair and balanced with any decisions taking into account local community contexts.

One USAID project has reportedly leveraged CBDR to strengthen the overall formal legal system. An example of this project’s efforts is combining a decision by a Tribal Elder, who himself received the original legal petition from the formal State, with the process ending with the formal State’s final administration of punishment.⁶ This hybrid application of justice likely enhances overall longevity, especially if no major reforms to structure and process are planned after donor support declines. CBDR sustainability lessens the likelihood of a Taliban re-

¹ Afghanistan rule of law stabilization program (informal component): Assessment. 2011. P. 13.

² Ibid.

³ N. Coburn and J. Dempsey, *Informal Dispute Resolution in Afghanistan*, United States Institute of Peace. 2010. Footnote 4.

⁴ Ibid. P. 12.

⁵ Ibid. P. 17.

⁶ Ibid. P. 23

emergence in that area⁷ making Tribal elders even more valuable in linking the formal and the informal justice sectors. Reducing violence must be the ultimate objective especially if future project planning adjusts for variation between the Eastern districts and the Southern ones where stability is harder to maintain.⁸ If better baseline metrics and monitoring of projects can be applied and the greater use of women as peacemakers employed⁹, CBDR will have even more long-term success in establishing rule of law and governance.

The *Afghan Social Outreach Program (ASOP)* suggests that community-based dispute resolution processes is a viable approach is leveraging existing assets to confront difficulties in a short amount of time. Using existing informal legal institutions such as Tribal Elders to maintain continuity while new formal institutions are being designed and implemented permits development designers the time needed to maintain stability and offset any alternative models, in this instance the presence of the Taliban.

The results of a 2012 World Bank justice sector project reflect some measured gains but also some room for improvement. Using the Afghanistan Reconstruction Trust Fund (ARTF), the Bank sought to increase the number of improved justice facilities, the number of people who receive legal service as well as the number of qualified and properly trained justice professionals and resources for them. Broadly increasing the capacity of legal institutions to control human resources was also crucial.¹⁰ Lessons learned include: having an adequate human resources base necessary to implement reform and understanding the institutional context in which it sits, carefully and consistently measuring the impact of programs in the justice sector and including baseline data, having proper qualitative data collection tools and methods, and taking into account communication and cultural barriers when Bank personnel supervise and encouraging a more positive institutional environment.¹¹

The European Union initiated security sector reform in Kabul by launching a community policing pilot and eventually expanded the model to other regions such as Chagcharan, Feyzabad, Mazar-e Sharif, Kunduz, Bamyan, Herat and Helmand. Community policing emphasizes local ownership and cooperation with the citizenry to gain its trust and confidence.¹²

⁷ Ibid. P. 29.

⁸ Ibid. P. 30.

⁹ Ibid.

¹⁰ World Bank. 2012. Afghanistan - Justice Sector Reform Project. P. 3.

¹¹ Ibid. P. 26-28.

¹² See EU "Kabul Police District"

Another bilateral donor, the Australian Aid Agency, emphasizes elements of the Afghanistan Compact that was designed at the international 2005 London Conference, elements that include security, governance and human rights.¹³ Australia also highlights the importance of the Afghan Government's public commitments to reducing corruption by using ARTF funds to reform civil service reform and financial systems and leveraging the Afghanistan Independent Human Rights Commission to help human rights and the rights of women, minorities and children.¹⁴

Finally, academics such as Kate Fearon,¹⁵ Susanne Schmeidl and Masood Karokhail,¹⁶ and Thomas Barfield¹⁷ all advocate using traditional and customary law in accelerating stability in war-torn regions of Afghanistan rather than trying to implant wholly foreign Western legal models.

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¹³ Australia's strategic approach to aid in Afghanistan 2010-2012: December 2010. P. 7 of PDF.

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