



Bridging the Gap: Increasing Civil Society Participation in Law and Policy Formulation in Afghanistan

INITIATIVE TO PROMOTE AFGHAN CIVIL SOCIETY (I-PACS)

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Acronyms

ACBAR	Agency Coordinating Body for Afghan Relief
ANCB	Afghan NGOs Coordination Bureau
ACSF	Afghanistan Civil Society Forum
AHDS	Afghan Health and Development Services
ANDS	Afghanistan National Development Strategy
ANGO	Afghan Non-governmental Organizations
AWN	Afghan Women's Network
BPHS	Basic Package of Health Services
CHA	Coordination of Humanitarian Assistance
CPAU	Cooperation for Peace and Unity
CSO	Civil Society Organization
INGO	International Non-governmental Organizations
I-PACS	Initiative to Promote Afghan Civil Society
MoIC	Ministry of Information and Culture
MoF	Ministry of Finance
MoJ	Ministry of Justice
MoPH	Ministry of Public Health
MoWA	Ministry of Women's Affairs
MP	Member of Parliament
MRRD	Ministry of Rural Rehabilitation and Development
NGO	Non-governmental Organization
PDP	Provincial Development Plan
PRSP	Poverty Reduction Strategy Paper
PRT	Provincial Reconstruction Team
SDO	Sanayee Development Organization
SWABAC	Southern and Western Afghanistan and Balochistan Association for Coordination
UNAMA	United Nations Assistance Mission in Afghanistan
UNIFEM	United Nations Development Fund for Women
USAID	United States Agency for International Development

Important Terms

Civil Society: The term has been interpreted in various ways. One commonly accepted definition for civil society is “the sphere of institutions, organizations, and individuals located between the family, the state, and the market in which people associate voluntarily to advance common interests.”¹ The civil society sector is usually understood to embrace organizations, either registered or unregistered, that have united in taking actions to achieve mutually agreed upon goals. These organizations are collectively referred to as Civil Society Organizations (CSOs).²

Jirgas and Shuras: Definitions and functions of *jirgas* and *shuras* vary. However, it is commonly understood that they are traditional local councils that villages or tribes establish themselves, usually for the purposes of self-government but also to represent a community's interests to other parts of society. These councils exist in many parts of the country, although their influence is proportionally less as the degree of urbanization increases. Even so, they perform some functions considered to be in the realm of modern governments, principally conflict resolution, and also fulfill some of the roles of CSOs, enabling groups of citizens to gather to accomplish goals.³

Ulema: *Ulema* are religious scholars who sometimes form *Ulema jirgas* or *shuras* that provide religious guidance to communities.

Provincial Council: This is the elected body that resides at the provincial level. Provincial Councils were first elected in 2005 along with the Wolesi Jirga. The Provincial Councils are mandated to provide advice on provincial matters to the provincial government, as well as to their Wolesi Jirga representatives in Parliament. The head of each Provincial Council is also a member of the Meshrano Jirga.

Wolesi Jirga: This is the Lower House of the Afghan Parliament. It consists of 249 members who were elected through a nation-wide election.

Meshrano Jirga: This is the Upper House of the Afghan Parliament. Its membership consists of elected officials (Provincial Council heads) and officials appointed directly by the President.

¹ From Helmut Anheier's 2004 *Civil Society: Measurement, Evaluation, Policy*.

² *Afghanistan Civil Society Assessment*. Counterpart International, Kabul, 2005

³ Ibid

Executive Summary

In recent Afghan history, relations between the government, elected officials and civil society actors have been complex and plagued by misunderstanding. This study was designed to better understand the ways in which elected officials, government and civil society actors are currently working together to help shape laws and policies in Afghanistan, as well as identify ways to improve their engagement. Two laws – the Media Law and the Election Law – and two policies – The Afghan National Development Strategy and the Basic Pack of Health Services – form the center of this study. Interviews and focus group discussions were held with elected officials, government and representatives of civil society (largely CSOs) at the national, provincial and district levels to better understand the ways in which they have engaged in the formulation of these laws and policies.

The study found that there had been strikingly little engagement to date amongst these various parties in law- and policy-making processes. Moreover, neither the law- nor policy-making processes have clearly defined guidelines for including consultations with CSOs. A number of factors appeared to be at play here. At the root of the situation was a poor understanding of what is meant by civil society, as well as of the law- and policy-making processes and the roles that each sector might have in these. Distrust between CSOs and government was another significant factor, although despite this, CSOs appeared to remain interested in engaging with government on these issues. The CSOs, however, generally did not have the necessary strategies and capacities to fully engage in law- and policy-making processes. Moreover, while there had been some attempts to influence laws and policies, the CSOs in Kabul had not been able to build systematic approaches to be effective at this.

The study revealed that, while there are well-articulated law-making processes, no such processes exist for policies. Neither the law- or policy-making processes have clearly defined guidelines for including consultations with CSOs. When CSOs have been consulted, it has generally been personal connections that have driven the choice of whom to consult. This has led to a less than inclusive process of consultation, during which the CSOs often appeared to have been inhibited from providing recommendations that might be perceived as negative. Moreover, it appeared that policy formulation and legislation processes were highly centralized and barely reached the provinces. In some cases, attempts had been made to involve the participation of women, but this participation was seen to be largely symbolic.

Below are the major recommendations that have emerged out of this study.

1. Building a Better Understanding of Civil Society and Law- and Policy-making Processes: Build across all sectors and at all administrative levels a better understanding of civil society, the law- and policy-making processes, and the roles that each sector can play in these; and support strong governance projects that help communities better understand their roles in policy dialogues.

2. Increasing Access to Information: Increase the flow of information between elected officials, government actors, and CSOs and also ensure that information from the center flows to the provinces and districts, especially information about the law- and policy-formation processes; encourage media to provide more coverage on the laws and policies, as well as relevant initiatives relating to these; and increase the

transparency of donor-government agreements so that civil society is aware of the commitments made.

3. Building Strategies and Capacities to Enhance Engagement: Strengthen the strategies and capacities of CSOs (research, advocacy, networking, use of media, planning collective actions) and media (investigative journalism and reporting) so that they can be more effective at influencing laws and policies; build the capacity of government at the provincial and district levels to promote policy dialogue; direct international donor support, programmatic and financial, to build the capacities of CSOs, media and government to engage more effectively in policy dialogue.

4. Building and Using the Voice of CSOs: Create platforms for CSOs working in the same thematic areas (e.g. health) to promote better coordinated approaches to engage in thematically-relevant policy dialogue; for existing coordinating bodies, develop more strategic approaches to engage in policy; and strengthen the voice of CSOs through networking with organizations and relevant individuals who can provide additional expertise.

5. Increasing the Women's Participation: Build the capacity of the MoWA, especially at the provincial and district levels; raise awareness in government about the value of genuine participation from women; and strengthen the capacity of an existing body to act both as a platform for women's CSOs and a forum for building their capacity.

6. Building the Foundation for Increased Participation in Law and Policy-making: Codify and widely share the processes used for making policies; develop a well-articulated process for including CSO and women's participation in the formation of laws and policies; include collective CSO platforms or CSO “advisory” bodies in the consultation processes; and create a working group of civil society and government to provide oversight to strategies to promote policy engagement, to monitor the progress made and how the inputs of CSOs are used, and to ensure information is disseminated adequately to government and civil society at all levels.

Background

Counterpart International is currently implementing the Initiative to Promote Afghan Civil Society (I-PACS) with funding from the United States Agency for International Development (USAID). This initiative began in January 2005 and is slated to be completed in September 2010. The overarching goal of I-PACS is to increase the role and viability of civil society in Afghanistan by providing capacity-building training and grant support to civil society organizations (CSOs) that show the potential to be sustainable, effective organizations.

Working together with two local NGO implementing partners, Afghanistan Civil Society Forum (ACSF) and Afghan Women's Education Center (AWEC), Counterpart has supported the development of eight Civil Society Support Centers (CSSCs) throughout the country. It is through these CSSCs that Counterpart has contributed to building the capacity of more than 220 CSOs, so that they are able to become professional, transparent and accountable participants in Afghanistan's rapidly growing civil society arena.

While implementing I-PACS, it became clear that there appeared to be limited understanding on the ways in which civil society can participate in the development of laws and policies in the country. As a first step in helping to inform this process, Counterpart identified the need to study the existing practices of developing policies and laws, with a particular emphasis on the ways in which civil society has participated to date. Through such a study, it was also anticipated that opportunities for increased civil society participation in these processes could be identified and built upon.

Counterpart identified the Cooperation for Peace and Unity (CPAU), a Kabul-based, not-for-profit research think-tank working to promote knowledge and awareness of peace, social justice and human rights as its partner for this study. The two organizations worked together to shape the approach and tools to be used. CPAU collected and analyzed the data and drafted the preliminary report. After which, Counterpart and CPAU collaborated to finalize and publish this report.

Purpose of the Study

The purpose of this study is to inform Counterpart, CSOs, government, donors and others who influence policy at local and national levels of the ways in which elected officials, government and civil society are currently working together to help shape laws and policies in Afghanistan. After the completion of this study, Counterpart intends to bring together representatives of civil society, elected officials and government to discuss the findings and develop viable mechanisms to enhance dialogue between all parties in future efforts to formulate laws and policies in the country.

Methodology

Overview

This study began in April 2008 and ended in January 2009. Background research was carried out in the form of a desk study and interviews with a number of key informants, both of which informed the design of the

study and the development of the tools, as well as the selection of the policies and laws on which to focus. Based on this initial research, it was decided that this study should focus on developing four case studies to reflect the way in which government, elected officials and civil society interact in the development of policies and laws. These case studies would then be used to inform a higher level analysis of the processes currently being used. The following were identified as the subject of the case studies:

- The development of the Media Law (Ministry of Justice)
- The review of the Afghanistan National Development Strategy (Parliament)
- The development of the Election Law (Ministry of Justice)
- The review of the Basic Package of Health Service (Ministry of Public Health)

Each case study followed the processes used for making laws and policies from Kabul to one provincial center and a district within that same province. In doing so, the research team explored the existing formal and informal linkages between CSOs (including traditional community leaders), legislature and the government at all three levels. The one exception was in the Afghanistan National Development Strategy (ANDS) case. Here, the case focused purely on the processes and linkages in Kabul since Parliament is located there and since the development of the ANDS was primarily Kabul-based. The table below identifies which provinces and districts were covered in each case study.

Table : Geographical Areas Covered in Each Case Study

Case Study	Center	Province	District
Media Law	Kabul	Wardak	Sayedabad
ANDS		-	-
Election Law		Parwan	Jabul Seraj
BPHS		Balkh	Deh Dadi

Data Collection

This study used two tools, structured interviews and focus group discussions, for collecting data. These tools focused on a number of broad areas of investigation. These were as follows:

- The role of the government at central, provincial and district levels in law and policy formulation;
- Existing linkages between CSOs and government, and CSOs and Parliament;
- Existing linkages between and amongst CSOs; and
- Women's representation in law- and policy-making processes and the extent to which gender issues are taken into consideration in these processes.

The tools were developed and tested during the development of the ANDS case study. They were then revised and used in the remaining three cases.

Interviews

A list of potential participants for each case study was identified through preliminary discussions with key resource people and CPAU's local partners. This list formed the basis for selecting interviewees. Fourteen to twenty-six participants were interviewed for each case study. The participants reflected a good mix of elected officials, CSOs, government, donors, and media organizations. They also reflected a good representation of the different administrative levels (center, province and district), except for the case of the ANDS which drew all of its participants from Kabul.

Interviews were carried out by teams of at least two researchers with one leading the interview and one taking notes. Notes were consolidated at the end of each day's interviews in Dari, Pashto or English. All the interviews were carried out on the basis of confidentiality and, hence, no names are used in this report. In some cases officials have allowed the publication of their job titles.

A total of 87 people were interviewed. Of these 28 (32%) were female⁴ and 59 (68%) were male. Of the 87, 27 (31%) were government officials, 36 (41%) were civil society representatives, 14 (16%) were elected officials and 10 (11%) were media staff. Table 2 describes in more detail the affiliation of the 87 interviewees.

Table 2: Breakdown of Interviewees by Category

Category	Number of Participants
Parliamentarians and Elected Officials	
Parliamentarians	8
Provincial Council Members	6
Total	14 (16%)
Civil Society Organizations	
NGO staff	9
INGO staff	5
Women's CSOs	5
Member of local <i>shuras</i> or <i>jirgas</i>	7
Religious leaders (or members of <i>Ulema shuras</i>)	6
Afghan Academia	4
Total	36 (41%)
Government Officials and Donors	
Central Government official	7
Provincial Government official	12
District Government official	4
Donors	4
Total	27 (31%)
Media Organizations	
Media staff	10
Total	10 (11%)
Total Participants	87 (100%)

⁴ Women's participation in the four processes under investigation was generally low, making it difficult to identify female interviewees. This was further compounded by factors such as traditional restrictions on women's movement and the security situation.

Table 3 (below) charts the number of interviews conducted and their distribution across administrative levels for each of the four case studies.

Table 3: Number and Distribution of Interviews per Case Study

Case Study	Kabul	Provincial Center	District	Total
Media Law	12	7	5	24
ANDS	14	-	-	14
Election Law	9	10	4	23
BPHS	10	11	5	26
Total	45	28	14	87

Focus Groups

Focus group participants were drawn from the list that CPAU developed of potential interviewees and from recommendations from CPAU's and Counterpart's local partners. A total of seven focus group discussions were conducted during this study. These were held at the provincial and district levels, except in the case of ANDS case study. For this, the focus group discussion was held in Kabul. Each focus group consisted of five to eight participants bringing the total number of participants to 47. Of these, 11 (23%) were female and 37 (77%) were male. Twelve were from the government, 32 from civil society and 3 from the media.

Limitations

A number of limitations were encountered during this study. These are listed below. It is important to note that, while there were limitations, they did not hinder this study from being able to shed light on how government, elected officials and CSOs have or have not engaged in law and policy dialogue to date.

- There was very little written on the way in which civil society influences policy dialogue in Afghanistan. This lack of information was even more acute in the local language literature. This made it difficult to find background data to help analyze civil society's role in law- and policy-making. Additionally, some of the changes in laws and policies were very recent and have not been reflected in the literature. This meant that the research team needed to rely on media reports, which were not always as comprehensive as needed.
- Participant selection was at times driven by the pressures of finding people with relevant information, those willing and able to take part, and the security issues which restricted movement of the research team to some extent. Moreover, the number of women who participated was lower than anticipated in part due to the topic and in part due to security issues.
- Insurgent fighting and tightened security in Wardak Province and the Deh Dadi District of Balkh Province restricted the movement of the research team in and between the districts in those provinces. This affected the team's ability to collect data.
- Almost all of the respondents had limited knowledge about policy formulation and their possible role in changing direction of any policy, which made it difficult for them to engage constructively in this line of investigation.

- It was difficult to make in-depth comparisons between the provinces because each case study focused on a different policy.
- Some of the law- and policy-making processes covered in this study were still evolving, which made it difficult to assess as completed processes. Additionally, because this study only focused on two laws and two policies, it was difficult to be conclusive about law- and policy-making in Afghanistan in general.

Setting the Context

In order to better understand the processes being discussed in the findings section of this report, what follows is a brief description of how laws and policies are made in Afghanistan.

How Laws are Made

Law-making in Afghanistan has gone through a number of changes since 2001. Until the election of Parliament in 2005, laws were made by presidential decree. These laws were not subject to significant consultation outside the executive branch of the government. The process for approving the decrees was in effect governed, much as policy-making is now, by the dynamics of the specific sector for which the law applied, or by donor's agenda.

With the election of Parliament, and the production of parliamentary procedures in 2006, the system for passing a law was codified (see Figure 1). In this system, laws can be prepared by a ministry or government office, the Supreme Court, or Parliament (referred to as the National Assembly in Figure 1). Most, but not all, laws drafted by the Supreme Court or a ministry require parliamentary approval.⁵ Government approval and involvement in laws initiated by Parliament are not required. Additionally, the Wolesi Jirga (Lower House of Parliament) has the power to force the enactment of a law, should the President reject it.⁶ The Taqin (Legislation Office) of the Ministry of Justice reviews laws to ensure that they do not contradict any existing law before they can be enacted by the President or parliament. The legislative process used in Afghanistan does not legally mandate civil society inclusion.

The law-making process has been slowed by the agreement that Parliament will review all presidential decrees made between 2001 and 2005.⁷ When these former presidential decrees are submitted to the Wolesi Jirga (Lower House of Parliament) for debate, the decrees are not voted on as a whole, but instead they are discussed line-by-line in the relevant parliamentary commission. Once the law is approved the Wolesi Jirga, it must be still be passed to the Meshrano Jirgo (Upper House) and the law is again debated line-by-line in the relevant commission.

⁵ Article 94 and 97 of the Constitution (1382), 2004, Islamic Republic of Afghanistan. See Figure 1.

⁶ The Wolesi Jirga (Lower House) and Meshrano Jirga (Upper House) can also propose a new law if it is supported by ten or more members of the relevant commission and subsequently by 20% of the House in which it originated. Once the law is drafted, it can then be passed by the majority of the House in which it originated and sent to the alternate House for debate. If there are discrepancies between the views of the two Houses, the Wolesi Jirga is able to force the passage of a law with a two-thirds majority

⁷ Katzman, K. (2006) Afghanistan: Elections, Constitution, and Government, CRS Report for Congress, Washington, <http://www.usembassy.it/pdf/other/RS21922.pdf> accessed 1-13-09

Both the Media and Election Laws covered in this report were originally presidential decrees that Parliament reviewed. They were debated in the Wolesi Jirga and the Meshrano Jirga. The Media Law was forcibly passed by the Wolesi Jirga after the President did not endorse it. At the time of publication, the Election Law was still under debate.

How Policies are Shaped

Unlike laws, policy-making processes led by the Afghan government follow no standard procedure. These processes are often described as confusing and difficult to engage with and CSOs regularly complain that they are excluded from the process. The lack of structure in these processes means that there are two overriding influences which tend to dictate the form, type and depth of consultation between the government, elected officials and CSOs. These are:

- **The dynamics within the sector for which the policy is being produced:** For example, in the health sector there are long-term contractual relationships between CSOs and the Ministry of Public Health (MoPH) for the delivery of health services. These relationships have eased the inclusion of health-related CSOs into policy-making processes that were led by the MoPH. This dynamic, as positive as it has been, however, has served to isolate parliament from the formulation of BPHS policy, other than its usual annual budget approval for government agencies.
- **The influence of particular donor agencies, championing a particular policy (or whole sector):** Donor agencies have often given their own direction to the consultation process. For example, the World Bank influenced the ANDS so it could also serve as the organization's Poverty Reduction Strategy Paper (PRSP) for Afghanistan. Because the World Bank requires civil society consultations in its PRSPs, these became a requirement for the development of the ANDS.

Figure 1: Flowchart showing the stages of law making in Afghanistan



Prepared by Mark Hamilton
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The Case Studies: A Quick Overview

Each of the four case studies considered the processes involved in making either laws or policies. What follows here is a brief description of the law- and policy-making framework for each case study.

Media Law (Ministry of Information and Culture)

The initial draft of the Media Law was prepared by the Ministry of Information and Culture (MoIC) and the Ministry of Justice (MoJ). The draft was presented to the Wolesi Jirga, at which point CSOs were able to provide some input, although they had not officially been invited into the process by the MoIC. After a month of tense debate, the law was amended and approved in May 2007.

The most significant changes introduced by the Wolesi Jirga included replacing the MoIC as the head of the Media Council (the regulatory body) with an elected head and removing the government-funded National Television from under the management of MoIC and making it an autonomous entity. When the law was approved, it was sent back to the President for final approval. The President rejected the changes and returned the Media Law to the Wolesi Jirga. The main areas of contention were related to the control over the National Television and the regulatory measures. The government wanted to retain these, but the Wolesi Jirga and the media preferred to leave these more open. At this point, the Wolesi Jirga refused to make any changes and endorsed the Media Law with a two-thirds majority as is allowable in the Constitution.⁸ The Minister of Information and Culture, however, refused to accept the endorsed bill and it is unclear how this will be resolved.⁹

Afghanistan National Development Strategy—ANDS (Parliament)

The ANDS, which is said to be a combined effort of the Afghan Government, Afghan people and the international community, was developed by the government to address the security, governance and development needs of the country. The ANDS is also Afghanistan's Poverty Reduction Strategy Paper (PRSP), which guides donor funding in Afghanistan for the next 5 years (2008-2013).

What was striking about the process of the ANDS design and adoption was that it occurred outside the legal and policy-making processes of the government. Neither the ANDS, nor any of its related policies, were legally subject to Parliament's approval or enactment. However, as part of the donor-driven mandatory consultation process for the ANDS, Parliament was asked to review and give recommendations on the policies. The parliamentary review was very slow. This was in part due to what was seen as reluctance by the government to provide the necessary information regarding the policies for a full review and in part due to the fact that the policy documents themselves were very complex. While the ANDS process did involve CSO inputs, there are questions about the quality of these inputs, how they were used, and the impact that they may or may not have had on the ANDS.

⁸ Kabul Press, 2008a, صوبې نهایی قانون رسانه ها, published September 1, 2008, <http://www.kabulpress.org/my/spip.php?article2182> accessed 1-6-09

⁹ Kabul Press, 2008b, وزیري که بر اصل قانون تردید دارد, published September 5, 2008 <http://kabulpress.org/my/spip.php?article2649> accessed 1-6-09., Constitution of Afghanistan 1382 (2004), Article 94 Ch. 5. Art. 14), Islamic Republic of Afghanistan.

Election Law (Ministry of Justice)

While the Election Law has not yet been enacted by Parliament, there has been plenty of debate and discussion about the law in the Wolesi Jirga. Initially, the key actors behind the formulation and development of the Election Law were the government and United Nations Assistance Mission to Afghanistan (UNAMA). The government has sought to retain influence over the Election Law but has been challenged by Parliament, which has reviewed the law.

The processes involved in developing this law to date have been highly centralized and have focused primarily on the involvement of Kabul-based entities. Here, the Independent Election Commission of Afghanistan, with cooperation of the MoJ and UNAMA, facilitated a consultation with citizens and some CSOs in Kabul through seminars, workshops, conferences, roundtable discussions and consultative meetings during the parliamentary review of the law.

Basic Package of Health Services - BPHS (Ministry of Public Health)

The Basic Package of Health Services (BPHS) has been a hallmark program of the Ministry of Public Health (MoPH) since 2003. In 2002, soon after the establishment of the Afghanistan Interim Administration, the MoPH began a process to determine its major priorities for rebuilding the national health system and to identify the health services that would address the greatest healthcare needs of all Afghans. The results were used to develop this standardized package of basic health services which now forms the core of service delivery in all primary health care facilities in the country.

The policy framework for the BPHS was reviewed in 2005. It is this revision process that this study has focused on. CSOs, government and donors all participated during this revision. Parliament, however, was effectively sidelined during this process. Moreover, it is generally believed that government and donors had the most significant influence over the review process.

Major Findings

This section of the report draws upon the four case studies collectively to develop an understanding about the degree to which government, elected officials, civil society representatives (including women and media) currently interact with each other during the process of formulating laws and policies. It is hoped that by shining a light on the current practices, this study will demonstrate the potential areas for improvement, as well as highlight good practices that already exist in this complex law- and policy-making arena.

How Government, Elected Officials and CSOs Engage with Each Other

This study attempted to examine the way in which government, elected officials and CSOs have engaged with each other to date in dialogues that inform the processes of making laws and policies in the country. The general premise here is that dialogue between these entities at all levels of the country is important to the development of a democratic society and the country as a whole. What emerged, though, was a striking lack of policy-level dialogue that included the perspectives and voices of all of these actors.

At the Central Level

At the central level, the linkages between government, elected officials (Parliament) and CSOs were found to be generally weak across all four case studies. However, they were most notably lacking in processes leading to the development of the Media and Election Laws. The weak relationship between government and CSOs was often attributed to the fact that these two entities were competing with each other both for accessing funds and exerting pressure on the donor community.

The weak relationship between parliamentarians and CSOs, however, was attributed to competition for political authority, as seen in the Election Law case study, as well as suspicion about CSOs' funding sources and expenditures, as seen in the ANDS case study. Both of these factors appear to have fed reluctance on the part of parliamentarians to engage with CSOs at the central level. It should, however, be noted that the Wolesi Jirga is currently populated by conservative elites who may, in general, be less inclined to involve CSOs in the affairs of their parliamentary commissions.

At the Provincial and District Levels

In contrast to what was found at the central level, the provincial- and district-level governments generally trusted and appreciated the work of CSOs. The one exception here was in Wardak Province, where government viewed the work of CSOs as being of poor quality. The mostly positive relationships that developed between these two entities revolved almost entirely around the development concerns in the provinces. At the provincial level, the study also found that provincial government appeared to appreciate the contributions of the Provincial Councils, the provincial-level elected officials.

In all three of the case studies that included data collection in the provinces, local CSOs and Provincial Councils were actively engaged and meeting with each other to discuss provincial development issues. However, these interactions were based on project and program issues. That said, CSO and Provincial Council members indicated that their ability to influence government policies was very limited because they believed that government did not take them seriously. By way of example, in Balkh Province, a large number of CSOs and the Provincial Council, seeing that policies were determined in Kabul and sent to the province for implementation, understood that their voices were not important to the policy formulation processes. Based on this, they chose to no longer participate in policy-related events.

The case studies highlighted the fact that all of the actors at both the provincial and district levels lacked information about the law- and policy-making processes. Similarly, they were unaware of what roles and functions they might play in these processes. This can, in part, be traced back to the role of the Provincial Councils. These newly formed councils appeared to be unaware of their role in promoting policy-level dialogue. Moreover, they lacked access to policy documentation from the central level and were ineffective in interpreting and explaining policies and laws to the wider community. This has clearly limited the possibility of a more inclusive and meaningful dialogue at this level and the district concerning the law- and policy-making processes.

However, despite this situation, there were strong signals that the majority of provincial and district-level study participants across all sectors would support the creation of a more dynamic civil society and a culture that involved and engaged local institutions in processes that informed the development of policies and laws. This clearly represents an important opening for more inclusive policy dialogues in the future.

The Role of Media in Promoting Policy Dialogue

The past four years have seen significant developments in the media sector in Afghanistan. At the Central level, media are now seen to engage in policy issues, particularly those that affect them directly, such as the Media Law. There was less evidence, though, that media were involved in policy discussions at the provincial level. Here, media and CSOs appeared to have little contact with each other. This represents a missed opportunity to encourage dialogue between government and civil society. Local media appeared to lack the knowledge and commitment to bridge the policy gap between local actors. CSOs and media, however, were eager to begin working together in order to improve their engagement in, and influence over, policy dialogues.

Factors Influencing the Level of Engagement

Extrapolating from the four case studies, the lack of substantive engagement between and among all three sets of actors – government, elected officials and CSOs – in policy dialogues can be traced back to a number of common factors which are identified below.

The study revealed that there is no formal mechanism in Afghanistan for encouraging consultation and collaboration between and amongst all three parties. Moreover, without such a mechanism, when these actors did engage with each other, the engagement tended to be ad hoc and not integral to the law- and policy-making process.

It also became clear that government, in general, tended to be reticent to actively engage with CSOs in law- and policy-making discussions. By way of example, research revealed that it was only after donors exerted pressure on government that it began to engage more actively with CSOs in the review of the ANDS and BPHS. In another example, CSOs had been excluded by government from the Media Law policy debate but managed to enter into the process through Parliament. Acting together, parliamentarians and CSOs were successful in introducing revisions to the Media Law that reflected CSO concerns. Finally, during the development of the Election Law, government appeared to try to avoid any engagement with CSOs. The only engagement between government and CSOs was facilitated by an independent organization funded by UNAMA and in this participation was less than balanced or representative.

However, when government and CSOs *did* interact around law- and policy-making, they did so primarily through personal relationships and to a much lesser extent through institutional relationships. The case studies indicated that in these instances it was often government officials who began their work in NGOs who called upon the participation of their former colleagues in the policy-making arena when needed. This often translated into a less than systematic and inclusive approach to determining CSO participation in these dialogues.¹⁰

No formal links between CSOs and parliamentarians were found in this study. As with the government, there was a general reluctance on the side of the parliamentarians to engage in law and policy dialogue with CSOs. In the few instances in which the two actors *did* interact, these interactions were, again, governed by personal relations, which, again, translated into a less than systematic and inclusive approach to determining participation. Relationships between government and elected officials, on the other hand, tended to be propelled by the drive for power and influence. As such political needs, as opposed to issues concerning the formulation of law or policies, became the predominant reason for these actors to engage with each other.

The research also revealed that many of the participants representing CSOs, elected officials, media, academia, and government at all administrative levels (central, provincial and district) appeared to have a poor understanding of civil society in general and more, specifically, did not know the role that each played or could play in helping to build a stronger and more vibrant civil society. Moreover, almost half of the participants in this study identified that a key barrier to their own effective policy engagement was a lack of understanding of the policy processes themselves.¹¹ Another factor that was seen to limit engagement was the perceived competition between government and CSOs for donor funds. This emerged frequently as one of the explanations as to why the two actors had not been able to fully engage with each other in law and policy dialogues.

Finally, conspicuous by their absence were examples of CSOs being proactive in engaging in law- and policy-making efforts. The one example that did exist from this study highlighted the fact that CSOs can influence policy when they are more assertive in their engagement in these processes. In this example, CSOs had been excluded by government from the policy debate, but managed to enter into the process through Parliament. Acting together, parliamentarians and CSOs were successful in introducing revisions to the Media Law.

How CSOs Engage with Each Other

This study also undertook to explore ways in which CSOs have come together among themselves to engage in dialogue about laws and policies. It is generally through such types of dialogue that the voice of civil society is strengthened so that it can eventually have greater influence over, and impact on, law and policy processes. This study found that there were stirrings among CSOs to come together for this purpose at the

¹⁰ The few institutional relationships that were identified in this study tended to involve service delivery rather than policy dialogue. An example of this type of relationship emerging from this study involved the MoPH contracting an NGO to deliver health services under the BPHS.

¹¹ Case Study 2, Parliament and ANDS, Kabul

central level, but little evidence for this at the provincial or district levels. Moreover, the study also found that CSOs at all levels have not yet begun to *systematically* build their voice for inclusion in the dialogue concerning the formulation of relevant laws and policies.

At the Central Level

While CSOs are plentiful in Kabul, very few mechanisms currently exist to help them coordinate their activities and build their voice as important contributors to legal and policy-making dialogues. Of the mechanisms that do exist, Agency Coordinating Body for Afghan Relief (ACBAR) is the most notable.¹² It currently has close to 100 members drawn from the international and Afghan CSO community and has engaged in policy dialogue on behalf of its members. Of particular note in this study was ACBAR's attempt to bring the voice of CSOs into the ANDS review process. The main vehicle for this was the creation of the Civil Society ANDS Secretariat. Moreover, ACBAR has also made attempts, albeit less than systematic, to consult with its members on how it should frame its statement and reports to the Afghan Parliament regarding CSO concerns about the draft Media Law. Aside from the coordinated effort in the ANDS review process, the general perception that emerged in this study was that ACBAR still needs to develop its role and strategies for effective engagement in the process of law and policy formulation.

A few NGO consortia, aiming to provide common platforms for policy engagement, have begun to emerge in Kabul. One such example is the Human Rights Research and Advocacy Consortium (HRRAC), consisting of seven Afghan and six international organizations, which conducts research about political and social rights and implements small projects to raise awareness about human rights. It is, however, unclear how effective this and other consortia have been to date.

Most of the findings from the case studies highlighted the fact that there is plenty of room for CSOs to improve the way in which they work together to become effective advocates of civil society in the law- and policy-making arena. The Media Law case study revealed that, even when changes had been brought to bear on policies, CSOs themselves believed that CSOs had not been able to build *systematic* approaches for effective lobbying and policy engagement. This view was further supported in the debate on the Election Law. Here CSOs appeared to be unable to come together in an effective manner to jointly share and explore experiences or to hold policy-related discussions on the topic. In the one instance (during the ANDS review) in which CSOs did come together for the expressed purpose of engaging in policy debate that could potentially influence policy formulation, they appeared to have had great difficulty in working together effectively towards this end. In direct contrast to this, as was seen in the BPHS case study, CSOs have been effective in coming together for service delivery purposes.

Added to the above difficulties that CSOs have had in coming together for law- and policy-making purposes, research indicated that their lack of involvement in some of these areas may also be shaped by their concern for their funding relations with government. The fear was that if they were overly critical of government in such debates, their funding would be jeopardized. It is not clear how well-founded this fear is,

¹² Other coordinating bodies are ANCB, SWABAC and AWN.

although interviews with at least one ministry seemed to indicate that this would not be the case.

Many of the CSOs were critical of their own lack of systematic engagement in the policy arena. While policy statements had been issued by a few organizations such as the Afghanistan Civil Society Forum (ACSF), the Afghan Women's Network (AWN), the Sanayee Development Organization (SDO), and the Afghan Women's Skill Development Center (AWSDC), CSOs believed that as a sector they had not exerted the pressure required for influencing policy formulation or policy change.

At the Provincial Level

There was no concrete evidence of provincial CSOs coming together to engage in policy debates. CSOs themselves indicated that, while there was good coordination amongst them for the delivery of services, their efforts to engage collectively on policy issues were at best weak. It was also clear that CSOs' knowledge about the laws and policies covered in this study was limited or non-existent at this level (as in the case of Wardak). Moreover, CSOs were not entirely clear as to what their roles might be in law- and policy-making and in what ways they might be able to contribute to relevant dialogues.

A major contributing factor to this situation was the fact that provincial CSOs were intently focused on implementing demanding programs in difficult environments, which left them little time to take up other concerns, even if the knowledge and interest were there. This was particularly striking in Wardak Province, where CSOs were primarily engaged in service delivery and project implementation and expressed that they lacked the time and knowledge to engage in policy debate and discourse. Health-related CSOs faced the additional challenge of having a limited number of similar organizations with which to engage on health topics at the provincial level. This situation has its roots in the way the health sector functions: CSOs typically have been allocated large areas (entire provinces at times) in which to implement the program, thus limiting the number of other CSOs with whom they might engage on policy issues.

At the District Level

There was no evidence of district CSOs coming together to engage in policy debates. There were, however, interesting examples of civil society and media working together to achieve mutually positive outcomes in areas other than policy. One example in Wardak Province involved a community *shura* using the radio station to communicate their concerns to the government about the burning of girls' schools in the district. As a result of making citizens' voices heard through the radio, government officials came to the communities to address the issue in person. The end result was the formation of a *jirga* of community elders and government representatives to provide protection to the local schools. While this example focuses on a local issue with little connection to policy issues, it highlights the power that coordinated collective efforts can have on affecting change.

Factors Influencing the Level of Engagement

It is clear from this study that CSOs, with their often limited knowledge about political processes, were generally poorly prepared to participate in policy dialogues, which then significantly undermined their

ability to influence policy. It was also clear that CSOs, when they did engage in policy dialogue, had for the most part tended not to be strategic in their policy interventions. There were a few notable exceptions, of course, such as the creation of the Civil Society ANDS Secretariat by ACBAR.

This situation was further exacerbated by the fact that the central government did not readily share relevant information with CSOs, which then further limited any meaningful engagement by CSOs in policy-making. (Similarly, the central government did not appear to be sharing information with elected officials and the provincial government officials, which in turn had also limited their involvement in the policy dialogue.) In order to maximize their policy influence, CSOs at all levels need to better understand policy processes and their role in these processes. They also need to become more strategic about their engagement in such processes.

The study also revealed that some of the policy-makers in the government were frustrated by the CSOs' inability to communicate effectively in the policy process. This frustration was particularly evident with regard to technical policies such as those affecting health or agriculture.

It appeared as well that many CSOs acted alone and did little to try and involve other CSOs in their engagement with policy-makers. One such example from this study was of a leading health-focused organization which engaged with the MoPH, but made no effort to involve other organizations in the dialogue. Nor did it attempt to share its experience with other CSOs. This predominant approach of CSOs working alone may have led to unbalanced dialogues and representation of CSOs in the policy-making process. There were, however a few notable exceptions in this study, which should not be lost. In the development of the Media Law, ACBAR issued a statement on behalf of the CSOs and the journalists' union, who had come together to provide a list of recommendations to improve the law.

The study also found that when CSO input into policy dialogue was personalized (i.e., based on personal relationships) the degree to which a CSO might affect policy change was severely limited. It was noted that when CSO members had been identified through personal connections and invited to participate in policy dialogues, they tended to make vague comments, such as “the government needs to do more for children's education” during these meetings. However, when CSOs made inputs into the policy dialogues through official statements and papers that obscured the identity of individuals, they tended to be more detailed in their critique and recommendations.

Capacity, trust and competition for funding were also seen as factors that did or could influence the level of CSO engagement in policy dialogue. While CSOs expressed an interest in ensuring that government and elected officials hear their voice in law- and policy-making, they raised a number of concerns relating to their own capacity to be effective in such dialogues. CSOs, however, believed that if their capacities were built in this area, they would be able to provide alternative perspectives to the relevant bodies and these would add value to law- and policy-making processes. However, there was still the concern, raised by the CSOs themselves, about the Afghan government's ability to respond in an open way to their involvement in the process. Furthermore, CSOs were also concerned that their funding may be put in jeopardy should they be perceived as being too critical of government or donors.

Not surprisingly, the research also found that Afghan CSOs have had very limited impact on policies. Many of the issues identified above were clearly contributing factors. Added to these, though, is the fact that opportunities for participation in policy reform were not always made available to CSOs. This was clearly the case in the formulation of the Election Law. Moreover, when consultations were sought, it is not at all clear that these were serious efforts to involve CSOs in the processes. Certainly, CSOs have labeled these consultations as “tokenistic”, indicating that their presence in these dialogues was more for the sake of form than substance. At times, too, CSOs indicated that their contributions were overshadowed by those of international donors. This was particularly evident in the gendered aspect of the ANDS, where donors were seen to drive the process. Also of note is the fact that where CSO contributions have had a demonstrable impact, as was seen in the formulation of the Media Law, it was not necessarily because CSOs were invited into the process at the outset. In this case, the CSOs sought out collaboration with Parliament and entered the process after the government had already approved the law.

How Women Are Engaged in the Formulation of Policies

In building a democratic society, as Afghanistan is doing, it is important that women are brought into the process to ensure that there is gender equity and laws and policies that reflect the needs of women. This study, therefore, also looked at both the role women have played in helping shape policies in Afghanistan and the extent to which existing policies currently take into account the needs of women as a special interest group.

At the Central Level

There were no indications of women specifically, or solely, having had a positive impact on policy processes at this or any other level. The ANDS did try to encourage women's participation in formulation of policies relating specifically to women. This participation, however, was a direct result of UNIFEM's (rather than the government's) initiative. The participation of women in this process, however, was overshadowed by the participation of donors who insisted on the use of international norms relating to gender mainstreaming. This in effect rendered the local women's participation all but meaningless. In the end, despite the attempts to facilitate policy dialogue with women that were made by the Ministry of Women's Affairs (MoWA), with support from UNIFEM and the Ministry of Rural Rehabilitation and Development (MRRD), the ANDS process was generally perceived by participants in the study to have largely failed in genuinely and strategically include women.

In the consultation process for the Media Law, women were invited to join the dialogue. Women's CSOs viewed the participation of women as being purely ceremonial and not substantive in nature. The government, however, hailed its success at including women as participants. This raised questions about how willing the government had been to truly include women in policy debates. Moreover, there were also concerns at this level about the commitment of elected officials to involve women in policy debates. By way of example, during the ANDS review, female Members of Parliament (MPs) had met to draft an open letter to the Paris Conference. This letter demanded that the international community use its influence on the Afghan Government to give greater consideration to women-focused projects when allocating budgets. While this was clearly positive, the letter did *not* take that extra step of calling for the international community to exert influence over the Afghan Government to include women in policy debates.

At the Provincial and District Levels

At the provincial and district levels, opportunities for women's participation in the policy dialogue and decision-making processes were limited and where they did exist, women were barely represented. One exception to this was during the ANDS consultation, where women participated in a number of gatherings during which they presented their needs. There was, however, no record of the impact these women had on this process. The lack of women's participation was very evident in the remaining case studies. By way of example, the Media Law case study revealed that in Wardak Province, which is conservative, the role of women in policy processes was non-existent at the district level and barely visible at the provincial level. The MoWA officials identified cultural and security limitations as the major reasons for the lack of women's participation in policy debates. In reality, though, even when women were invited to participate, it was not to be involved in the debates, but rather to fulfill a ceremonial function (such as cutting a ribbon) at an inauguration. The MoWA understood that the participation of women in these ceremonial events was being used by government to appease donors' concerns about women's participation in the broader policy arena. Despite a more liberal culture in parts of Balkh Province, the BPHS case study also revealed that female participation in policy debates was similarly very low. Sometimes this was limited to one woman attending a meeting, in which it was understood that she was only there because of her gender.

Structural Factors Influencing the Level of Women's Engagement

Fully engaging women in policy dialogue in Afghanistan has to date proven to be a difficult task. This study revealed that women's CSOs clearly have faced many challenges in their effort to bring women into the process. As with the more general CSO population, they lacked access to information and were often unaware of existing policy documents. Furthermore, they, like the rest of the CSO population, lacked effective platforms in general for policy dialogue. In addition to these more commonly held challenges, women's CSOs faced a number of their own challenges. The most prominent of these have been: weak capacity within the MoWA to facilitate active women's participation; the lack of government political will to improve women's roles in policy processes; and the lack of a strong platform for gender policies to be discussed separately from the larger CSO community issues. Another challenge was the fact that the role of women's *shuras* in policy formulation and dialogue had not been defined and, hence, were non-existent. This study, in fact, revealed that the *shuras* had virtually no information about policy and law making processes.

The Inclusion of Gender Considerations in Policies and Laws

Separate from the issue of the role of women in the policy dialogues is the actual existence of gendered policies. Gendered policies *do* exist in Afghanistan, although their existence cannot be attributed to the actions of Afghan women in civil society.

Both the BPHS and the ANDS aim to improve the delivery of basic services equitably for both men and women.¹³ The first three of the 14 major changes made to the BPHS in 2005 were all related to the health of women and families in recognition that women have been a critically underserved group and that their well-being should be viewed within the existing family relationships.¹⁴ Further, in the MoWA strategy for the ANDS, the National Action Plan for the Women of Afghanistan (NAPWA), there is now a provision for increasing women's participation in policy-making.¹⁵

Both of these changes are important. They closely reflect, however, the policies of the donors (World Bank, USAID and the European Commission) that drove the BPHS and ANDS processes, rather than the influence of women's CSOs. In this situation, one in which donors drove the change, it was not possible to tell the extent to which the change did or did not also capture the views of women civil society organizations. Moreover, a case can be made that this type of dynamic may, in fact, act as a further disincentive to women's engagement in policy debates because it leaves women, yet again, feeling that their participation in these processes is merely symbolic.

How Policy Engagement is Affected by Center-Province-District Relations

Across all case studies the relationships formed within and across sectors (government, CSOs and elected officials) appeared to be strongest within, rather than across the administrative (center, province and district) levels. The study revealed that the links between the central entities and their provincial counterparts was most often weak or missing in the arena of policy formulation. These weak links also affected the way in which provincial entities could then interact with their district level counterparts.

This study, in fact, found that it was only in the ANDS review process that provincial level consultations were held. By contrast in the Media and Election Law processes, there was strong pressure from central government not to consult widely at the provincial level. In addition to this, rivalries between Parliament and the central government hindered the flow of relevant information from the center to the provinces. This was particularly evident in the development of the Media Law. Here, since the central ministry and the Wolesi Jirga could not agree on the amendments, the ministry did little through its provincial office to raise awareness and initiate debate on the law.

In addition to this, Provincial Council members, who have been given the mandate to advise on policies and laws, often reported that consultations with their Kabul-based MPs were infrequent. The few consultations

¹³ The ANDS promotes gender equity based on “the Constitution, the MDGs, the Afghanistan Compact, and international treaties”. Islamic Republic of Afghanistan (2008a), ANDS Executive Summary, 2008a. http://www.and.s.gov.af/ands/final_ands/src/final/ANDS%20Executive%20Summary_eng.pdf accessed 1-12-09.

¹⁴ Islamic Republic of Afghanistan Ministry of Public Health A Basic Package of Health Services for Afghanistan 2005/1384, pages viii, 5 and 6, available from http://www.moph.gov.af/hmis-reports/BPHS/BPHS_2005_FINAL.pdf accessed 1-5-09

¹⁵ Islamic Republic of Afghanistan Ministry of Women's Affairs Strategy for MoWA in the ANDS (Draft) 2007, p2, available from http://www.and.s.gov.af/ands/final_ands/src/final/ministry_strategies/English/MoWA%20-%20English.pdf accessed 20-1-09

that they did have with these MPs tended to focus on solving problems that were affecting their constituents.¹⁶ Moreover, the Provincial Councils appeared not to have received relevant information from these MPs about their work in Kabul and how it might involve or affect the Provincial Councils. This then severely limited the way in which the Provincial Councils could effectively engage on policy issues with entities at the district level.

Similarly, the links between CSOs at the center and those at the provincial level were also weak. The study found that often CSOs were engaged in Kabul in policy discussion, but they did not share their experience with their field offices or other CSOs that might have been affected by a change in policy.¹⁷ This pattern was observed across all four case studies. However, this lack of communication was of most immediate concern in the BPHS review because the policy changes had enormous impact for the programs being implemented at the provincial level.

This lack of communication between center and province regarding law and policy formulation was also noted in the international NGO (INGOs) community. Language has been a major obstacle to this lack of communication and flow of relevant information. In these INGOs, policy issues were often the domain of the international staff, as was seen in the ANDS case study. Most of the international staff did not speak the local languages. This then resulted in poor communication about the policies and processes between the Kabul-based office and field offices in the provinces.

Provincial Variations in Policy Engagement

This study revealed significant differences between provinces in the level of policy engagement. Contrary to expectations, it appeared that geographical proximity to the center was *not* necessarily a major defining factor in the level of policy engagement at the provincial level. To exemplify, research revealed that the provincial center of Balkh Province appeared to be more engaged in policy processes than that of Parwan Province, despite the fact that physically it is further from Kabul. Similarly, policy engagement in Wardak Province, a province that is currently racked by insecurity, appeared to be greater than that found in Parwan Province, despite the fact that physically it is further from Kabul. These geographical differences in the level of policy engagement were traced back to the connections—usually personal—that a specific province had with the center. There may be other factors at play, however, that were not uncovered by this study.

The study also revealed that there were significant differences across the provinces with regard to the participation of women in policy debates. It became clear that these differences, however, could *not* be explained purely in terms of ethnicity or how conservative the province was. For example, barely any representation of women in the policy and law making processes was found in either the provinces of Parwan (largely inhabited by Tajiks) and Wardak (a conservative province largely inhabited by Pashtuns).¹⁸ However, women's participation in Balkh Province (mixed ethnicity) was more evident, particularly in

¹⁶ Interview with a government official, September 2008

¹⁷ Health-related CSOs in Kabul believed that communication between their central and provincial offices had improved. Provincial and district-level staff, however, did not see this improvement.

¹⁸ Pashtuns are considered to be very conservative, adhering strictly to traditions. Tajiks are considered to be less conservative.

some of the BPHS consultations. Again, it appeared that personal contacts were at play here.

With personal contacts seeming to play a significant role in defining provincial involvement in policy dialogue, it appears that policy influence is highly idiosyncratic. This suggests a need for a more strategic and equitable approach to engaging provinces and districts in policy dialogue.

Major Conclusions

This study found that law- and policy-making processes in Afghanistan were not clearly understood and over the last seven years it has been difficult for CSOs and elected officials to engage in these processes. Some improvements were seen in the law-making processes after the election of Parliament in 2005. This was largely attributed to Parliament bringing greater clarity to the roles of the judicial, executive and legislative branches of government. However, lack of clarity about civil society's participation in these processes still remained. Policy-making processes, which were less clearly developed than law-making processes, faced the same problems concerning the involvement of civil society. It also appeared that, despite its expressions to the contrary, government had *not* embraced the participation of CSOs in a meaningful way in most of these processes. Both sets of processes lacked clear guidelines about the intended consultative processes, which led to situations in which the consultations were subject to political, sectoral and donor dynamics.

The way in which the three key actors (government, elected officials and civil society) engaged in the law- and policy-making arena was generally found to be limited. Most of the engagement that did occur was based on personal contacts, rather than clearly guided processes in which the participation of the key actors was seen as both necessary and important. Frequently, too, there were tensions and competition between the groups for influence, power and funding. Despite this, there was a high degree of respect amongst the groups in most case studies and a willingness to explore ways to interact more closely. This represents an important opening for building stronger, more inclusive processes.

The degree of engagement of all three actors in law- and policy-making was most pronounced amongst the actors within administrative levels (center, province and district) rather than between them. In most cases it was the weak or non-existent link between the center and the province that caused the break down in engagement between all three administrative levels. The study also revealed that there was little communication within or between these three groups of actors across or within the administrative levels. Engagement within the civil society sector itself also tended to be stronger amongst CSOs at the same administrative level (center, province and district), rather than across the levels. Kabul-based CSOs themselves believed that they had not yet managed to build systematic approaches for effective lobbying and policy engagement, even when they had managed to bring changes to bear on policies, as was the case with the Media Law. It appeared that, while CSOs had managed at the provincial and district levels to coordinate and work effectively together on development issues, they had not managed to achieve this with regard to policy issues.

The most common limitations that impeded the participation of CSOs in law- and policy-making dialogues were: lack of access to information (which also affected elected officials at all levels and government officials outside Kabul); lack of understanding of policy processes by CSO staff; and the lack of strategic approaches used by CSOs to engage in these dialogues. Some of the policy-makers in the government also seemed frustrated by the inability of CSOs to communicate effectively in policy processes, particularly with regard to technical policies. It also appeared that attempts to bring CSO influence to policy formulation processes through existing platforms, such as ACBAR, were generally perceived by CSOs as being unsatisfactory. This partly explained why many CSOs had preferred to act alone in policy-making processes.

In this study there were no indications of women specifically, or individually, having had a positive impact on policy processes, although this was not because they did not try. In addition to the barriers that the general CSO community faced, Women's CSOs also faced their own specific barriers. When there was consultation with women's CSOs, their participation was considered to be little more than symbolic. The voice of women in policy formulation was very weak at the provincial and district levels, where women were barely represented in the policy engagement. Gendered policies do exist in Afghanistan, but it was not through the actions of Afghan women's groups that these policies came into being. Instead it was donor pressure and the imposition of international norms that led to the policies becoming gendered.

All the actors involved professed to want further, in-depth consultations in future efforts to establish or review laws and policies. In order to facilitate this, there is a need for a system to be developed and legislated that outlines the processes to be used for including all relevant parties (government, elected officials, CSOs in general, and women's CSOs) in law- and policy-making dialogues and processes. Moreover, there is a need to improve the flow of information amongst all of these parties at all administrative levels. Civil society actors must also improve their research and analysis so that they can deliver credible research-based evidence to policy-makers, present their views in a more systematic pro-active fashion and take the lead in policy engagement when they believe it is required. Additionally, to strengthen their voice on policy issues, CSOs must also expand their networking with organizations and relevant individuals who can provide additional expertise. There is also clearly a need for CSOs and media to begin to work more closely on these issues. Additionally, elected officials also need to understand that they are not the sole representatives of the people and expand their communication and engagement with CSOs. There is also a need to improve communication and the flow of information between Kabul-based elected officials and the provincial elected officials. Finally, while donor support is clearly beneficial in the law- and policy-making arena in Afghanistan, attention needs to be paid to possible side-effects of donor intervention limiting or potentially stunting home-grown civil society from emerging.

Recommendations

In many instances, the rush to establish a post-Bonn Afghan government¹⁹ left little time for reflection on who should be consulted in the production of a presidential decree or policy. With hindsight, it is easier now to identify some of the gaps in the existing law-making and policy-formulation processes. This study has identified many of these gaps. What follows are a number of recommendations to help address the identified gaps so that the processes used to develop laws and policies in Afghanistan may be improved.

Building a Better Understanding of Civil Society and of Law and Policy-making Processes

- There is an urgent need to build across all sectors (government, elected officials and CSOs) and at all administrative levels (center, province and district) a solid understanding of what is meant by civil society.
- In conjunction with this, there is a need to build across all sectors and at all administrative levels a better understanding of the roles that each type of actor can play in the development of policies and laws. In so doing, particular attention needs to be paid to ensuring that provincial- and district-level actors understand their roles and responsibilities in promoting dialogue at their respective levels.
- In support of the above, there is also a need to build a greater understanding in government and Parliament as to the importance of including all parties in policy dialogue and debate at all levels. This includes CSOs, women, elected officials and government in the provinces and districts.
- To help ensure that this understanding better reaches communities, there is a need to support the development and implementation of strong governance projects in which communities are taught their roles in governance and their roles in dialogues for laws and policies that affect their lives.

Increasing Access to Information

- There is an urgent need for central-level government and elected officials to ensure that relevant documentation is shared with the CSO community in general and reaches the government and elected officials in the provinces and districts.
- In support of increasing access to information:
 - a) The government needs to translate and localize important policy documents so that the content can be more easily understood by readers at all administrative levels and across all provinces; and
 - b) A series of workshops should be conducted at the national, provincial and district levels to build more in-depth understanding about the relevant laws and policies and the legislative process.

¹⁹ The Bonn Agreement was the initial agreement intended to re-establish the Afghan state following the U.S. military intervention in Afghanistan in response to the September 11, 2001 terrorist attacks.

- Kabul-based CSOs, in turn, need to ensure that this information is shared with their provincial offices and other CSOs working in the provinces and districts.
- International staff of CSOs also needs to make more concerted efforts to share policy-level information with their Afghan colleagues *and* to engage them directly in policy dialogue and debate.
- Media organizations at all levels also need to provide more coverage on policies and laws, as well as on related initiatives. Reporting on these initiatives should help to highlight the impact of the laws and policies on civil society. This requires, however, that media organizations be provided with training so that they can achieve this improved coverage.
- International donors should make donor-government agreements on policy issues more accessible by actively communicating the commitments and agreements to the wider public.

Building Strategies and Capacities to Enhance Engagement in Law and Policy Formulation

- It is highly recommended that a series of roundtable events be held regularly at all administrative levels with key actors from all sectors to discuss laws and policies. More specifically, these roundtables could be used to: inform participants of their roles and responsibilities in the formulation of laws and policies; build understanding of what the laws and policies mean in practical terms to the various actors; enhance understanding of the impact of the laws and policies; build relationships between the various actors at each administrative level; and provide feedback to the various actors on how their inputs during the formulation of the laws and policies has been used.
- CSOs need to build on their desire to be more effective as a sector in policy dialogue and develop better approaches to promoting their voice more systematically and pro-actively. These may include a combination of the following: forming networks around policy issues to help build amongst CSOs and between CSOs and government the trust that is needed to engage in a meaningful way in policy dialogue; working more closely with media; producing credible research; and developing platforms for both discussing laws and policies and planning related collective actions.
- In support of the above, CSOs need to work more closely with the media to relay their messages to the government and other policy actors, as well as to promote greater understanding of CSOs' and media's joint responsibility in the process of developing laws and policies. Particular attention needs to be paid to building relationships between CSOs and media at the provincial and district levels.
- Additionally, media organizations need to further develop and refine their analytical and investigative journalism skills so they can provide reliable, accessible, in-depth coverage on relevant issues and, in so doing, further educate civil society about laws and policies and how these might affect it.
- There is also a strong need for CSOs to develop and refine their research and analysis skills so that they can provide credible research-based evidence and advice to policy-makers.

- There is also a need to build the capacity of elected officials and government at the provincial and district levels so that they can better promote dialogue and engagement at their respective levels. Important dimensions to this include ensuring that these actors understand more fully their roles vis-à-vis law- and policy-making, that they understand the importance of engaging with CSOs and women in dialogues, and that they receive relevant information to support them in their work.
- To further support the government and parliamentarians' understanding of the value of less centralized and more inclusive planning processes, they should be exposed to participatory approaches to planning in general and to policy design in particular.
- The international community should provide direct support, both programmatic and financial, to assist CSOs, media and government in building their capacity to engage effectively in the law- and policy-making arena. Some of the specific capacity-building needs identified through this study include: strengthening the research and advocacy skills of CSOs; building the investigative journalism and reporting skills of the media; strengthening the capacity of an existing women-orientated body to act as a platform and capacity-building initiative for women's CSOs (see Gender); strengthening governance projects in which communities are taught their roles in governance and their roles in policy dialogues; and building participatory planning skills within government.

Building and Using the Voice of CSOs

- CSOs working in the same thematic area (e.g., health) need to develop joint platforms through which they can promote more coordinated approaches both to participating in dialogues regarding the formulation of laws and policies and to share and learn from each others' experiences.
- Existing coordinating bodies need to develop more systematic approaches to engaging in law- and policy-making issues. These approaches need to involve their constituent CSOs more actively to educate them about the issues and to involve them in the processes.
- In order to potentially better influence policies through a more unified approach, the existing coordinating bodies also need to work together more closely to bring CSOs into dialogue with government.
- To strengthen their voice on policy issues, CSOs must also expand their networking with organizations and relevant individuals who can provide additional expertise.

Increasing Women's Participation

- To further support the involvement of women in policy dialogue, there is a strong need to build the capacity of the MoWA to engage women more systematically in these dialogues. Special attention needs to be paid to efforts to do this at the provincial and district levels.
- Government and elected officials also need to be more supportive of seeking genuine inputs from women, who represent an important element of civil society, in policy dialogues at all administrative levels.

- There is a need to build the capacity of an existing women-orientated body, such as the AWN, to act as a platform for women's CSOs to discuss the gender dimensions of laws and policies and to plan approaches and strategies to engage with government on these issues. It could also be through such a platform that capacity of women's CSOs in a broad range of institutional areas could be further built.

Building the Foundation for Increased Participation in Law and Policy-making

- There is an urgent need to codify and share the processes involved in making policies so that all sectors are clearer about how policies are formed. While there are law-making processes in place, these also need to be shared and discussed more widely so that all sectors have greater clarity on these processes.
- Additionally, in order to help clarify roles and develop processes that reflect openness to the inclusion of CSOs and women, the government needs to develop/refine and legislate systems that include consultation with them in major government policies and laws. The government should seriously consider involving CSOs themselves in determining how best to include them in these new systems.
- In actualizing these systems, there is a need to move away from the use of personal contacts for consultations and to engage a wider CSO community in these processes. A good starting place for this would be to either include collective CSO platforms or ask CSOs to create specific “advisory” bodies made up of a wide range of representatives from civil society to engage in specific processes.
- In order to support future efforts at engagement between government and civil society, a working group comprised of representatives from both should be formed to: provide oversight to strategies for promoting policy engagement; monitor the progress made in establishing dialogues and including CSO inputs into new laws and policies; and to ensure that information is adequately disseminated to government and civil society at all levels. This working group could also be used as one of the channels through which donor-government agreements and commitment on policy issues are discussed and shared with the broader community.

Bibliography

- ActionAid USA / ActionAid Uganda. *Rethinking Participation: Questions for Civil Society about the Limits of Participation in PRSPs Discussion Paper*, 2004, available from http://siteresources.worldbank.org/CSO/Resources/AA_Rethinking_Participation_by_Action_Aid.pdf, accessed 1-20-09.
- Anheier, Helmut. *Civil Society: Measurement, Evaluation, Policy*. London: Earthscan Publications Ltd., 2004.
- BBC Persian. تصویب قانون رسانه ها در پارلمان افغانستان, May 22, 2007, available from http://www.bbc.co.uk/persian/afghanistan/story/2007/05/070522_k-ram-af-media-law.shtml, accessed 12-31-08.
- Centre for Civil Society, London School of Economics, 2004, available from <http://www.lse.ac.uk/collections/CCS/introduction.htm>, accessed 1-27-09
- Counterpart International. 2005. *Afghan Civil Society Assessment & How Afghans View Civil Society*, Kabul, March 2005.
- Earl, Sarah, Carden, Fred and Smutylo, Terry. *Outcome Mapping: Building learning and reflection in to development programmes*, IDRC, Canada, 2001.
- Islamic Republic of Afghanistan
- *ANDS Executive Summary*, 2008, available from http://www.ands.gov.af/ands/final_ands/src/final/ANDS%20Executive%20Summary_eng.pdf, accessed 1-12-09.
 - *Afghanistan National Development Strategy*, Kabul 2008.
 - *Strategy for MoWA in the ANDS (Draft)*, Ministry of Women's Affairs, 2007. Available from http://www.ands.gov.af/ands/final_ands/src/final/ministry_strategies/English/MoWA%20-%20English.pdf, accessed 20-1-09.
 - *A Basic Package of Health Services for Afghanistan*, Ministry of Public Health, 2005/1384.
 - *Constitution*, Kabul, 2004.
- Kabul Press.
- تصویب نهایی قانون رسانه ها, published September 1, 2008.
 - وزیرى که بر اصل قانون تردید دارد, published September 5, 2008
- Katzman, Kenneth. *Afghanistan: Elections, Constitution, and Government*, CRS Report for Congress, Washington, 2006.
- Sedra, Mark. *Security Sector Transformation in Afghanistan*, DCAF, Geneva, 2004.
- Wilder, Andrew. *A House Divided? Analysing the 2005 Afghan Elections*, AREU, Kabul, 2005.



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