



International Development Law Organization
Organisation Internationale de Droit du Développement
سازمان بین المللی انکشاف حقوق

Models and Options for Legal Aid Delivery in Afghanistan

November 2007

** IDLO consulted with numerous organizations and Afghan Government authorities, including the Ministry of Justice, in the preparation of the report. IDLO is solely responsible for the statements and opinions expressed herein.

Index

Models and Options for Legal Aid Delivery in Afghanistan.....	1
Executive Summary	4
Introduction.....	14
Law, Policy & Challenges – in developing a legal aid framework	16
Legal Framework	16
Challenges.....	17
Legal Aid Providers in Afghanistan	24
Introduction.....	24
Government Legal Aid Department.....	27
Non Governmental Legal Aid Providers	29
Afghan Women Judges Association (AWJA)	29
Afghanistan Human Rights Organization (AHRO).....	32
Association of Defense for Women Rights of Balkh (ADWRB).....	36
Da Qanoon Gushtunky.....	37
International Legal Foundation – Afghanistan (ILF-A)	40
Legal Aid Organization of Afghanistan (LAOA).....	45
Norwegian Refugee Council (NRC).....	51
medica mondiale	57
Other National Organizations Supporting Legal Aid	59
International Organizations and Legal Aid.....	62
Legal Aid Models & Options.....	67
1. Management structure.....	67
2. Legal Aid Models	70
3. Delivery Mechanisms	71
4. Mixed model of legal aid	82
5. Other issues to consider	83
Recommendations and proposals for next steps	84
Annexes.....	86

Glossary

AAA	Association of Afghanistan's Advocates
ABA	American Bar Association
ACSF	Afghan Civil Society Forum
ADWRB	Association of Defense for Women Rights of Balkh
AHRO	Afghan Human Rights Organisation
AIHRC	Afghan Independent Human Rights Organisation
AJIS	Access to Justice and Integration Section (of JSSP)
AROLP	Afghan Rule of Law Project
AWEC	Afghan Women's Education Centre
AWJA	Afghan Women Judges Association
CIDA	Canadian International Development Agency
CPAN	Child Protection Action Network
CSHRN	Civil Society Human Rights Network
DQG	Da Qanoon Gushtunky
FCCS	Foundation for Culture and Civil Society
FLA	Faryab Lawyers Association
GTZ	German Technical Cooperation
HAWCA	Humanitarian Assistance to Women & Children of Afghanistan
ICC	Interim Criminal Code
IDLO	International Development Law Organisation
IDP	Internally Displaced Person
IJO	Italian Justice Office
ILF-A	International Legal Foundation - Afghanistan
INGO	International Non-Governmental Association
ISISC	Institute of Higher Studies in Criminal Sciences
JSSP	Justice Sector Support Program
LAOA	Legal Aid Organisation of Afghanistan
LCSAWC	Legal and Cultural Services for Afghan Women and Children
MM	medica mondiale
MOJ	Ministry of Justice
MoWA	Ministry of Women's' Affairs
MPI	Max Plank Institute
NLADA	National Legal Aid and Defender Association
NRC	Norwegian Refugee Council
OSI	Open Society Institute
OSJI	Open Society Justice Initiative
PJI	Provincial Justice Initiative
PRT	Provincial Reconstruction Teams
SC	Supreme Court
TAG	Technical Advisory Group
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Program
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development

Executive Summary¹

Pursuant to constitutional obligations and new legislation, the Ministry of Justice of the Islamic Republic of Afghanistan will develop and administer a system to provide legal aid services in Afghanistan.

Identification of legal aid options requires consideration of several key issues. These include the law and policy framework; challenges to legal aid provision; the legal aid management structure; legal aid delivery models; and other issues such as funding and sustainability.

This paper aims to explore some of these questions and is informed by consultations and information from key stakeholders in Afghanistan and lessons learnt from around the world.² The hope is that the paper will provide a catalyst for discussion around these issues and act as a tool for further consultation toward the development of an effective legal aid framework in Afghanistan.

Law and Policy

Afghanistan has a legal obligation to provide legal aid in criminal cases to indigent people as outlined in Article 31 of the Afghan Constitution. In the following weeks, and the passing into law of the Advocates Act, responsibility for legal aid will pass from the Supreme Court to the Ministry of Justice (MoJ). The MoJ has identified in policy guidance a vision for legal aid which will provide:

- an affordable and sustainable justice system that
 - is accessible by all Afghans - whoever they are and wherever they live
 - conforms with international minimally acceptable quality standards
- stronger linkages where appropriate and where in keeping with the rights of citizens between the state system and the traditional systems that are for many Afghans their only regular justice system, and
- legally aware citizens, better able to demand their rights and perform their responsibilities.³

¹ This Paper was commissioned by the Ministry of Justice of Afghanistan (MoJ) and prepared by IDLO/CIDA. The paper was researched and produced by Gerry Fox and Daud Wardak, of the European Commission's Justice Sector Reform Project.

² The models and options presented have been informed by consultations with the MoJ, the Supreme Court, the Afghan Independent Human Rights Commission, NGO legal aid providers, civil society organizations and international organizations. The author would like to thank all these organizations for their generosity in time, provision of information and support, without which this paper would not have been possible.

³ Government of the Islamic Republic of Afghanistan 'Justice for All: A Comprehensive Needs Analysis for Justice in Afghanistan', Kabul May 2005.

Furthermore, the MoJ has recognized that “In civil cases, without at least some modest legal assistance capacity, it will be difficult to defend the rights of women and children in family matters.”⁴

Challenges

However, in providing legal aid services which meet all these needs, Afghanistan also has to contend with many challenges. The formal legal system has extremely poor infrastructure with many of the district courts requiring significant repair or total rebuilding; a high percentage of poorly trained judges and prosecutors; severe credibility problems – bribery and corruption is recognized to be widespread and processes are slow and expensive; and large caseload backlogs. Faced with this backdrop, many Afghans prefer to resolve disputes using jirgas and shuras (data suggests up to 80% of disputes), however these customary processes often fail to meet basic human rights standards and are discriminatory towards women.

Furthermore, the prison population is growing exponentially increasing from 600 in 2001 to over 10,500 in 2007 with large numbers of accused being held in pre-trial detention beyond statutory time-limits.⁵

There is also a critical lack of defense lawyers to address current needs; the present number of registered lawyers being only a little over 300. Furthermore, the numbers of law and sharia students graduating from universities across the country will not be able address this problem in the near future.⁶

Present Legal Aid Providers

By far the bulk of legal aid in Afghanistan is presently being provided by NGOs. As can be seen in the section ‘Legal Aid Providers in Afghanistan’, primary NGO legal aid providers employ around 190 defense lawyers and a further 42 paralegals. These services are being provided in 18 provinces with a further six provinces receiving some legal aid services though legal aid outreach or mobile clinics. The government legal aid department, presently administered by the Supreme Court, but soon to become the responsibility of the MoJ, presently has 19 lawyers. It has only one office in Kabul which provides indigent defense in criminal cases. Some travel to other provinces is undertaken.

The Supreme Court Legal Aid Department resources severely limit its ability to provide a comprehensive service. The Legal Aid Department does not have the resources to visit police stations or detention centres, instead relying on the courts to inform the Legal Aid

⁴ ‘Justice for All’, p. 6.

⁵ UNAMA ‘Justice Overview, April 2007’. UNODC statistics on prisoners and detainees, 28 August 2007.

⁶ One professor from Kabul University Law Faculty advised that in all probability a maximum of 200 graduates per year are likely to become defense lawyers and more likely only 100. This is because the total number of graduates from all the legal and sharia faculties combined is in the order of 500 per year and these graduates service the Judiciary, Attorney General, Ministry of Justice and private practice (in addition to following other professions).

Department that the accused requires a defense lawyer or for the accused to ask for one. Lack of resources also impacts on the ability of the Department to provide adequate investigation and representation.

Some NGOs provide purely criminal defense, others represent a mix of criminal and civil cases and one primary provider (NRC) specializes in property cases.

In addition to representing accused in the formal legal system, NGO legal aid providers also provide a range of methodologies for the resolution of cases. These include: mediation between the parties; involvement of community leaders as part of a reconciliation process; and engagement with shuras and jirgas.

NGO legal aid providers also provide a range of other services including legal training and workshops to the legal profession; training of paralegals and civil society; Training of Trainers; awareness raising programs including the publication of legal materials, pamphlets and posters to inform civil society of their rights; and awareness raising of elders and shuras and jirgas to raise awareness on international human rights and legal standards.

NGO legal aid providers also play an important role in public interest advocacy by identifying key issues either through casework or research and advocating for law reform.

Legal Aid Management Structures

Managing a publicly funded legal aid system will require a legal aid authority. In establishing this authority the MoJ has two primary options: it may either keep direct authority within the Ministry or alternatively establish an independent legal aid authority through new legislation.

Most legal aid experts agree that independence and meaningful oversight of legal aid services significantly enhances the quality of legal aid by providing a measure of independence to the legal aid system from political and judicial influence. Without such independence, the likelihood of successfully managing and improving legal aid services is greatly diminished.⁷

Given the perceived lack of credibility of the Afghan formal legal system, an independent legal aid commission would play an important role in providing the perceived independence a defense function will require.

This commission would also act as an oversight body by monitoring the quality of legal aid programs; develop uniform policies, procedures, standards and statistical information; and provide a central voice for legal aid services.⁸

While the establishment of a Legal Aid Commission would take some time to establish, interim arrangements could be put in place with an advisory council comprising

⁷ Spangenberg Group 'State Indigent Defense Commissions', December 2006. The concept of independence of the defense function is also recognized by the Legal Aid Department of the Supreme Court of Afghanistan in 'Principles for the Effective Functioning of Public Defender Offices' (Annex 4).

⁸ Spangenberg (2006), p. 18.

stakeholders from government, non-government and academia, to provide a transition to a more independent body.

Legal Aid Models

The legal aid authority may use a variety of different models to administer legal aid. For example, the authority may employ its own staff ‘in-house’ to deliver legal aid services; the legal aid authority may contract out the delivery of services to a third party such as NGOs; or the legal aid authority may use a mixed model of both ‘in house’ legal services and contracted out services.

1. Legal aid could be entirely provided by legal professionals paid salaries directly by the legal aid authority. Advantages of an ‘in house’ service include: direct accountability for quality of service; ability to directly train its staff; better guarantee in consistency in service; centralized system to ensure equal workload for professionals; and a centralized information system. Disadvantages include: the current lack of capacity of government lawyers to provide services; risks of conflict of interest in some cases; limited opportunities for innovation in services; difficulties in providing incentives for hard / good work; perceived lack of independence of legal professionals.

2. Legal aid could be entirely contracted out to other legal aid providers such as NGOs or private lawyers in the community. In an entirely contracted out model of services advantages would include: perceived independence of lawyers; ability for more flexibility and innovation in services; no issue with conflict of interest; cost saving since existing staff and infrastructure can be built on; potential ability to reach a wider number of people. Disadvantages include: less control over service delivery; the need for more complex accountability mechanisms; higher possibility of inconsistency in service and quality across country.

3. A mixed model that would include both ‘in house’ staff and external contracting. Advantages of the mixed model is that it provides the strengths of flexibility – recognising the current capacity of NGOs, while also providing scope for the development of an ‘in-house’ legal defense service. Disadvantages of this model include the increased complexity of administration, coordination and oversight.

Delivery Mechanisms

There are also a range of different mechanisms which can be used to deliver legal aid. These include public defender services; private lawyers (often referred to as *judicare*); pro bono work; and a range of supplements and alternatives to lawyer dominated legal aid such as university clinics, legal interns and paralegals.

Public Defenders

The term ‘Public Defender’ has many different meanings in different countries which can lead to considerable confusion.⁹ Most commonly, public defenders can be characterized as

⁹ For example, in Seattle, Washington, lawyers known as public defenders work not for the State, but for one of four not-for-profit agencies, each of which holds a bulk contract (negotiated yearly) to deliver a certain

providing legal representation through salaried lawyers employed either directly by the government or through a legal services authority. Advantages and disadvantages of a public defender mechanism depend on a range of factors, including size of caseload per lawyer, efficacy of management, maintenance of high morale, training, adherence to ethical and professional standards, and independence.

One option for Afghanistan would be the establishment of an ‘in-house’ public defenders service with staff directly employed by the legal aid authority (the legal aid authority would initially need to be the MoJ but this function could be passed to an independent statutory legal aid commission). In this model, in addition to the existing service in Kabul, offices would need to be rolled out to provinces across the country with district offices potentially being added over time as security constraints, experience and capacity for increasing services expanded. However, given the capacity of the MoJ to provide legal aid at this time, this option on its own would be difficult to achieve.

NGO and other legal aid providers

Another option for Afghanistan is for the legal aid authority to contract-out all public defender services to other legal providers.

A number of NGOs and legal agencies are already providing legal aid services. Some NGOs provide specialized criminal defense, others specialize in civil cases and some providers offer a range of criminal, civil, mediation, advocacy and legal awareness services. Many providers also use both registered lawyers and paralegals to deliver services. However, presently all these providers are privately funded; uncoordinated; and have no common oversight mechanisms to ensure quality of service. They also do not have the capacity to meet demand.

NGOs and/or other non-state legal providers could be contracted through the legal aid authority to undertake specific services. At the same time, these providers would be able to continue to seek funds from other sources to undertake services beyond the legal aid authority mandate. This would provide a flexibility of approach and the opportunity for providers to continue to experiment with new ideas and specialize on particular issues of concern to their agencies.

Private Lawyers

This mechanism delivers legal aid to indigent clients through private practitioners. Clients can choose a participating lawyer to represent them and the lawyer is then paid with public funds on a case-by-case basis through the legal aid authority. Payment procedures can vary: payment can be based on the time taken on the case though more commonly, a fixed fee is provided based on the type of case and the anticipated amount of work involved thereby providing greater control over funding.

quantity of criminal services. In Israel, the office for the public defender contracts with private practitioners. In England and Scotland, public defender offices are small experimental groups of salaried lawyers employed by the Scottish Legal Aid Board and the Legal Services Commission. They have been devised to be a totally different method of provision from private practice. In San Francisco, the public defender is elected by the people. In Australia, New South Wales, the post is a prestigious one concerned only with higher level advocacy. In many US states and in the US federally, it generally means an independent organization that employs salaried criminal practitioners.

One of private lawyers' most significant weaknesses is its expense, particularly compared to other legal aid delivery mechanisms.¹⁰ A number of studies have shown that the higher costs associated with this mechanism do not necessarily result in better quality of services.

At present the Afghan Government does not provide any legal aid through private lawyers. However, private lawyers still may be able to play a useful role in legal aid provision – particularly in rural areas where low caseloads may make the establishment of a legal aid office not cost effective, or where there are benefits in the existence of a second provider in cases where there may be a conflict of interest. Equally, the importance of engaging the private legal community as stakeholders in the criminal justice system is not to be undervalued. One reason why Australian legal aid funding is considered to have survived better than the US is the stake private lawyers had in its preservation.¹¹

Pro-Bono Legal Services

Pro bono schemes provide useful services to supplement paid legal aid services around the world. In Afghanistan, Article 13 of the Advocates Act, which is shortly to be passed into law, requires registered lawyers to 'take 5% of cases in each year free of charge'. This pro bono work will supplement other legal aid provision. However, many of the registered lawyers will have no defense experience; therefore training programs, for example through the Bar Association, will be important. Another option to ensure quality of services is to link lawyers undertaking pro bono work with other legal aid services such as NGOs, or other salaried legal aid services. This system works successfully in several countries both augmenting the legal aid service and providing support for the private lawyer.

University Legal Clinics

University legal clinics provide practical legal education for students and free legal services for indigent people. They also provide opportunities to pursue a range of potential social justice benefits in developing countries.¹² In addition to their educational benefits, university clinics can serve as both supplements and complements to other indigent legal services. In some developing and developed countries, clinics work in tandem with government legal aid, NGOs, and community-based paralegals.

In Afghanistan, the pilot program between the Herat University, ILF-A and the Open Society Justice Initiative appears to be producing promising results. In this pilot, university students act as interns within the ILF-A Herat legal aid office.¹³ Plans are also being

¹⁰ In 2002, England was spending \$38 per capita on legal aid as compared with \$2 in the United States, \$9 in Ontario, Canada, and \$12 in the Netherlands. (Bellow-Sacks Seminar: US Legal Services in Comparative Perspective, Nov. 18-19 2002 in Access to Justice Africa and Beyond P.63).

¹¹ No matter which form of legal aid is adopted, strategies will need to be in place to provide strong advocacy to ensure that funding needs are emphasized. This is particularly important in a country where the concept of defending the accused is new. It will be all too easy for financial decision-makers to want to give only the minimum to this area of need. See Susan Armstrong 'What Happened to Legal Aid', 2001.

¹² There is the potential in many civil cases, to provide services support indigent clients. For example, see Aubrey McCutcheon 'University Legal Aid Clinics: A Growing International Presence with Manifold Benefits' in 'Many Roads to Freedom', Ford Foundation. February 2000.

¹³ See section 'Legal Aid Providers in Afghanistan'.

contemplated to expand the program and link other Universities to ILF-A clinics in other provinces.

Paralegals

Paralegals are individuals who have received specific training to undertake specific tasks in the legal field. Paralegals challenge the assumption that lawyers are necessary to assist indigent clients at every stage of the criminal justice process and offer an alternative (and less expensive) method of assisting the indigent. Paralegals can be paid professionals or volunteers.

Paralegals serve many functions, including advising people of their basic rights, assisting lawyers, and providing vital education and training. In addition, community-based paralegals are able to deliver legal services to people outside of the traditional legal system, and to those living in rural or remote areas.¹⁴

The role of paralegals is recognized in the Afghan Interim Criminal Code and many legal aid providers in Afghanistan are using paralegals as part of their legal aid provision.¹⁵

Given the extreme shortage of lawyers and the extent of access to justice challenges facing Afghanistan, paralegals can potentially play a very important role. Not only can they support lawyers and free up their time, but they can also play a critical role in providing advice and awareness-raising on legal rights and provide linkages between rural areas and formal legal aid services.¹⁶ Paralegal legal awareness and rights awareness-raising can also potentially assist in informal dispute resolution processes such as shuras and jirgas and help ensure that they comply with human rights standards.

Specialized legal aid services

In addition to general criminal and civil law services, many countries have found value in establishing specialized services providing legal aid in both thematic areas such as immigration, housing, social security and public interest and also services aimed at specific client groups such as women, children, refugees and disabled persons.

¹⁴ See Ford Foundation 'Many Roads To Freedom', February 2000; Penal Reform International 'Access to Justice in Africa and Beyond: Making the Rule of Law a Reality', 2007.

¹⁵ Article 96 of the Interim Criminal Code states:

Up to when in the Country there will be not available a sufficient number of defense counsels, as established in article 18, the suspect or the accused can make recourse to the assistance of an educated person having some knowledge of legal issues.

To this end the President of each Court shall institute a list of persons having the qualities indicated in the previous paragraph following the indications for the Capital of the Ministry of Justice and for Districts and Provincial Courts of Government Cases Department.

Afghan NGOs employing paralegals include: ILF, AHRO, Da Qanoon Gushtunky and NRC, see section Legal Aid Providers in Afghanistan.

¹⁶ As noted in the Rome Conference Panel on Access to Justice, Legal Aid and Human Rights 'The majority of Afghans in rural areas are illiterate and uneducated. They have little or no understanding of their rights or the legal and justice system. They also lack basic understanding of the obligations of duty bearers (the police, prosecutors and judges) and the procedures for claiming these obligations. Rights awareness programs are therefore an essential component to any justice program). (July 2-3 2007), p.2.

Specialized services as part of the legal aid framework will be an important consideration to meet the MoJ vision to encourage ‘legally aware citizens, better able to demand their rights and perform their responsibilities’.¹⁷ In Afghanistan the lack of access of women and children to the law make specialized services in this area particularly important.

Mixed delivery models

As outlined above, legal aid services can be delivered in a range of different ways, many of which have application in the Afghan context.

Legal aid public defenders may be provided ‘in house’; public defender provision may also be contracted out to other providers such as NGOs; some legal aid may be provided by private lawyers including the provision of pro bono; legal aid services may also be supported by university law and sharia faculty students; and paralegals may also provide legal services. Paralegals may be employed in-house, contracted out, members of other organizations, or even volunteers.

Most probably a mixture of all these services is likely to provide the best opportunity of meeting the Afghan Government policy vision above. Indeed, experience in many countries is showing that a mixed delivery model is the most effective method of delivering services.¹⁸

One interesting example of a mixed delivery model is the South African Justice Centre. These centres provide consumers with a ‘one stop shop’ instead of sending them from place to place to obtain assistance. The justice centres provide a full range of legal and paralegal services to indigent clients by bringing together legal aid officers, public defenders, law clinic intern public defenders, professional assistants, supervising lawyers, paralegals, administrative assistants, and administrative clerks under one roof.

Recommendations

Recommendations which may wish to be considered in the development of a legal aid framework include the following:

1. Structure
 - a. The establishment of an independent legal aid commission to manage legal aid provision
 - b. As an interim arrangement, prior to the establishment of the legal aid commission, the establishment of a legal aid council which includes representatives of legal aid stakeholders. The function of the Council will be to act as an advisory body to the MoJ in matters of legal aid.
2. Legal aid delivery models
 - a. The establishment of a mixed model for delivery of legal aid. This model may include the following elements:

¹⁷ ‘Justice for All: A Comprehensive Needs Analysis for Justice in Afghanistan’ Government of the Islamic Republic of Afghanistan, Kabul May 2005.

¹⁸ See Penal Reform International (2007), Ford Foundation (2000).

- i. 'In-house' public defenders
 - ii. Contracted-out legal aid providers
 - iii. NGO legal aid providers
 - iv. Pro bono
 - v. University clinics
 - vi. Interns in private law firms
 - vii. Paralegals
3. Scope of legal aid
 - a. Provision of legal aid at all stages of the criminal process including investigation, arrest, pre-trial detention, bail hearings, trials, appeals, and other proceedings brought to ensure that human rights are protected. Suspects, accused persons, and detainees to have access to legal assistance immediately upon arrest and/or detention wherever such arrest and/or detention occurs.
4. Legal aid in civil cases
 - a. In addition to the legal obligation to provide criminal legal aid, the provision of legal aid in some civil cases as outlined in MoJ policy. The scope of civil legal aid will need to be defined.
5. Means and merits tests
 - a. In criminal cases, a definition of indigent will be required to define eligibility for legal aid
 - b. In civil cases, both a means and merits tests will require definition
6. Training
 - a. The prioritization of providing training in defense lawyer skills
 - b. Ongoing training for police, prosecutors and judges in the role of defense lawyers and legal aid
 - c. The establishment of mechanisms for accreditation of paralegals; including identification of paralegal functions, training needs and supervision mechanisms.
7. Funding
 - a. The establishment of a salary structure for defense lawyers presently employed by the government to create greater equity with salaries provided in non-profit organizations.
 - b. The encouragement of donors to providing funding legal aid services and management structures and to support any transitional arrangements.

Proposals for next steps

1. Consultation
 - a. A Forum on legal aid may be considered with representatives from a broad range of stakeholders. This forum would include experts from other countries with experience in different legal aid delivery models.
2. Policy papers
 - a. Development of policy papers by stakeholders may want to be considered on issues such as potential scope of legal aid in civil cases; role and functions of paralegals; and criteria for means and merits tests.
3. Study tours
 - a. Study tours may be considered to inform policy makers on key legal aid delivery approaches.
4. Pilots
 - a. Piloting of some initiatives may want to be considered before developing a larger program.
5. Legislation
 - a. Depending on the outcome of the consultation process and study tours, legislation on some or all of the following may be required:
 - i. Legal Aid Act and regulations
 - ii. Legal Aid Commission
 - iii. Paralegal accreditation
 - iv. Guidelines on supervisory mechanisms for legal interns and paralegals
6. Base-line data
 - a. To enable for planning of legal aid services and to establish legal aid need, a program to gather comprehensive base-line data is required.

Introduction

In developing a legal aid system for Afghanistan, there are a number of key questions that need to be considered. Some of these are the following:

- What criminal services should be provided? In particular, what services should be provided prior to a suspect being charged and during interrogation by the police?
- In addition to mandatory duties for publicly funded criminal legal defense, what discretionary services should be provided?
- Will there be provision for civil cases? And if so, what types of civil cases should be covered?
- How do publicly funded services interrelate with other forms of funding services or different ways of resolving a dispute?
- Should legal services extend beyond representation to advice?
- Is there a need to provide information and public legal education?
- Should provision for public interest litigation and casework be included? If so, how?
- What test of means, if any, is envisaged for criminal cases?
- What test of means and merit is envisaged for civil cases?
- Who will administer the tests of means and merit? Can the providers be trusted sufficiently to do this or should there be some form of third party certification?
- How should criminal services be delivered? By salaried practitioners? Private practitioners, some form of ‘public defender organisation’ or some combination of delivery? What are the advantages and disadvantages of each system?
- Whatever the means of delivery for criminal cases, will it meet determinants for quality of service?
- How is it envisaged that civil legal services be delivered? Should it be through private practitioners, NGOs, national agencies or some other model?
- What body will manage publicly funded legal services?
- How will responsibilities for management and policy be divided?
- What will be the mechanisms for accountability of the managing body?
- How important is the co-operation of the existing legal profession? If it is important, how can it be encouraged?
- What provisions are envisaged to assure quality?

- How much money is available for funding legal aid services? And how will value for money be demonstrated?
- What are some of the key issues affecting access to justice in Afghanistan and how will policy on legal services integrate within wider access to justice policy?¹⁹

This paper aims to explore some of these questions and has been informed by consultations and information from key stakeholders.²⁰ The hope is that the paper will provide a catalyst for discussion around these issues and act as a tool for further consultation toward the development of an effective legal aid framework in Afghanistan.

The paper covers several key issues: The legal and policy framework in Afghanistan; key challenges being faced to the provision of defense counsel; the existing capacity of legal aid providers; and possible legal aid framework options, including management structures, legal aid models, and potential delivery mechanisms. Finally the paper suggests some possible next steps to move towards the provision of an effective legal aid system in Afghanistan.

¹⁹ Roger Smith, 'Legal Aid: Models of Organisation', 2002.

²⁰ The authors would like to thank the Ministry of Justice, the Supreme Court, the Afghan Independent Human Rights Commission, NGO legal aid providers, other civil society organization and the many international organizations which gave their time, information and support, without which this paper would not have been possible.

Law, Policy & Challenges – in developing a legal aid framework

Legal Framework

Afghanistan has a legal obligation to provide legal aid in criminal cases to indigent people as outlined in Article 31 of the Afghan Constitution. Further reference to the right to defense is also included in the Afghan Interim Criminal Code for Courts, Afghan Law on the Structure and Competencies of Courts, and the Afghan Juvenile Code.²¹

Furthermore, there are additional Sharia Standards and International Standards identified by the Afghan High Judicial Council of the Supreme Court that provide for the right to defense. Sharia standards identified are the Qur’ān, Judge Ahmad Ibn Baqi, Surat al-Najm, and the Prophet in a hadith. International standards are also identified including the International Covenant on Civil and Political Rights, the United Nations Basic Principles on the Role of Lawyers, and the United Nations Basic Principles on the Independence of the judiciary.²²

In the following weeks, and the passing into law of the Advocates Act, responsibility for legal aid will pass from the Supreme Court to the Ministry of Justice (MoJ). The MoJ has identified in policy guidance a vision for legal aid which will provide:

- an affordable and sustainable justice system that
 - is accessible by all Afghans - whoever they are and wherever they live
 - conforms with international minimally acceptable quality standards
- stronger linkages where appropriate and where in keeping with the rights of citizens between the state system and the traditional systems that are for many Afghans their only regular justice system, and
- legally aware citizens, better able to demand their rights and perform their responsibilities.²³

Furthermore, the MoJ has recognized that ‘In civil cases, without at least some modest legal assistance capacity, it will be difficult to defend the rights of women and children in family matters,’²⁴ meaning that the government may take on some obligations to provide legal aid in civil matters.

²¹ The High Judicial Council of the Supreme Court ‘Guidelines for Implementation of the Right to Defense’ The High Judicial Council of the Supreme Court, 2007.

²² *Ibid.*

²³ ‘Justice for All’ May 2005, p. 4.

²⁴ *ibid.* p.6.

Challenges

Women

One particularly critical issue when considering a legal aid framework is the human rights abuses faced by women. Millions of Afghan women and girls continue to face systematic discrimination and violence either in their homes or their communities, as indicated by the common practice of forced and early-age marriages. Domestic violence against women is a common practice. Women, who have few places to take shelter from such violence, may undertake self-immolation or suicide in extreme cases. The numbers of such cases are now rising. In Kandahar province alone, at least 64 women have attempted suicide, and 36 others resorted to taking poisons such as rat-killers during the first eight months of 2006.²⁵

Furthermore, the justice system discriminates against women and violates their rights. Examples include the lack of statutory proscription of rape resulting in victims routinely being detained and charged with adultery, 'honour killings' going unpunished, and victims of domestic violence and forced marriage facing prosecution and imprisonment for elopement while authorities systematically fail to investigate and effectively prosecute perpetrators of violence against women.²⁶

In the rare cases where women are willing to report the crimes perpetrated against them, they risk being ignored, accused of committing sexual offences, detained arbitrarily, tried unfairly and/or returned to the husbands or families responsible for the crimes.²⁷

Post release support to women prisoners is problematic. Women in Afghanistan face enormous barriers, social and economical, to leading independent and self supporting lives. However, some women are not able to return to their homes, as they are rejected due to the shame they have brought on their family members according to the social and cultural norms in Afghan society.²⁸

Moreover, customary practices and traditional dispute resolution mechanisms deny justice to women. Women are detained for crimes against social norms and for purposes of executing punishments on behalf of husbands or male relatives.²⁹

Children

Children also face particular risks. Children as young as 11 years old can be arrested and imprisoned in Afghanistan for minor crimes such as theft and once arrested, they are sometimes detained with adults in prison. Some of these children go through the justice system without having proper legal representation. The Afghan Independent Human Rights

²⁵ UNDP, 'Afghanistan Human Development Report', (2007) p 58.

²⁶ Rome Justice Conference (July 2-3, 2007) 'Panel on Access to Justice, Legal Aid and Human Rights.

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ UNAMA 'Justice Overview', April 2007 p.26.

Commission (AIHRC) reported that there are 625 children detained at juvenile correction centres.³⁰

There are numerous reports of torture, serious ill-treatment and sexual abuse of children by police officers, in detention facilities and other state institutions. Juveniles are often held in pre-trial or under-trial detention for periods that exceed the maximum punishment for the offence committed. Few juveniles are provided legal aid. Girls are mainly prosecuted for moral offences that are not crimes under Afghan statutory law.³¹

Policy guidance

As noted above, the MoJ recognizes that in civil cases, without at least some modest legal assistance capacity, it will be difficult to defend the rights of women and children in family matters.³² Policy also identifies the need to ‘Improve human rights of all citizens of the country, in particular women, children and the disabled.’³³ And ‘expand and coordinate public legal awareness programs with special emphasis on human rights issues, in particular women’s and children’s rights.’³⁴

In addition, the government policy recognises the need to develop ‘Specialized programs to target women and children’ including the need to ‘Develop and expand a paralegal program.’³⁵

Government policy also identifies the role of traditional justice and how that it presents some very serious issues for the Government. In particular ‘the unacceptable intrusion of the traditional sector into criminal justice and the burden it places on women, often in violation of human rights norms which the Government has agreed to implement’ and the importance of engaging with the traditional system, ‘to seek to eliminate its unacceptable elements and maximize its positive features’ by ‘offering training to elders and others, incentives to follow the best approaches, and linkages to the state system where agreed procedures are followed’.³⁶

Legal system

The development of a legal aid framework needs also to consider many of the challenges faced by the Afghan legal system. The formal legal system has extremely poor infrastructure with many of the district courts requiring significant repair or total rebuilding. There are also a high percentage of poorly trained judges and prosecutors and

³⁰ UNAMA ‘Justice Overview’ (April 2007) p. 29.

³¹ Rome Justice Conference (July 2-3, 2007) ‘Panel on Access to Justice, Legal Aid and Human Rights, p.5.

³² ‘Access to Justice’ MoJ p.6.

³³ Draft Strategy of MoJ (April 21, 2007).

³⁴ *ibid.*

³⁵ Recommendations from the Technical Advisory Group for Women and Children (TAG) to the Rome Conference, June 2007.

³⁶ ‘Justice for All’ p.12.

the system faces severe credibility problems. Bribery and corruption is recognized to be widespread and processes are slow and expensive. Furthermore the courts have large caseload backlogs. There is currently a back-log of 6,000 appeal cases in the country awaiting adjudication.³⁷

Faced with this backdrop, many Afghans prefer to resolve disputes using the informal justice system of jirgas and shuras (data suggests up to 80% of disputes), however these customary processes often fail to meet basic human rights standards and are discriminatory towards women.

Corruption

Afghanistan ranks among the bottom one-eighth of countries with serious governance problems. Public perception surveys further indicate that Afghans perceive the courts as among the most corrupt institutions in Afghanistan.³⁸ Corruption in the Afghan judiciary is in part a result of its outdated organizational structure, overly complex judicial procedures, lack of adequately trained staff, insufficient financial resources as well as poor implementation of existing legislation.³⁹

Poor salaries and lack of other benefits and resources for judges and prosecutors significantly contributes to corruption and lack of professionalism. Judges are paid an amount that is insufficient for basic care of their families and reflects a significant diminishment of economic and social status in society. Judges in the provinces receive around \$35-50 per month.⁴⁰

Furthermore, judges, prosecutors and other officials are often subject to intimidation by local strongmen. The result is a demoralized workforce and an ever present risk of corruption.⁴¹

Policy guidance

The Supreme Court, Ministry of Justice, and Attorney General's Office agree that raising current salaries is urgent. They also agree that improved salaries must be linked with greater accountability and accompanied with a careful review of staff qualification and performance monitoring to ensure professionalism, integrity, and credibility.⁴²

³⁷ UNDP, 'Afghanistan Human Development Report', (2007) p. 72.

³⁸ *ibid* p.8.

³⁹ *ibid* p. 62.

⁴⁰ UNAMA 'Justice Overview' (April 2007) p. 13.

⁴¹ 'Justice for All' p.7.

⁴² 'Justice Sector Priorities' Rome Conference on Justice and Rule of Law 2-3 July 2007. Prepared by Supreme Court, Ministry of Justice Attorney General & Afghanistan National Development Strategy Secretariat p.5.

Lack of qualified legal personnel

According to Supreme Court (SC) records, there are 1384 judges in Afghanistan.⁴³ Of these judges, the SC reports that 44% of existing judges have graduated from a university program in sharia, 12% from a university law program, 8% from other university departments, 16% from various non-university programs and 21% have only a high school education or less.⁴⁴

The lack of sufficiently qualified personnel significantly contributes to the current problems within the Afghan justice system. Due to the absence of qualifications, comprehensive training and relevant texts, many judges are unfamiliar with the law and make decisions without any reference to legal codes or standards. In many areas, particularly at district level, judges' personal opinions are the primary or only source of law.⁴⁵

Even the small number of graduates from law schools have not received a comprehensive legal education as neither the law or sharia faculty provide 4 years training exclusively in legal and judicial matters.⁴⁶

Detention

The issue of detention is also an increasing challenge. The prison population is growing exponentially increasing from 600 in 2001 to over 10,500 in 2007 with large numbers of accused being held in pre-trial detention beyond statutory time-limits.⁴⁷

Under the law, police must remand any persons charged with a criminal offense to the prosecutor within 72 hours, and the prosecutor may order the detention of prisoners for up to 30 days before a judge becomes involved. The prosecutor supervises and directs all police actions in any case after 72 hours.⁴⁸

However, there is ample evidence that the statutory timelines for detention and other fundamental safeguards are almost invariably not applied. Individuals are routinely detained for months without charge or being brought before a judge and rarely receive legal representation.⁴⁹

⁴³ UNDP, 'Afghanistan Human Development Report', (2007).

⁴⁴ M. Cherif Bassiouni and Daniel Rothenberg 'An assessment of Justice Sector and Rule of Law Reform in Afghanistan and the Need for a Comprehensive Plan', p.25.

⁴⁵ UNAMA 'Justice Overview' (April 2007) p.15.

⁴⁶ *ibid* p.17.

⁴⁷ *ibid*.. Also see UNODC statistics on prisoners and detainees, 28 August 2007.

⁴⁸ UNAMA 'Justice Overview' (April 2007) p.13.

⁴⁹ UNAMA 'Justice Overview' (April 2007) p. 6.

Access for defense lawyers

The concept of a defense lawyer and a legal defense is also alien to most people, including many judges and prosecutors. This results in defense lawyers needing to overcome many obstacles to effectively represent clients.

Lawyers are often denied access to detention centres and have to wait long hours to confer with their clients. Very often trials are conducted very informally and notice of the trial is not provided in advance.⁵⁰

The prosecutor also often fails to inform defence lawyers of any investigation he/she might be conducting, particularly any interrogations of the accused or examinations of experts, so that the defence lawyer can be present. Furthermore, the courts often question witnesses without the defence lawyer being given the opportunity to question the witnesses. Moreover judges often interfere with the defence lawyer's right to present witnesses for the defence. In some cases judges refuse to hear a defence lawyer's witnesses.⁵¹

Although under the law the court must provide defence lawyers with a minimum of five days advance notice before a hearing this commonly does not occur.⁵² When lawyers are given advance notice, it is often on the day of the trial.⁵³ This makes it difficult for defence lawyers to call witnesses and other evidence or to prepare their oral pleadings in advance. During trials, courts often ignore the defence statements presented by lawyers. Also Supreme Court judges are refusing to acknowledge the right of a defence lawyer to submit defence statements, to appear before them or to explain why the secondary court judgment is wrong. Some judges have declined to hold trial hearings at all, reaching decisions on cases just by reviewing the files.⁵⁴

However, a culture of criminal defense advocacy is being gradually instilled into the legal community in Afghanistan.⁵⁵ Trained defense lawyers can play an important role in strengthening the judicial system by demonstrating legal procedure to both judges and prosecutors, and encouraging prosecutors and judges to follow the law.

Legal aid defense lawyers can also play an important role in public interest advocacy by identifying key issues such as those raised above and advocating for both compliance with the law and law reform.

However, there is also a critical lack of defense lawyers to address current needs. Although there are around 2,000 prosecutors and 1384 registered judges,⁵⁶ the present number of registered lawyers is only a little over 300. Even fewer lawyers are engaged in legal aid

⁵⁰ The High Judicial Council of the Supreme Court 'Guidelines on Right to Defense' 2007 p.4.

⁵¹ Ibid.

⁵² Art 42, Art 67, Art 74, Art 83 of Interim Criminal Code.

⁵³ The High Judicial Council of the Supreme Court p.6.

⁵⁴ Ibid.

⁵⁵ UNAMA 'Justice Overview' (April 2007) p. 18.

⁵⁶ UNDP, 'Afghanistan Human Development Report', (2007) p.71.

provision. The government legal aid office currently housed within the Supreme Court and shortly to pass to the Ministry of Justice, presently has 19 defense lawyers. The remaining legal aid provision is from NGOs with primary providers having a sum total of around 190 defense lawyers and approximately 44 paralegals operating in offices in around 18 of the 34 provinces (with some extended services in a further six provinces).⁵⁷

Opportunities to augment numbers of defense lawyers through university graduates is also limited. One professor from Kabul University Law Faculty advised that in all probability a maximum of 200 graduates per year are likely to become defense lawyers and more likely only 100. This is because the total number of graduates from all the legal and Sharia faculties combined is in the order of 500 per year and these graduates service the Judiciary, Attorney General, Ministry of Justice and private practice (in addition to following other professions).

Problems are particularly acute in rural areas. Defense lawyers are practically non-existent and there is a low level of understanding of the law and legal rights. Legal awareness is therefore a critical element of providing legal defense. Furthermore the majority of Afghans in rural areas are illiterate and uneducated. They have little or no understanding of their rights or the legal and justice system. They also lack basic understanding of the obligations of duty bearers (the police, prosecutors and judges) and the procedures for claiming these obligations. Rights awareness programs are therefore essential.⁵⁸

Assessment of access to defense undertaken by the Justice Sector Support Program (JSSP) found that many persons who need the services of a defense lawyer did not know that they could request the assistance of a defense lawyer or did not make such a request because they did not know how. Equally troubling is the fact that in many instances if they had asked for defense counsel, the police, prosecutors and courts lacked procedures or mechanisms to locate and appoint counsel.⁵⁹ The assessment found that most persons who were convicted of crimes and who are serving criminal sentences in the provinces did not have any access to a defense lawyer prior to conviction or on appeal.⁶⁰

Furthermore, although generally, prosecutor and police respondents stated that the criminal justice processes would be greatly improved by the addition of registered defense lawyers, many of the persons interviewed during the assessment, regardless of position or occupation, felt that the few unregistered defense lawyers in the provinces provided poor quality services.

Policy guidance

Government policy guidelines recognize that education of the legal sector is needed to help address some of these issues, stating that ‘without a foundational legal education system of acceptable quality, no legal reform in Afghanistan is sustainable’, and noting that ‘If the

⁵⁷ For details of the NGOs covered in this survey see section: ‘Legal Aid Providers in Afghanistan’.

⁵⁸ Rome Conference July 2-3 2007, Panel on Access to Justice, Legal Aid and Human Rights, p.2.

⁵⁹ JSSP ‘Assessment of Provincial Defense Capabilities in Balkh, Herat, Kunduz, and Nangarhar’, (2007) p.5.

⁶⁰ *ibid* p 4-5.

country's universities cannot produce a reliable flow of qualified graduates, neither the justice institutions nor an independent bar can function.⁶¹

The Ministry of Justice has also specifically identified the shortage of qualified defense lawyers as a critical problem and proposes addressing this issue by developing an extensive training component 'in coordination with institutions of higher education, including the Ministry of Higher Education, to ensure the training and availability of qualified defense lawyers'. The program 'will also consider the need for qualified defense lawyers and access to legal materials to enable them to provide proper services to the public' and 'will look at establishing collaborative linkages with existing legal aid providers and the forthcoming Afghan Independent Bar Association'. MoJ policy also contemplates justice officials and the public being 'provided with information detailing the importance of the role played by defense lawyers in the legal aid program and the justice system as a whole.'⁶²

Funding

One critical issue will be finding the resources to develop a comprehensive legal aid program. As the MoJ identifies, 'At this stage, the critical matter is not the precise future cost. What is important is that there is a very large unfunded priority that must somehow be addressed by the Government and its partners'.⁶³

In the Rome Conference in June 2007, international donor assistance was requested to support the provision of an effective quality legal aid service, as follows:

- Assist the government in designing and covering the cost of a state-funded legal aid scheme;
- Financially support national legal aid organizations;
- Develop monitoring tools on legal services provided by national and international organizations;
- Promote the advancement of a culture of criminal defence and confidence in the formal justice system;
- Provide facilities where lawyers can meet their clients confidentially (both in detention centres and in the courts);
- Assist the Government of Afghanistan and the Supreme Court to address the issue of obstruction and undue interference in the work of lawyers by justice officials;
- Produce gender and sex disaggregated data on legal services;
- Promote the delivery of legal aid for civil cases, particularly property disputes.⁶⁴

⁶¹ 'Justice for All'. p.8.

⁶² 'Draft Strategy of Ministry of Justice', April 21, 2007 p.15.

⁶³ 'Justice for All' p.6.

⁶⁴ Rome conference 'Access to justice, legal aid and human rights panel'.2007, p.5.

Legal Aid Providers in Afghanistan

Introduction

By far the bulk of legal aid in Afghanistan is presently being provided by NGOs. As can be seen from the table below, primary NGO legal aid providers employ around 190 defense lawyers and a further 42 paralegals. These services are being provided in 18 provinces with a further seven provinces receiving some legal aid services through legal aid outreach or mobile clinics. The government legal aid department, presently administered by the Supreme Court, but soon to become the responsibility of the MoJ, has 19 lawyers. It has only one office in Kabul which provides indigent defense in criminal cases. Some travel to other provinces is undertaken.

The Supreme Court Legal Aid Department resources severely limit its ability to provide a comprehensive service. The Legal Aid Department does not have the resources to visit police stations or detention centres, instead relying on the courts to inform the Legal Aid Department that the accused requires a defense lawyer or for the accused to ask for one. Lack of resources also impacts on the ability of the Department to provide adequate investigation and representation.

Some NGOs provide purely criminal defense, others represent a mix of criminal and civil cases and one primary provider (NRC) specializes in property cases.

To identify indigent accused requiring defense, many legal aid providers visit police custody, pre-trial detention and prisons. Also, many providers publicize their services in police stations, detention centres, courts and the prisons. Cases are also often referred by MoJ, MoWA, and other agencies. In many cases NGO providers also have policy guidelines and/or practice manuals to assist their defense lawyers in preparing a defense, such as investigation of evidence, representation at trial and case management.

In addition to representing accused in the formal legal system, NGO legal aid providers also provide a range of methodologies for the resolution of cases. These include: mediation between the parties; involvement of community leaders as part of a reconciliation process; and engagement with shuras and jirgas.

NGO legal aid providers also provide a range of other services including legal training and workshops to the legal profession; training of paralegals and civil society; training of trainers; awareness raising programs including the publication of legal materials, pamphlets and posters to inform civil society of their rights; and awareness raising of elders, shuras and jirgas to raise awareness on international human rights and legal standards.

NGOs providers have also identified areas of special need such as juvenile justice, women's shelters, and women's access to the law and are providing specialised legal services.

NGO legal aid providers also play an important role in public interest advocacy by identifying key issues either through casework or research and advocating for law reform. NGO providers also participate in the Legal Aid Providers Committee and other networks to share information, coordinate activities, raise issues, and advocate for legal reform. The Legal Aid Providers Committee meets to discuss members’ activities and identify solutions to legal aid provider problems, support new initiatives such as the development of a National Bar Association, and provide input into new laws, such as the advocacy law. Membership includes DQG, ILF, medica mondiale, AHRO, Global Rights, JSSP, USAID, International Bar Association, UNAMA and the Afghan Lawyers Union.

Overleaf is a table providing a summary of primary NGO legal aid providers coverage by location including number of lawyers and paralegals servicing each office. A summary of NGO services delivered by location is provided in Annex 1.

Key: Table of Legal Aid Providers (overleaf):

ADWRB	Association of Defense for Women Rights of Balkh	Legal aid office	
AHRO	Afghanistan Human Rights Organization		
AWJA	Afghan Women Judges Association	Legal Aid Outreach/ Mobile Clinic	
DQG	Da Qanoon Gushtunky		
ILF-A	International Legal Foundation - Afghanistan		
LAOA	Legal Aid Organisation of Afghanistan		
MM	medica mondiale		
NRC	Norwegian Refugee Council		

* Only 9 NRC lawyers are presently registered with MoJ

Primary NGO Legal Aid Providers

Number of lawyers and paralegals (by location)

Service Provider		ADWR B	AHRO		AWJA	DQG	ILF-A		LAOA	MM	NRC	Total Lawyers	Total Paralegals
Clients		All	All		Women Only	All - with Priority to Women	All		All	Women Only	Refugee Civil Cases Only		
Lawyers and Paralegals		Lawyers	Lawyers	Paralegals	Lawyers	Lawyers	Lawyers	Paralegals	Lawyers	Lawyers	Lawyers*		
Total		9	42	35	5	32	40	7	19	14	29	190	42
Central / Kabul													
1	Kabul		16	10	1	11	28	4	16	6	8	86	14
2	Parwan				1							1	
3	Kapisa				1							1	
4	Bamyan										4	4	
5	Logar												
6	Wardak					4						4	
7	Panjshir												
8	Dikundi												
Paktiya / South													
9	Paktiya												
10	Khost												
11	Paktiak												
12	Ghazni				1							1	
Ningarhar / East													
13	Ningarhar		4	3		4	2	1			3	13	4
14	Laghman												
15	Nooristan												
16	Kunar												
Kandahar / Southeast													
17	Kandahar		7	7		5	2			2		16	7
18	Helmand												
19	Urozgan												
20	Badghis												
21	Zabul												
Herat / Southeast													
22	Herat					8	4	1		4	2	18	1
23	Nemroz												
24	Farah												
25	Ghor						1					1	
Balkh / Northwest													
26	Balkh (Mazar)	3	2	2	1					2	4	12	2
27	Jowzjan		5	5								5	5
28	Sur-i- Pul	3										3	
29	Samangan	3										3	
30	Faryab								1		4	5	
Kunduz / West													
31	Kunduz		2	2			3	1				5	3
32	Badakhshan												
33	Baghlan		6	6							4	10	6
34	Takhar								2			2	

Government Legal Aid Department

The Advocates Act provides for the “organizational structure of the Legal Aid Department together with the staff thereof [to] be separated from the Supreme Court and merged with the Ministry of Justice”. The Ministry of Justice will thereby be “responsible to prepare the Legal Aid organizational structure and budget in accordance with present needs”.

The Advocates Act was passed by the Wolesi Jirga on 30 May 2007. It is anticipated that it will be finally passed into law in the next few weeks at which time the Ministry of Justice will take over responsibility for legal aid. Until such time, the government legal aid department will continue to be situated in the Supreme Court.

Supreme Court Legal Aid Department

The Supreme Court Legal Aid Department provides legal aid for criminal cases only and presently has 19 legal aid lawyers. Some of the lawyers have been trained in defense while others are judges.

The Department has one office in Kabul with no offices in other provinces although lawyers do travel to some provinces to represent clients.

The Legal Aid Department registers all cases. Statistics supplied for the previous six months identified 548 cases undertaken which included 875 accused. Of these cases 285 the accused did not appear and sixty three of the cases are still open.

No	Cases	Number of cases	No of accused in charge
1	Murder	18	47
2	Theft	42	99
3	Narcotic trafficking	51	94
4	Kidnapping	4	7
5	Absent (cases in which accused did not appear)	285	419
6	Fraud	9	22
7	Pederasty	67	97
8	Beating	3	5
9	Attempt to Kidnapping	1	3
10	Robbery	3	7
11	Annoying	2	2
12	Driving without license	40	40
13	Traffic Death	7	7
14	Adultery	8	11
15	Escape from home	4	5
16	Debauchery	4	10
17	Total	548	875

Furthermore, 127 were undertaken in other provinces: 91 in Kunduz, 29 in Parwan, 6 cases in Maidan Wardak and 1 case in Paktia.

The Legal Aid Department, on receiving a case provides letters to the Court advising the court that the Department is representing the client. The client is also provided with a letter advising the client that no payment is required for representation.

The Legal Aid Department applies a very basic means test in as far as some clients are deemed ineligible if they are considered clearly in a position to pay for private counsel. Examples of very rich clients were given as not being eligible.

The Chief of the Supreme Court Legal Aid Department identified several constraints on the work of the department. The number of lawyers was clearly insufficient to meet demand, resulting in many cases proceeding without a defense lawyer. The Legal Aid Department also does not have the resources to visit detention centres or police stations, instead relying on the courts to inform the Legal Aid Department that the accused requires a defense lawyer or for the accused to ask for one.

Lack of resources also impacts on the ability of the Department to provide adequate investigation and representation. The Department also lacks transport to access the provinces and attend courts. Even basic resources are lacking, such as stationary and office materials.

Furthermore, salaries of Legal Aid Department defense lawyers are only 60-80 USD per month which is not a living wage; this impacts on morale, quality of service and increases risk of corruption. The salary of NGO legal aid providers however averages 600-800 USD per month.

Non Governmental Legal Aid Providers

Afghan Women Judges Association (AWJA)

The Afghan Women Judges Association (AWJA) was founded in 2002. There are currently around 60 women judges in Afghanistan and AWJA aims to ensure the active participation of female judges and lawyers in the judicial system. AWJA also aims to promote quality and reliable legal advice for vulnerable Afghan women countrywide.

AWJA has four main programs:

1. Capacity Building of members
2. Judiciary exchange
3. Legal awareness
4. Legal Aid

The objectives of the legal aid program are the following:

- To provide free legal counselling and legal awareness for the most vulnerable women who are in conflict with the law
- To help women access justice
- To strengthening the rule of law in Afghanistan
- To struggle against injustice women are facing
- To decrease the role of traditional (informal) justice toward formal justice
- To encourage women to stand for their rights

AWJA has four offices: The main office is in Kabul and the legal aid activities are being undertaken in four province offices: Ghazni, Kapisa , Parwan and recently Mazar Province. Since November 2002 the program has provided counselling and legal aid to around 1000 women in these provinces.

AWJA uses a range of strategies to find solutions to cases. These include negotiations between the parties; negotiations with families of the parties; the use of Shuras and Jirgas; and formal legal processes including representation before the courts. Mostly cases require both legal proceedings and counselling.

1. Legal representation

1.1 Number of lawyers and types of cases (per location)

AWJA has five lawyers in offices in the following locations:

- Kabul
- Ghazni (with outreach services twice a week to two districts, Khuja Omeri and Nahor)
- Kapisa (with outreach to districts)
- Parwan

- Mazar

1.2 Total number of cases being undertaken in each month of operation

In the last month, AWJA undertook 24 cases in Ghazni, 12 cases in Parwan and 12 cases in Kapisa province. A breakdown of the types and numbers of cases undertaken from May to August 2007 is below:⁶⁵

AWJA registered cases in Ghazni, Kapisa and Parwan Province Second Quarter (May-August 2007)

Nature of cases	Number of the case	Ongoing			Solved					Pending Cases
		Court	MOJ	Prosecutor	Court	Prosecutor	MoJ	Jirga / Shura	AWJA	AWJA
Alimony	4								2	1
Avoid Salary Payment	1								1	
Beating	14						1	9		3
Child Custody	1									1
Disposal	1									
Divorce	6	1	1		3				1	
Engagement Dissolution	15	2			1		1		4	6
Family Violence	15							10		4
Maher	1						1			
Maher and Inheritance	5	1						1	2	1
Murder	1	1								
Property Claim	3								2	1
Rape	2								1	1
Running away from home	16	4			7			2	1	2
Separation Due to Absence	4	3								1
Separation Due to Defect	1									1
Separation due to Harm	10								4	6
Zena	2				2					
Total	102	12					2		37	28

⁶⁵ Mazar Project has not completed its first cycle of reporting so information is not yet available. Mazar is providing the same legal services as the other offices.

1.4 System to determine which clients will be represented.

AWJA represents any women who are in conflict with the law. Most cases are civil cases.

1.5 Client awareness of services

AWJA receives referrals through the MOWA at the provincial level. Announcements are also made every three months in the media.

1.6 Quality of service

Quality of service is attained by hiring experienced lawyers.

3. Legal awareness training workshops for legal profession and civil society

AWJA works closely with several international organisations which support the capacity building and training of women. These include UNIFEM and the International Association of Women Judges. These partnerships have supported training programs for women judges.

In June 2005 AWJA launched a new program in Afghanistan: Legal Awareness for Women and High School Girls in Kabul High Schools. Through this program, AWJA will educate teachers and girl students about their human rights under the new Afghan Constitution.

Afghanistan Human Rights Organization (AHRO)

The Afghanistan Human Rights Organisation (AHRO) was established in 1997 in Peshawar (then called the Afghanistan Commission for Human Rights – ACHR). It started operations in Kabul in January 2002. AHRO is an independent NGO which was founded to promote and protect the human rights of Afghan citizens. As part of its activities, AHRO provides free legal aid and legal awareness services.⁶⁶

AHRO has 8 offices in Afghanistan providing free legal representation:

Office	Established
Kabul	2002
Jawzjan	2003
Nangarhar	2003
Baghlan	2003
Kunduz	2003
Mazar-e-Sharif	2003
Kandahar	2006
Herat	2007

AHRO has three methodologies for reaching solutions in cases:

1. Negotiation

In the first instance, AHRO will encourage parties to come to the legal aid centre to negotiate with a paralegal. If this is successful, generally the solution is permanent.

2. Involvement of community leaders

- If negotiation in the legal aid office is not successful or is not appropriate, AHRO will engage in a mediation process which includes community leaders. This process has been used in around 4,000 to 5,000 cases and AHRO believes this methodology to be very successful. In particular, the process has been successful in finding equitable solutions for women. AHRO has found that negotiated processes tend to lead to a permanent solution.

⁶⁶ Other AHRO activities include: Human rights awareness and education, human rights monitoring and investigation, women’s rights promotion program, child protection; advocacy for reforms at policy level, human rights publications, human rights research, training and capacity building, human rights international networking centre, representation for extremely vulnerable groups, community services, and HIV/AIDS awareness program.

3. Formal legal process

- If neither process 1 or 2 are appropriate, then the formal legal process is adopted with the case lodged in the court and the client represented through all the legal process.

1. Legal representation*1.1 Number of lawyers and paralegals (per location)*

Office	Lawyers		Paralegals		Total
	Male	Female	Male	Female	
Kabul	13	3	6	4	26
Jawzjan	2	3	3	2	10
Nangarhar	3	1	2	1	7
Baghlan	4	2	4	2	12
Kunduz	1	1	1	1	4
Mazar-e-Sharif	1	1	1	1	4
Kandahar	5	2	4	3	14
Herat	???	???	???	???	???
Total Staff	29	13	21	14	77

1.2 Total number of cases from 2003 to 2007 (by location)

AHRO indexes cases by two categories:

1. Rights Cases - this includes forced marriages, underage marriages, divorce, property and inheritance.
2. Criminal Cases – this includes kidnapping, running away from home, robbery, rape, torture, murder and assault.

Office	Rights Cases		Criminal Cases		Total
	Male	Female	Male	Female	
Kabul	1045	124	1185	111	2465
Jawzjan	384	705	123	166	1378
Nangarhar	250	39	101	46	436
Baghlan	179	81	119	47	426
Kunduz	96	35	59	11	201
Mazar-e-Sharif	38	15	22	12	87
Kandahar	32	8	18	6	64
Total Cases	2024	1007	1627	399	5057

1.3 Number of visits to detention facilities and court appearances

The average number of visits to detention facilities and courts for one year by Kabul AHRO Office (including visits by all defense lawyers and paralegals) is as follows:

Offices	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Lock up	9	11	7	6	3	4	8	12	0	5	7	4	76
Custody	23	18	14	17	12	22	11	9	13	18	21	14	192
Jail	3	2	4	3	2	1	4	2	1	3	4	2	31
Family court	12	8	6	3	7	11	3	5	6	9	2	5	76
First courts	24	28	33	21	25	27	19	28	32	28	19	24	308
Second	16	20	24	17	22	22	18	26	18	25	23	21	252
Appeal court	6	4	9	11	5	13	16	10	7	13	19	8	121
Special	34	27	23	28	21	18	26	25	20	27	20	29	298
Supreme	15	13	8	10	12	17	7	11	19	21	6	16	155
Total	142	131	128	116	109	135	112	128	116	149	121	123	1509

1.4 System to determine which clients will be represented.

AHRO represents cases where clients are victims of human rights abuses and criminal cases.

There are two ways for rejecting cases:

- Cases of those clients who are able to pay the fees of the defense lawyer.
- False Information from the clients.

1.5 Client awareness of services

Clients' awareness of services is achieved through the following:

- Public awareness is achieved through the legal rights services, electronic media and print media, installing billboards in intersections and places of mass gatherings, and organizing orientation sessions for public opinion leaders such as community and religious leaders, schoolteachers and students.
- Prisoners' awareness regarding legal Aid services is achieved through defense lawyers, surveyors and pamphlets distribution in the police stations, detention centres, prosecutors' offices, child detention centres and other related centres.
- Cases are also referred from other organisations such as UN, other NGOs, and CSOs.

1.6 Quality of service

AHRO has different mechanisms for quality control:

- AHRO has daily supervision and monitoring in all legal service offices.
- AHRO has separate progress sheets for service quality which are completed by all legal and paralegal staff.
- AHRO receives daily, weekly and monthly reports from all employees.
- AHRO conducts clients' interviews for feedback on quality of services provided.
- AHRO conducts performance evaluation at regular intervals using independent consultants.

2. Staff training and support

AHRO conducts five modules of training for its regular staff as follows:

- 2.1 Basic Training: this training is compulsory for all the technical staff of AHRO upon their joining the organization. The module encompasses the key topics of acting as a defense lawyer.
- 2.2 Project design and management training: this training is offered to AHRO managerial staff.
- 2.3 Refresher Training: the performance of the staff is evaluated from time to time and based on the evaluation result weak areas are identified and staff are offered refresher training in these areas.
- 2.4 Advanced training: advanced training is offered to those staff who have shown long term commitment with the organization and demonstrate strong performance. Advanced training includes topics such as dealing with complex cases, advanced negotiation skills and policy reforms.
- 2.5 On the job training: in addition to formal training, AHRO provides professional and personal development in the work place through continued mentoring and coaching.

AHRO also provides internship opportunities to fresh graduates from the faculty of Law and Sharia. Some of the internees, after the completion of the internship period, choose to work with AHRO. So far AHRO has provided internship opportunities to 20 individuals of which 8 are females.

3. Legal awareness training workshops for legal profession and civil society

One of the strategic areas in which AHRO is working is capacity building of civil society organizations and related government departments and authorities in human rights and legal issues. As of today 520 government officials, including provincial assembly members, and 850 NGO personnel have participated in different workshops organized by AHRO

4. Legal Reform / Advocacy

Another strategic area of AHRO is engagement in legal reform and advocacy issues at the policy level. In this area AHRO is working together with other sector players such as Afghanistan Lawyers Union, DQG and ILF-A. So far AHRO has successfully participated in a number of legal reforms such as reform to legislation concerning prisons and the role of defense lawyers.

5. Future projections of service

AHRO plans to expand its activities to areas of the country presently not covered by legal aid providers.

Association of Defense for Women Rights of Balkh (ADWRB)

It was not possible to interview the Association of Defense for Women Rights, however material obtained from ADWRB is as follows.

The Association of Defense for Women's Rights started operations in August 2002 and provides legal aid services in Balkh, Samangan and Sar-e- Pul provinces. It has three lawyers working in each location.

The aim of ADWRB activities is to increase rights and participation of women in society and a reduce violence through increased awareness, improved governmental policy and reduced domination of men.

ADWRB cases include: forced marriage, child marriage of underage children, girls running away from home, violation and abuse of women and girls, selling of women and girls, murder and manslaughter of women.

ADWRB has registered 517 cases. It receives approximately between 15 to 20 cases per month referred from Balkh, Samangan, Faryhab, Sari-e- pul, Kabul and Baghlan provinces. Between one and three cases are referred to court per month.

ADWRB accepts cases from all women that cannot access their rights, or their life is in danger. ADWRB also refers cases to the relevant government departments when appropriate. Cases are never refused but cases involving issues such as inheritance, land or property are referred to court or relevant government offices.

ADWRB raises awareness of its services through conducting workshops, roundtables and broadcasting TV programs about women rights, human rights and the negative consequences of old traditions. ADWRB activities and mission are also broadcasted through the local media.

Quality of service is maintained through monitoring and evaluation forms maintained at the offices. Questionnaires are also provided at training sessions and to clients to collect information regarding quality and satisfaction of services.

In 2008, ADWRB plans to increase their advocacy section to have a greater impact on policy issues. It also plans to increase outreach activities.

Da Qanoon Gushtunky

Da Qanoon Ghush-tonky (DQG) is a non-governmental organisation with an independent Board. It started operations in January 2006. It has five legal aid offices which operate in Kabul, Herat, Kandahar, Nangarhar and Maidan Wardak. From these five provinces DQG also provides legal aid to nine other provinces (Parwan, Kapisa, Ghur, Fara, Badghis, Laghman, Kunar, Ghazni and Logar).

1. Legal representation

DQG provides free legal representation in both criminal and civil cases. It represents criminal cases of women, men and children and also family cases of women in 14 provinces of Afghanistan

1.1 Number of lawyers and types of cases (per location)

A total of 32 registered defense lawyers are working with DQG in the following locations:

Kabul	11
Herat	8
Kandahar	5
Nangrahar	4
Maidan Wardak	4

1.2 Total number of cases being undertaken in each month of operation

DQG has undertaken over 4000 cases since the beginning of 2006. Approximately 70% of these cases are criminal, the remainder being family cases. As an example of present monthly caseload, the total number of cases being managed in the month of August 2007 per location is as follows:

No	Provinces	Number of Cases
1	Kabul, Parwan, Kapisa	110
2	Herat, Badghis, Ghur & Fara	131
3	Kandahar	43
4	Nangarhar, Kunar & Laghman	45
5	Maidan Wardak, Ghazni & Logar	35

These cases include new cases and cases still ongoing from previous months. On average, each lawyer will have a caseload of between 35 - 45 cases.

1.3 Number of court appearances each month

The number of court appearances for the month of August per location is as follows:

No	Provinces	Number of Cases
1	Kabul, Parwan, Kapisa	53
2	Herat, Badghis, Ghur & Fara	60
3	Kandahar	21
4	Nangarhar, Kunar & Laghman	18
5	Maidan Wardak, Ghazni & Logar	8

Note: the number of courts appearances will be different per month.

1.4 System to determine which clients will be represented.

DQG accepts all criminal cases of women, men and children and family cases of women.

However, DQG will not accept cases from men if one of the parties in the case is a woman. The rationale for this approach is the DQG position that women are not treated equally under the law and therefore it is necessary to discriminate in favour of women to increase their access to services. Also, it is important for women to know that there are services which defend women's rights.

1.5 Client awareness of services

Awareness of services is achieved through a variety of avenues:

In each province, the legal coordinator visits women and men's police custody, detention centres, prisons and Juvenile centres two to three times a week.

Government and non-government organizations such as courts, attorneys' offices, police stations, Afghan Independent Human Rights Commission, Ministry of Women's Affairs, Legal Departments within the government, shelters, UN agencies such as UNIFEM, UNAMA, UNICEF refer the cases to DQG.

DQG produces legal awareness materials including five posters, four booklets and one pamphlet. These materials have been distributed widely to courts, police stations, prisons and within the community and include DQG phone numbers and details of services.

1.6 Quality of service

DQG has a system of weekly reporting with cases reviewed by supervisors. A weekly training meeting is also held where cases can be discussed. DQG lawyers also complete a monthly report on activities.

DQG maintains a database of all cases which includes information on nature of offence, gender, age, procedure and problems faced in reaching an outcome. The database aims to provide a tool for evaluating the efficiency and effectiveness of services. DQG is also participating with UNIFEM and UNAMA to feed this information (without compromising the confidentiality of work) into a broader national database which will provide both quantitative and qualitative data for assessment of services and gaps on a national basis.

2. Staff training and support

DQG lawyers participate in training courses provided by other agencies such as NRC, ILF, IDLO, and JSSP. DQG also provides ‘in house’ training to lawyers and other staff. DQG also organises national training workshops, such as the 6 day national workshop held in 2006 in which 30 lawyers participated. The workshop included mock trials and advocacy training.

3. Legal awareness training workshops for legal profession and civil society

DQG also provides workshops on a request basis for judges, prosecutors, students from the law and sharia faculties, and potential paralegals. Workshop topics have included the penal code, criminal procedure and role of defense attorneys. In 2006, DQG presented six of these workshops.

In 2006, DQG also trained 79 paralegals and is developing a paralegal training manual. Participants were drawn from both government and NGOs from Kabul, Herat, Nangarhar, Maidan Wardak, Ghazni, Logar, Kapisa, Parwan, Laghmon and Kunar. The training aims to establish a network of paralegals which can provide legal advice where lawyers are not present and also support lawyers in some legal cases in the courts.

DQG produces a range of awareness raising materials for NGOs, civil society and communities. Material has included issues of women and children and their legal rights, rights upon arrest, the role of defense attorneys, and the working of the justice system. Materials include booklets, posters, brochures and pamphlets. DQG also works with community based theatre groups to help develop plays which will increase legal awareness, some of which have been recorded on DVD for broader distribution. DQG has also participated in TV debates regarding justice issues and women’s rights.

4. Legal Reform / Advocacy

DQG is actively engaged with the Legal Aid Providers Committee, Prison Coordination Committee and other networks to share information, coordinate activities, raise issues, and advocate for legal reform.

The Legal Aid Providers Committee meets monthly to discuss members’ activities and identify solutions to legal aid provider problems, support the development of a National Bar Association, and provide input into new laws, such as the advocacy law. Membership includes Afghan Lawyers Union, AHRO, DQG, ILF, LAOA, medica mondiale, Global Rights, JSSP, International Bar Association, UNAMA and USAID.

5. Future projections of service

DQG will be establishing a new office in Mazar which will also allow outreach services to Saripul and Kunduz. DQG priority is to expand services to remote areas where legal representation is non-existent.

New lawyers and paralegals will be trained in addition to advanced training – both ‘in house’ and through cooperation with other relevant agencies – to expand knowledge and skills of all lawyers.

International Legal Foundation – Afghanistan (ILF-A)

International Legal Foundation – Afghanistan (ILF-A) has been operating since 2003. Since that time, ILF-A data shows that it has represented over 4244 criminal cases of indigent Afghans. Initially, ILF-A used international fellows to mentor Afghan lawyers. In 2007 ILF-A became an independent national Afghan organization with a national Board of Directors.

ILF-A undertakes the following activities:

- Legal representation to indigents accused of a crime
- Staff training and support
- Legal awareness training workshops for the legal profession and civil society
- Legal Reform / Advocacy

1. Legal representation to indigents accused of a crime

ILF-A presently has six offices all of which provide legal representation: Kabul, Kunduz (also covering Takhar province), Kandahar, Jalalabad (also covering Laghman and Kunar provinces), Ghor and Herat. There are also plans to open new offices in Bamayan and Mazar-i-Sharif in 2008. ILF-A only represents criminal cases.

ILF-A provided the following data regarding number of cases and services undertaken:

1.1 *Number of registered Lawyers (per Location)*

ILF-A employs 40 lawyers and 7 paralegals in the following locations:

Kabul:	28 registered lawyers and 4 paralegals.
Kunduz:	3 registered lawyers and one paralegal.
Kandahar:	2 registered lawyers.
Ghor:	1 registered lawyer.
Herat:	4 registered lawyers and one paralegal.
Jalalabad:	2 registered lawyers and one paralegal.

1.2 *Total Number of cases accepted in each month of operation*

ILF-A has two categories for the cases handled by each lawyer throughout Afghanistan.

Active cases: Lawyers undertake investigations and write and file defense statements

Open cases: Cases in which the indictment and defense statement have been filed with the court and the lawyer is awaiting the trial.

Each defense lawyer has a minimum of 12 Active cases and may have more than 25 open cases. Supervisors and heads of office in provincial offices maintain a lower caseload with a minimum of 7 active cases.

Kabul holds more open cases than the provinces as it is also handles Supreme Court and anti narcotic court cases from all the provinces.

1.3 ILF-A CASELOAD Figures.

a) Number of court appearances each month (per location)

- Kabul: 15 to 25 trials per month
- Kunduz: 5 to 8 trials per month
- Herat: 5 to 12 trials per month
- Kandahar: 2 to 5 trials per month
- Ghor: 2 to 7 trials per month
- Jalalabad: 3 to 6 trials per month

b) Number of Cases Handled by ILF-A Attorneys, Per Year

Provincial Office	Date Opened	2003- 2004	2005	2006	2007	Total
Kabul	Aug. 2003	214	516	824	1111	2665
Kunduz	Nov. 2004	14	175	197	214	600
Nangarhar (Jalalabad)	Mar. 2006	0	0	118	142	260
Kandahar	April 2006	0	0	104	118	222
Herat	June 2006	0	0	126	306	432
Ghor	May 2007	0	0	0	65	65
Grand Total	--	228	691	1369	1956	4244

c) Case Types Handled by ILF-A Attorneys, Aug. 2003 – June 2007

Offense	Number
adultery	78
arson	11
assault	626
attempt of murder	15
attempt of terrorist attack	3
breach of trust	11
burglary	9
connection with Taliban	12
contempt of court	8
corruption	41
driving without license	24
embezzlement	9
escape from home	36
escape from prison	6
ethical crime	35
extortion	3
fake currency	6

false report to police	8
false testimony	8
forgery	155
fraud	167
gambling	20
guarantor	4
human trafficking	3
impersonation	5
kidnapping	116
mischief	5
murder	278
negligence in duty	37
obstruction of justice	11
poisoning	3
possession of explosive	6
possession of stolen goods	4
rape	3
riots	5
robbery	56
selling illegal items	4
smuggling alcohol	4
smuggling drugs	303
smuggling of woods	4
smuggling other things	44
smuggling scrap	10
sodomy	32
terrorism	27
theft	1167
threats	21
traffic violations	3
treason	6
use of drugs	31
use of wine	24
usurping land	72
vehicular assault	316
vehicular manslaughter	148
weapons	45
Unknown charges	156
Total	4244

1.4 System to determine which clients will be represented by ILF-A's lawyers.

The ILF-A represents indigent Afghan nationals for criminal cases. The main reasons why a client will be refused are:

- If a client asks the lawyers to bribe the Saranwals or the judges.
- If a client can afford a private lawyer
- If a co-defendant is already represented by an ILF-A lawyer and there is a conflict of interest.

1.5 Client awareness of services

ILF-A undertake regular visits to detention centres wherein they offer representation to newly arrived detainees.

1.6 Quality of service

All defence lawyers are supervised whereby investigation and defense statements are reviewed, trials are monitored and outcomes evaluated. The ILF-A database also provides constant access to supervise and monitor progress of cases and check on timeliness of interventions.

2. Staff training and support

ILF-A provides the following training and support for defense lawyers working in these offices:

1. *Six month orientation:* Defense lawyers initially work for six months in the Kabul office under the supervision of experienced attorneys.
2. *In-house continuing legal education:* ILF-A conducts weekly in-house continuing legal education programs for its staff. This includes new legislation and discussion of cases that require input from colleagues.
3. *Practice manual:* ILF-A has developed a practice manual which provides guidance for staff on policy and practice in the following areas:
 1. General Rules of Conduct
 2. Case Management
 3. Case Analysis
 - A. Review of the Information Received
 - B. Investigation
 - C. Case Presentation
 - D. Defense Statement: The Format
 - E. Basic Arguments to Consider:
 - Time Limits for Detention:
 - Time Limits for Filing Appeals
 - Notice Requirements
 - Interrogations
 - Search and seizure of evidence
 - Trial Issues
 - Release on Guaranty
4. *Case tracking and management:* ILF-A has developed a system for tracking and managing its caseload, including key information on the defendant, alleged crimes, contents of the case file and court dates. The system is being computerised which will provide access of case-files between offices. This will provide opportunities for improved data management and supervision.
5. *Notice of new legislation and presidential decrees:* ILF-A collects and disseminates among its offices and lawyers new legislation or presidential decrees with relevance to criminal defense, police and court functioning, or prison administration.

6. *University Clinic*: ILF-A is also working with the Open Society Institute in Herat. Three internships have been piloted, where between 10-12 law students from the Sharia/legal faculty provide criminal defense under the supervision of defense lawyers in the ILF-A office in Herat. The internship both provides practical experience in working as a defense lawyer and augments the capacity of the office to represent clients.
7. *ILF-in-a-Box*: ILF-A has also developed an “ILF-in-a-Box” concept which aims to enable quick start-up of new offices and helps ensure consistency of systems and service provision. The ILF-A start-up kit contains the necessary files for the administration of the provincial offices – accounting file folders, weekly reporting forms, personnel files, necessary legal materials (laws, practice manual, and motion papers), and a laptop computer loaded with ILF-A forms and documents.

3. Legal awareness training workshops for legal profession and civil society

1. *Workshops for the legal community*: ILF-A has been conducting seminars and workshops for judges, prosecutors, prison wardens and police since 2003. The workshops aim to increase awareness of legal professionals, increase understanding of the rationale for effective criminal defense and raise human rights issues. ILF-A has also provided training programs for other legal aid providers, such as Medica mondiale.
2. *Civil Society Workshops*: ILF-A also participates in workshops with civil society to raise awareness of individual rights.
3. *Customary Court System*: ILF-A also supports awareness raising of local leaders engaged in the customary system to increase awareness of human rights.

4. Legal Reform / Advocacy

ILF-A also advocates for legal reform and lobbies for changes and amendments to legislation which will lead to improvements in access to justice and the right to counsel. For example, ILF-A advocated against amendments to the criminal code which would have adversely impacted on lawyer-client relationship and lobbied to safeguard statutory timelimits on pre-trial detention.

Legal Aid Organization of Afghanistan (LAOA)

The Legal Aid Organization of Afghanistan (LAOA) was registered in December 2006 and started operations in March 2007. The goals of the Organization are:

1. To defend the rights of suspects, accused and those who have been charged with criminal offences
2. To defend the rights of women and children
3. To strengthen the rule of law in Afghanistan
4. To promote the role of defense lawyers in Afghanistan

LAOA is a national NGO with an Afghan Board of Directors. The Executive body of LAOA is responsible for the operational management of the organization.

LAOA has the following four departments:

1. Training and Education
2. Women and Children's Affairs
3. Research and Legislative Reform
4. Criminal Defense

LAOA provides a range of legal services covering summary advice, consultation, referral, and representation at trial and appeal. It also provides legal training and education, legal research and advocacy services.

1. Legal representation

LAOA presently has 3 offices which provide legal representation in Kabul, Takhar and Faryab province. It also runs a mobile clinic in Wardak Province. In 2008, LAOA has plans to open offices in 11 provinces in collaboration with UNICEF, these are Herat, Baghdis, Balkh, Baghlan, Kunduz, Bamian, Nangarhar, Ghazni, Kandahar, Badakshan and Parwan.

Both individuals and legal entities are eligible for services. Services range from summary advice, through to direct representation. LAOA provides representation in criminal cases and represents women in civil cases related to family law (divorce, child custody, familial support), Human Rights (plaintiff side only) and civil cases involving matters within the mandate of the LAOA. Direct representation services are provided through the Criminal Defense Services and the Women & Children's Affairs departments of the organization.

In addition to criminal defense, LAOA provides specialist services for women and juveniles.

Women

LAOA provides legal services to people assisted by HAWCA (Humanitarian Assistance to Women & Children of Afghanistan). This organization helps women fleeing various forms

of violence who reside in one of the two women's safe houses in Kabul. The administration of HAWCA has identified outstanding legal issues as the primary obstacle to women leaving the shelter and reintegrating into the wider community.

The Women and Children's Affairs department is also conducting public legal awareness workshops and providing legal aid services for women in Wardak Province in the Lawyers' Resource Centre. The services aim to raise the awareness of women regarding their legal rights and legal remedies, and to facilitate connection with appropriate local resources to assist in resolving their legal issues.

In the 3 month period since the commencement of the activities, 35 women's cases have been registered at LAOA. Cases include forced marriages, child custody, family violence, divorce and dowry.

Juveniles

The Legal Aid and Juvenile Justice component of LAOA activities focuses on juveniles detained in the Kabul Juvenile Rehabilitation Centre, in Pol-i-Charki and in Kabul Detention Centre. The aim is to reduce the number of children inappropriately incarcerated in local detention centres and the Juvenile Rehabilitation Centre, and to reduce the overall length of incarceration for those who are currently detained in these facilities.

Services include legal advice and representation to children under the age of eighteen. A specialized focus is case review and advocacy which aims to ensure a correct placement of the juveniles within the open or closed Kabul rehabilitation centre. The project has been conducted in collaboration with Italian Justice Office, UNICEF (through their Afghanistan Country Office), UNODC and the Juvenile Justice Department of the Ministry of Justice.

In the first 6 months of the project, the Criminal Defense Services Department represented eighty-eight juvenile cases. The majority of the 88 cases were for theft (31) and stabbing (15) but there were also a variety of other crimes such as suicidal activity (5), running away from home (3), moral corruption (2) and rape (2). Of these cases 20% were acquitted, 8% of cases were withdrawn and 30% were convicted of a lesser offence or received a suspended sentence.

1.1 Number of lawyers and types of cases (per location)

LAOA has 19 defense lawyers who operate in the following locations:

Kabul: 16 registered lawyers working in the following departments:

- Criminal 10
- Women 1
- Training 3
- Research 2

Takhar: 2 registered lawyers

Faryab: 1 registered lawyer

1.2 Total number of cases being undertaken in each month of operation

LAOA receives between 50 and 60 new cases monthly. Each defense lawyer will normally have a caseload of approximately 15 – 18 active cases.

In the first eight months from when activities began in March 2007, LAOA has received 300 cases. LAOA data shows that from these cases:

60 clients have been acquitted

20 clients have been released from custody without trial (the time in pre-trial detention being considered sufficient punishment for the alleged offence).

50 clients have received reduced sentences

The remaining 170 cases are still in progress.

1.3 Number of court appearances each month

On average, lawyers from the criminal defense department appear in court between 20-25 times per month (per lawyer).

Court appearances in relation to women's cases average 10 court appearances per month (per lawyer).

1.4 System to determine which clients will be represented.

LAOA has a number of operational policies⁶⁷ including a Case and Client Selection Criteria Policy. The policy sets out service priorities; subject matter eligibility, client eligibility and financial eligibility. The service priorities are:

- i. Indigent clients;
- ii. Women and children;
- iii. Members of any religious, ethnic, or cultural minority who are under represented;
- iv. Individuals who can demonstrate the unavailability of alternate legal resources;
- v. Cases with law reform potential and/or which promote the mandate of the LAOA.

All women and juveniles are represented. Indigent males are also represented based on those to be in greatest need. Need is assessed through an interview based on a questionnaire. Cases of highest priority, given the capacity of LAOA, are provided with legal aid.

LAOA policy regarding withdrawal or refusal of services are as follows:

- Cases in which there is a conflict of interest that cannot be resolved – for example when LAOA is already representing a co-defendant
- Individuals who can afford to pay for a private lawyer (financial eligibility criteria not met)
- Where the assigned lawyer is instructed by the client to take action that is inconsistent with or in violation of the laws of Afghanistan

⁶⁷ As at November 2007 these are: Case and Client Selection Policy; Conflict of Interest; Confidentiality Policy; File Management and Organization Policy; Supervision Policy; Outside Work Policy; Withdrawal of Services Policy; Complaints Policy; Board of Directors Policy; Personnel Policies.

- Where the client is pursuing a legal matter solely to harass or maliciously injure another party or is guilty of dishonourable conduct in the proceedings

1.5 Client awareness of services

Clients become aware of services through LAOA activities and through direct contact with accused. LAOA regularly visits accused in police custody, detention following charge, and in prison after sentence. LAOA contact details are available in police stations, detention centres, courts and prisons. Police and prison authorities also regularly contact LAOA to represent clients. LAOA also receives referrals from MoJ, MoWA, and other agencies such as the women's shelters.

1.6 Quality of service

LAOA has policy guidelines to assist in maintaining service quality. Policy areas include: Confidentiality, Conflict of Interest, File Management, Case and Client Selection, Complaints and Supervision.

All lawyers are required to report weekly on caseload and case-management. All case files and intakes are reviewed by the relevant LAOA Department Head on, at minimum, a weekly basis.

The quality of services is also measured by the number of acquittals and reduced sentences achieved and the increasing numbers of referrals from the authorities such as MoJ, HAWCA shelter, Kabul detention centre, women's organisations, courts and other agencies.

2. Staff training and support

Of the nineteen lawyers currently employed by LAOA, twelve are graduates of the IDLO/CIDA one-year Legal Aid Training Program.

Ongoing training programs have been initiated by LAOA and staff have also received mentoring from JSSP and IDLO.

LAOA has a weekly staff meeting where cases, procedures and challenges are discussed. In addition under the Supervision Policy each case worker must review their active cases with their Department Head, or a technical advisor, with the approval of the department head. Staff working in the provinces receive a one week training, and policy orientation course prior to being posted and have regular visits from head office for mentoring and support. Provincial staff also return to head office for additional training when required.

3. Legal awareness training workshops for legal profession and civil society

LAOA is providing capacity building to Afghan lawyers to enhance the level of legal services available throughout the country, both in the private practice of law and through legal aid.

LAOA has been developing on-going professional development workshops, trainings and mentorship programs for recent graduates of the Faculties of Law and of Sharia, the MoWA and NRC, both in Kabul and in a number of provinces. From March to October 2007, training has been provided to approximately 300 lawyers.

In October LAOA completed a four month specialized defense attorney training course, based on IDLO/CIDA's full year course of last year, for 31 participants, a number of whom were again supplied by MOWA. This is the first longer term training program provided by LAOA and they will undergo an evaluation & redevelopment period before offering the program again, with the revised curriculum, starting January 2008.

The Training & Education Department of the LAOA has also developed a Training of Trainers (TOT) program to assist NRC staff in building the capacity of the local justice sector actors and to enhance the monitoring and accountability infrastructure of local justice institutions.

LAOA has delivered the TOT program for local NRC ICLA staff in five locations: Faryab, Balkh, Baghlan, Nangarhar and Bamian provinces.

The Training and Education Department of the LAOA, also developed training materials tailored for the Afghan National Police in Faryab province. This training material covers subjects such as the role of police in judicial and administrative system of Afghanistan, rights of accused in custody, equality of people before law and related laws.

LAOA plans to develop a paralegal training course to increase the capacity of the sector to provide legal aid. LAOA also plans to design an information kit on how to start your own practice as a lawyer in Afghanistan which would then be the centerpiece of workshops. The kit will focus on identifying the legal and professional obligations of practicing law, and tools for meeting these obligations.

4. Legal Reform / Advocacy

The research department of LAOA undertakes case specific legal research that is available to lawyers within the organization as well as other practicing lawyers. This research is often used for advocacy by identifying gaps in existing provision and recommending law reform.

In some cases, research issues have been brought before the Attorney General, Supreme Court, Ministry of Interior and other relevant bodies and have lead to amendments to the law. Issues have included the protection of acquitted persons from having an ongoing criminal record; limiting access of media to accused persons which was impacting on fair trial practices, increasing access of defense lawyers in interrogation processes, mechanisms to increase opportunities for bail; changes to the juvenile defender legislation to provide for open detention centres; work with the MoJ and International Bar Association to further legislation on a National Bar Association; and advocating for changes in the current practice of victims being accused and sentenced for crimes that do not exist in the law, such as running away from home and 'moral' crimes.

LAOA is a member of the Legal Aid Providers Group and has also developed partnerships with a number of international organizations that are stakeholders in the rule of law sector in Afghanistan with the aim of encouraging a law reform agenda.

5. Future projections of service

LAOA aims to expand operations both in Kabul and throughout the provinces, particularly in provinces where the formal justice system is extremely under-developed and the practice of law is virtually non-existent. As noted above, LAOA anticipates expanding services into

Herat, Baghdis, Balkh, Baghlan, Kunduz, Bamian, Nangarhar, Ghazni, Kandahar, Badakshan and Parwan.

LAOA also plans to expand the staff of the Kabul office to enable further development of the existing partnership with the Justice Sector Support Program in providing professional training and public legal education. LAOA also plans to increase capacity building activities of civil society.

Norwegian Refugee Council (NRC)

The program provides information to IDPs and refugees about issues related to return to place of origin or resettlement, and legal services to assist in resolving obstacles to return or integration. The programs are responsive and community based, using national staff to identify local needs and assist in designing program activities.

One of the primary goals of NRC Afghanistan is to assist Afghan returnees in attaining durable solutions to conflict related displacement in Afghanistan. Afghan returnees face significant obstacles to either successful repatriation or the freedom to make a decision to integrate or resettle. The obstacles with which NRC are most commonly involved include conflicts over property, inheritance rights, land rights such as access to water or grazing land, recovery of lost wages or other compensation issues, and familial conflict. NRC Afghanistan has been assisting Afghan IDPs and returnees in resolving such claims through the operation of Information and Legal Aid Centers (ILACs). ILAC Pakistan began in 2001. A sister program ILAC Afghanistan was established in 2003. The two programs merged to become a single regional program in 2007. The Information, Counselling and Legal Assistance program (ICLA) is one of the NRC's 5 core activities.⁶⁸

ICLA has seven law offices in Afghanistan, located in Herat, Faryab, Mazar-i-Sharif, Baghlan, Bamian, Kabul and Nangarhar Provinces. The teams travel and operate in the following provinces, often with the cooperation of UNHCR,: Balkh, Dai Kundi, Ghor – Jalal Sarjantal, Jawjan, Kapisa, Kunduz, Nangarhar, Paktia, Parwan, Samangan, Saripul and Takhar.

NRC maintains a database of its program activities. In 2006 NRC statistics indicate that a total of 748 community visits were undertaken, 8,471 needs assessment 'information' cases (with a total of 299,657 recorded direct and indirect beneficiaries) and 5,213 successful referrals (total of 174, 548 direct and indirect beneficiaries). There were also 1,128 registered legal cases (total 304,031 direct and indirect beneficiaries) and 493 total solved legal cases (67,973 direct and indirect beneficiaries).

NRC data records state that during the first 6 months of 2007 ICLA:

- Registered 412 legal cases
- Solved 183 legal cases (approx 139, 245 direct and indirect beneficiaries)
- Carried out 336 community visits
- Registered 2,424 needs assessment cases
- Linked 1,310 water, health, education and vocational cases to programs (NGOs, UN and government departments) (64,331 beneficiaries)
- Provided 26 training sessions in 14 provinces, involving over 735 participants

⁶⁸ NRC Core Activities are Shelter, Distribution, ICLA, Education and Camp Management.

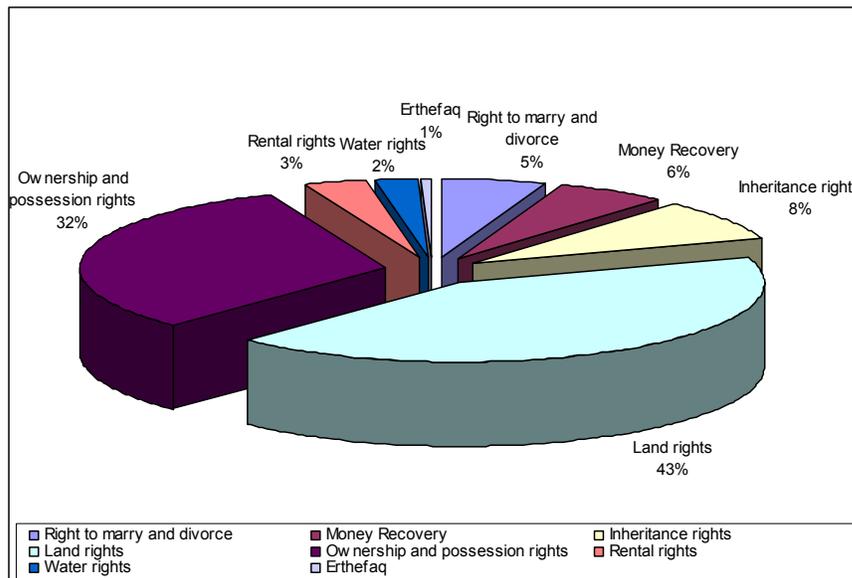
1. Legal representation

1.1 Number of lawyers and types of cases (per location)

The NRC ICLA program employs approximately 35 practicing Afghan lawyers (only 7 of whom are presently registered with MoJ) and also provides work experience for university law students. The case load is civil cases only, and most legal cases involve property and land disputes in addition to inheritance, water, family and other civil disputes.

Approximately 40% of cases are solved through the courts, but the majority are solved through jirgas, shuras and private mediation. A training team provides training in property law to public officials and judges, and jirga and shura members.

Types of cases received in 2006



1.2 Total number of cases accepted in each month of operation

On average 10 new legal cases are registered at each NRC office location per month. Faryab averages 15 to 20. Statistics recorded by NRC on property cases are as follows:

Location	Case Nos	Comment
Jalalabad	240 – 260 cases registered by Nangarhar courts each month. Currently about 230 active civil cases. NRC has 36 active property cases in the courts from 2 Provinces.	Apparently some district courts do not register cases regularly. NRC cannot operate in all districts.
Kabul	There are 4 zones in Kabul. Z1 85 active property cases Z2 200 active property cases Z3 120 active property cases Z4 70 active property cases	

	Total 475 active property cases	
Mazar	NRC registers around 3 property cases in the formal system a month. This is about 20% of the load. I.e the Courts register a total of around 16 property cases a month.	Approximately 40% of all cases registered with the courts are property. NRC registers approximately 20% of the property cases in the courts.
Maimana	Faryab province has 14 districts and each district primary court registers more then 20 legal cases (civil and criminal). Maimana city primary court registers per month more then 40 (civil and criminal cases).	
Pul-i-Khumri		Waiting for data
Bamian		Waiting for data

1.3 Number of court and jirga appearances each month

NRC represents clients in both the formal court system and in jirgas and shuras.

Court appearances

Province	Average no of court appearances per month
Faryab	40-45
Jalalabad	30
Kabul	60
Mazar-i-sharif	40
Baghlan	25 (approx 60% in Baghlan, 40% in Kunduz and Takhar)

Jirga appearances

Province	Average no of jirga appearances per month
Faryab	10 - 15
Jalalabad	40
Kabul	50
Mazar-i-sharif	15
Baghlan	10

During 2006, more than 60% of NRC cases were resolved to the satisfaction of the parties through informal systems.

NRC data identifies that clients choose the forum because it is:

- Geographically accessible
- Financially accessible
- Less susceptible to corruption
- Time efficient
- Preserves relationships

1.4 System to determine which clients will be represented.

Determination for acceptance of a case is defined by the NRC mandate, which provides for inclusion of clients that are refugees, returnees or IDPs that face civil obstacles to return, reintegration or resettlement. Equally, NRC may accept cases whereby representation will prevent further displacement of the beneficiary group.

Clients will be refused if they do not fall within NRC mandate – if either party to the dispute is not a refugee, returnee or IDP or it is a criminal case. In these cases, NRC refers parties to an organization which will take the case.

Equally, cases will not be accepted where the issue is not related to the person's displacement status, for example where a returnee has a civil legal problem that is not related to their status as a returnee.

Furthermore, in Jalalabad the security situation may result in cases being refused, or more often, cases will be closed-unsolved because NRC is unable to access the parties.

1.4 Client awareness of services

NRC's ILAC offices have information counselors who conduct, together with the lawyers, community visits. During these visits counselors explain NRC's mandate and ask if people have legal or other problems. Clients also approach NRC through word of mouth/reputation; through seeing lawyers at court; through referrals by the courts; provincial/community shuras, MoJ or other ministries; through media activities/education conducted via radio programs; and through visits to the encashment centres (refugee transit centres) in Kabul, Herat and Jalalabad.

1.6 Quality of service

NRC has procedures and policies on case file management, client relations and general office conduct with the aim of ensuring quality service to clients. NRC also provides training in various areas to all staff, such as financial procedures, professional ethics, oral advocacy, legal writing and substantive law updates.

NRC legal offices are supervised by an international Project Coordinator who can provide advice on legal conduct and act in a monitoring, evaluation and management role.

Clients can also speak to information counselors or the team leader about other protection problems they may have (such as socio-economic issues, access to services, household matters).

In the process of conducting research on caseload and as a part of monitoring and evaluation processes, NRC has also contacted clients and defendants both during and after their cases have been addressed and asked about the level of service provided.

2. Staff training and support

NRC Kabul lawyers have received training from the International Development Law Organisation (IDLO/CIDA) in areas including advocacy skills, case preparation and theory, client relations, witnesses and professional ethics. LAOA provided a similar training to the ILAC provincial offices.

NRC also undertakes training on specific topics for ILAC staff. For example, for international women's day NRC held a two day workshop for all substantive female staff on women's rights in international, national and sharia law.

NRC have also employed a consultant to evaluate and mentor staff in all ILACs to assist in establishing common standards for case management and leadership.

NRC also captures all cases in a database which, in addition to providing statistical data (including the mapping of land disputes around the country), provides a legal resource for lawyers, precedents on managing complex cases and also resolution and advocacy techniques.

3. Legal awareness training workshops for legal profession and civil society

In the first six months of 2007 the training team undertook 8 training sessions of public officials and judges and 18 training sessions of jirga and shura members. The total number of participants was over 737.

ICLA has conducted training in property law in over 14 provinces to judges, public officials and jirga and shura members – these being the decision makers who have the most influence over their client group.

NRC has found that training in property law, including how the law can be applied within existing community structures, has developed a sense of ownership and acceptance of the law within the communities.

NRC has also undertaken training for government officials and the national police in partnership with LAOA. LAOA provides training in the areas of criminal defence, criminal procedural law, family law and children's rights.

4. Legal Reform / Advocacy

NRC has used its experience developed in the ILACs to advocate for a range of policy and legal reforms in relation to land and other issues. It has also provided thoughtful research on the potentially complimentary roles of mediation, jirgas, shuras and the formal justice system in resolving disputes. NRC is also active in a number of coordination mechanisms which include government, UN, INGOs and NGOs.

5. Future projections of service of next 5 years

NRC anticipates an increased demand for its services in line with expected numbers of returnees from Iran and Pakistan and likely increased numbers of property disputes. Increase in awareness of rights among civil society will also in turn lead to an increased demand for services.

medica mondiale

medica mondiale is a German based international women's organisation that advocates for the rights and interests of women in war or crisis zones. All activities of medica mondiale aim at providing organizational independence, ownership and responsibility to its local projects.

In Afghanistan, medica mondiale started operations in 2002 and its Legal Aid Fund Project started in 2003. Currently, medica mondiale Afghanistan has offices in Kabul, Herat, Mazar and Kandahar and provides assistance through five projects:

1. Psycho-social support, including qualification of health workers in counselling and trauma work
2. legal advice and representation
3. Gender sensitive trauma and counselling training for Afghan medical personnel
4. Advocacy on behalf of women and girls
5. Training of safe house staff working in women shelters in Kabul, Herat and Mazar.

medica mondiale is in the process of nationalising its program in Afghanistan and plans to be a national NGO in one year.

The aim of medica mondiale's legal project in Afghanistan is to provide legal support to women and girls, both those incarcerated and those in need of legal support for civil cases. Ultimately the goal is to decrease the number of women and girls brought to prison through an awareness campaign which intends to increase the knowledge of women's rights and procedures in civil matters such as marriage and divorce.

1. Legal aid provision

medica mondiale has four legal aid offices with a total of 14 registered lawyers in the following locations:

Kabul:	6 registered lawyers
Herat:	4 registered lawyers
Kandahar:	2 registered lawyers
Mazar:	2 registered lawyers

medica mondiale undertakes both civil and criminal cases of women. On average offices will accept 8 to 15 new cases per month in each location and between 5 and 12 court appearances per lawyer each month.

All cases of women are accepted except property issues. medica mondiale does not defend men but refers these cases to other legal aid providers which also work in these locations.

Clients are aware of medica mondiale services through medica mondiale's presence in detention facilities and representation of clients, referral from nongovernmental and government partners and awareness and education programs outlined below.

2. Mediation

In many cases, in particular divorce or forced marriage, medica mondiale uses mediation rather than the formal legal system. These cases are often very time-consuming but medica mondiale's experience suggests that mediation often results in a better and more permanent outcome for the women involved. This mediation process is based on legal and women's rights rather than traditional practices which are more discriminatory towards women.

3. Training

medica mondiale undertakes a range of training initiatives for both their staff and also for a broader audience such as correctional officers. Training consists of different components including legal workshops, gender sensitization, training 'in the field' and other activities.

medica mondiale initially undertook a 9 day introductory training for defense counsels which was complimented by an ILF-A training program. medica mondiale has now developed a train-the-trainer course and training manual to enable in-house training.

This training is augmented by ongoing weekly training sessions in provincial offices that provides opportunities for discussion of cases, case analysis and case strategies.

4. Awareness raising and information sessions/seminars

medica mondiale has developed materials, such as an information pamphlet to inform community members about their rights upon arrest which includes contact numbers of medica mondiale lawyers. Material is made available in police stations and courts.

medica mondiale also provides seminars and information sessions to judges, prosecutors and police to increase an understanding of the role of defense counsel. medica mondiale also provides regular sessions to prisoners on the same topic.

5. Legal reform and advocacy

medica mondiale works with Ministry of Women's Affairs, Ministry of Justice, the Supreme Court and Head of Prisons to identify opportunities to improve justice for women.

For example, engagement with the Supreme Court enabled medica mondiale to video court sessions which led to the review of cases. Engagement with the prison department has led to the inclusion of complaints boxes within the prisons. medica mondiale also provides the head of prison administration with a list of prisoners allocated with defense counsel which assists coordination and management of cases.

medica mondiale has also entered into partnerships with other INGOs and NGOs such as UNIFEM and ILF-A to provide legal aid services.

Other National Organizations Supporting Legal Aid

In addition to the primary legal aid providers listed above, the following NGOs and social organisations are either providing some legal representation to indigent Afghans or engaged in supporting activities such as advocacy and legal awareness programs:

1. Legal and Cultural Services for Afghan Women and Children
2. Lawyers Union of Afghanistan
3. Faryab Lawyers Association (FLA)
4. Association of Afghanistan's Advocates (AAA)
5. Civil Society Organisations providing rights awareness programs

Legal and Cultural Services for Afghan Women and Children (LCSAWC)

The Legal and Cultural Services for Afghan Women and Children (LCSAWC) started operations in 2001. They have 29 lawyer members many of whom are either working in government or academia.

LCSAWC primary activities are training, awareness raising and research. LCSAWC has undertaken these activities throughout Afghanistan. LCSAWC data for the period June 2006 – December 2006 indicates that awareness raising activities were provided to 6,900 men and women. Through undertaking these activities LCSAWC also provides some legal aid to women or refers cases to other legal aid providers.

Key LCSAWC activities include the following:

- Legal and judiciary training courses; seminars; workshops for judges, prosecutors, advocates, police; as well as the establishment of an advocates' centre
- Workshops for women and children in prisons, detention centres, juvenile correction houses, and shelters and legal consultations advising them of their rights
- Short-term and long-term courses, workshops, seminars, conferences, and round-table discussions for enhancing the level of knowledge of women and familiarizing them with rights granted by law and Sharia, and international standards
- Research on traditions, customs, and practices that cause different forms of violence and violate human and Islamic rights of women and girls by the research committee of the organization and the holding of workshops and seminars to disseminate results of research
- Workshops and seminars related to family and children's rights for teachers of kindergartens and children of imprisoned women, teachers, and school students
- Literacy and legal courses for illiterate women

- Publication of scientific books, legal and social brochures, magazines, weeklies, and newspapers; translation of legal, social, and cultural documents from internal and external sources into Dari, Pashto, and English;
- Legal defence for women in the courts.

Lawyers Union of Afghanistan

The Lawyers of Afghanistan started operations in 2004/5 (1384) and is a social professional organization registered with the Ministry of Justice. Its membership comprises experienced lawyers working in the Attorney General Dept, Supreme Court, Judiciary, MoJ, Universities, and defense lawyers. The Lawyers Union of Afghanistan is active in a number of forums including the Legal Aid Providers Working Group.

Activities focus around legal reform and advocacy including the following:

- Advice and advocacy for the establishment of a legal aid department composed of professional lawyers which has experience in the defense of rights
- Assessment of the duration of trials and identification of mistakes
- Assessment of civil cases and follow up in the courts
- Consultation to the courts to support the solving of problems in cases
- Training courses, workshops and seminars for advocates
- Working for the establishment of the Independent National Bar Association in Afghanistan with the collaboration of the International Bar Association (IBA)
- Advocacy to improve the legal capacity of the public and effective role of the legal aid

The Lawyers Union of Afghanistan is presently seeking funding to establish legal aid clinics in Kabul, Parwan, Kapisa and Panjshir. Each clinic will be staffed by two defense lawyers and two paralegals.

Faryab Lawyers Association (FLA)

It was not possible to contact Faryab Lawyers Association. The Access to Justice Working Group gathered the following information regarding FLA in 2006:

FLA undertakes activities in Faryab province, Maimana city, Almar district, and Pashton Kut district.

Activities include:

- Advising on legal problems through Radio Quyash, the women's radio in Faryab province
- Legal counselling for children in Child Aid centre
- Advocacy in remote districts on legal problems to authorities and governmental departments
- Refer legal problems to AIHRC office in Maimana

- Distribution of legal awareness leaflets for people

Future plans include:

- Legal awareness for people by conferences, training and by schools for youths and students
- Workshops and training for stakeholders of the village and shura ton remedies for legal issues
- Publication of a new paper regarding civil and sharia law

Association of Afghanistan's Advocates (AAA)

It was not possible to contact the Association of Afghanistan's Advocates. Information gathered in 2006 by the Access to Justice working group identified AAA as an organization providing legal aid for women in need in Kabul.

Civil Society Organisations providing rights awareness programs

There are also many civil society organisations such as Afghans Civil Society Forum (ACSF), Afghan Women's Education Centre (AWEC), Foundation for Culture and Civil Society (FCCS), and CSHRN (Civil Society Human Rights Network), that are actively involved in rights awareness programs which play a role in raising awareness regarding legal rights and legal aid.

International Organizations and Legal Aid

At the UN level, agencies involved in legal aid issues are UNAMA, UNDP, UNICEF, UNODC and UNIFEM. Other international organisations with a direct interest include Afghan Justice Sector Support Program, Afghan Rule of Law Project (USAID), Global Rights, the GTZ Rule of Law Project and IDLO.

Support to Rule of Law Institutions

As outlined in the UNAMA justice sector overview, UNDP, US (USAID/AROLP and JSSP), Italian Justice Office and GTZ have been providing technical support to the justice institutions through the placement of international and national experts in the Ministry of Justice, Supreme Court and Attorney General's office. UNDP has also commenced the project 'Strengthening the Justice System of Afghanistan' in 2006. USAID AROLP has an ongoing court administration project which commenced in 2004 with an investigation of four provincial courts (Kandahar, Parwan Balkh and Herat) to determine empirically how cases are currently processed.⁶⁹ Since mid-2007, the European Commission has been providing technical assistance to the justice institutions focused on Public Administration Reform, particularly Organizational Development and Human Resource Management.

Training activities related to criminal defense

A number of training programs for sitting judges and prosecutors and lawyers have also been conducted over the past three years by IDLO, ISISC, USAID and Max Planck Institute funded by Italy (IJO), US (USAID), Canada (CIDA), Germany and France.⁷⁰

In 2006 IDLO/CIDA ran a 12 month program for recent graduates of the Faculties of Law & Diplomacy & Sharia, Kabul University along with participants proposed by the MOWA. A total of 68 participants received training in practical skills for defense lawyers, as well as substantive and procedural law, and court /prison study visits. Of the participants 31 were from Kabul, and 37 from the provinces. A total of nineteen females graduated. This year IDLO/CIDA trained 30 (25 male 5 female) students at the Faculty of Sharia principally in professional ethics, practical advocacy skills for defense attorneys and procedural law in the penal context. This course is currently being taught to a further 26 students at Sharia (13 male and 13 female) and 32 students at the Faculty of Law and Diplomacy (29 male and 3 female). The program focuses on developing advocacy skills for defense lawyers and promotes the role of defense lawyers within the faculties.

The JSSP Access to Justice and Integration Section (AJIS) activities provide criminal defense training and mentoring sessions for Afghan defense lawyers; provide curriculum for training – for example curriculum for corrections officers on prisoner's and detainee's rights for implementation by Afghan lawyers; design and implement training programs such as mock trial training program for defense attorneys; provide technical assistance for

⁶⁹ UNAMA Afghanistan Justice Overview, April 2007. p 11.

⁷⁰ *ibid.* p.15.

legislative drafting and assistance to improve registration of attorneys, and support establishment of standards of conduct, etc. AJIS has also been supporting the development of the Independent National Legal Training Centre. This is a joint US/Italian initiative to provide a centralised resource for specialised training, licensing and accreditation of Afghan lawyers and judges. AJIS has also developed other training programs for the justice sector in Kabul and other provinces.

AJIS also provides capacity building for NGOs providing legal aid (presently LAOA and DQG) through technical assistance and ongoing mentoring; and has also supported a criminal justice program in Wardak Province which has included the establishment of a Defense Attorney Resource Centre. LAOA has also agreed to use the Resource Centre to provide legal aid services to women in Wardak.

The IJO, in cooperation with the international Institute of Higher Studies in Criminal Sciences Provincial Justice Initiative (PJI) aims to re-activate criminal justice administration in the provinces by developing training as well as capacity building activities including provincial mentoring and monitoring cells. Six provinces had participated by April 2007 (Kunduz, Paktya, Balkh, Herat, Badakhshan and Nangarhar). Judges, prosecutors, judicial police, and defence lawyers are being trained by Afghan trainers on criminal procedure (moot courts system), penitentiary law and the juvenile code with reference to the Constitution and human rights protection. One PJI training program includes classes on case management, research skills and ethics. The aim of the project is to encourage recent law graduates to establish legal aid clinics.

UNAMA has been organising rule of law and human rights protection seminars. In 2006, the Provincial Justice Initiative is being expanded to 5 other Provinces to be selected in coordination with Provincial Reconstruction Teams (PRTs) and other actors' justice related activities. The Max Planck Institute (MPI) for Comparative Public Law and International Law (Heidelberg), funded by Germany and France (through the Institut International de Paris la Défense, IIPLD) has been conducting trainings on fair trial standards. Max Planck's Afghan Fair Trial Standards Manual (Third Edition) has been translated into Dari. The Bar Association of England and Wales also completed a training programme in 2006 which included the wide distribution of legal texts.⁷¹

Global Rights launched its Legal Fellowship Program for 31 law students from Kabul University in March 2006. The 16 weeks legal internship program aims to provide law students with an overview of criminal and civil law and the applicability of human rights standards in the practice of criminal law. Since 2005, Global Rights has also been running the Young Lawyers Training Program (YLTP). YLTP trained a total of 160 law students from the faculty of law in Kabul University over two series of courses; 50 students from the faculty of law in Al Biruni University, and 40 students from the faculty of sharia at Al Biruni University. Global Rights has also been running a series of legal rights workshops to strengthen civil society's understanding of the formal justice sector and also to promote adherence of legal norms by shuras and jirgas.

⁷¹ UNAMA 'Justice Overview' (April 2007)p.16.

JSSP's MoJ section has been working closely with several departments within the ministry for the past year on a variety of capacity building projects. JSSP currently has two international mentors and a cadre of Afghan lawyers embedded within the Ministry of Justice. JSSP's international AJIS defense mentor, with the assistance of the JSSP international experts currently embedded in the MoJ, is also interested in support to a future government legal aid program. The defense lawyer mentor is able to work with the Ministry in the transitional phases as well as provide training, possible infrastructure support, and ongoing mentoring.

An embedded adviser from the European Commission's Justice Sector Reform Project is supporting the strengthening of Human Resource Management functions within the MoJ as well as ongoing organisational restructuring. The project has also provided advice to the MoJ on the potential organisational and resource implications of possible legal aid systems.

New legal aid provider initiatives

UNICEF is developing a program of legal aid for children. The program will partner with existing NGO legal aid providers and will aim to identify a roster of locally based lawyers which can work on a case-by-case basis on cases involving children. Initially 11 provinces are contemplated.

The aims of the program will be:

- To end the inappropriate detention of children
- To ensure that children in conflict with the law enjoy full due process rights and adequate legal representation in judicial proceedings of all types
- To ensure appropriate detention conditions
- To provide legal aid to children whose rights are being violated or in danger at family, school and society levels with particular focus on harmful traditional attitudes.

Lawyers will be provided with specific training in relation to international juvenile justice norms and standards. An independent monitoring mechanism will also be developed.

In close collaboration with provincial legal aid providers, human rights organizations and relevant UN agencies (i.e. UNAMA and UNODC), UNICEF will advocate for transfer of detained children to non-custodial alternatives such as family care, rehabilitation and reintegration services and medical care, whenever possible.

The legal aid program will form part of the strategy of the Child Protection Action Network (CPAN) which brings together all key stakeholders at the provincial level (including social workers, health and education professionals, NGOs etc) with the aim of providing comprehensive responses to child protection.

UNODC also has developed a proposal for the support of a government legal aid program. The proposal contemplates the establishment of legal aid department, training of staff in legal representation, case and office management, training of office staff, the establishment of a database and a public information campaign.

The Afghanistan Rule of Law Project (AROLP), is currently accepting proposals to support legal aid activities in Afghanistan. The aim of the project is to increase the use of the

formal justice sector and access to the formal justice sector by providing legal services and representation to Afghan citizens who are accused of criminal offenses. Activities will also be aimed at addressing the lack of trained personnel, including paralegal staff. Funding available is 600,000 USD, however the project period is only from 1 Jan 2008 until 31 August 2008 which puts into question the sustainability of any services provided. The RFP (Request for Proposals) also anticipates one successful bidder. Given the capacity of current NGOs, the absorption of this level of funding in this timeframe, will also be very difficult.

The Open Society Initiative plans to build on the University Legal Aid clinic in Herat. The Herat clinic is a pilot between Herat University, OSI and ILF-A. Three internships have been piloted where between 10-12 law students from the Herat University Sharia/legal faculty provide criminal defense under the supervision of defense lawyers in the ILF-A office. The internship provides both practical experience in working as a defense lawyer and augments the capacity of the office to represent clients. OSI is planning on extending this partnership with ILF-A to other universities.

UNIFEM has been actively supporting national legal aid providers to increase access to justice for women. In consultation with providers it has developed standardised case reporting formats for legal services; criminal cases; civil cases; and land and property disputes. These formats will enable opportunities for standardisation of data and identification of issues, gaps in service, etc.

UNIFEM is also supporting initiatives to increase access to legal defense in rural areas. The limited legal aid provision currently available is largely concentrated in urban centres, leaving women in rural areas particularly vulnerable. UNIFEM has developed a comprehensive paralegal training manual and is developing 'Training of Trainer' programs in partnership with other legal aid providers with the aim of creating a network of paralegals in rural areas.

UNIFEM's paralegal strategy is supported by their research such as 'Uncounted and Discounted' a study of more than 1,300 cases of violence against women between 2003 and 2005. UNIFEM is also shortly to publish an extensive comparative review of legislation affecting women from the region which supports the need for specialised legal defense for women to overcome endemic discrimination in the law.

Global Rights also developed a paralegal program in 2005 in collaboration with local partner organisations which established small legal aid centres in which paralegals could provide basic legal information and consultation to Afghan communities in areas where the formal justice system was very limited or non-existent. However, the program was unable to continue for lack of funding. Global Rights will soon publish a comprehensive national domestic violence report for Afghanistan. The report will include a range of recommendations on how to better protect women who face or have experienced domestic violence, including specific requirements for improving legal aid for women.

In addition to ongoing Afghan police training and monitoring and evaluation of the justice sector, GTZ RoL Project is expanding its activities to the north, particularly in Kunduz, Mazar and Badakhshan. Activities will include supporting access to justice through the provisions for legal aid services, and training of legal professionals; rights awareness and

legal education to key national justice and human rights actors; and supporting national justice institutions to more effectively meet increased demand for formal justice.

Legal Aid Models & Options

Pursuant to constitutional obligations and new legislation, the Ministry of Justice of the Islamic Republic of Afghanistan will develop and administer a system to provide legal aid services in Afghanistan.

Identification of legal aid services and options requires consideration of the national context and challenges to legal aid provision coupled with international best practice. Consultations with key stakeholders identified key national issues above.⁷² These national issues provide a context for lessons learnt from around the world and inform analysis on options for a legal aid management structure, legal aid models, legal aid delivery mechanisms and potential next steps in the development of an effective legal aid framework in Afghanistan.

1 Management structure

Following the passing into law of the Advocates Act in the following weeks, responsibility for legal aid will pass from the Supreme Court to the Ministry of Justice.⁷³

In terms of managing the legal aid system, the MoJ may either keep direct responsibility within the Ministry or alternatively enable establishment of an independent legal aid authority through new legislation. Both types of management, direct or indirect, will accommodate any of the models / mechanisms proposed below. The main difference between the two management structures is where the responsibility and accountability for the legal aid system would lie. In the first case, accountability would remain with the Ministry; in the second case, accountability would pass to the independent authority, although the government would remain responsible for funding of the authority.

Most legal aid experts agree that independence and meaningful oversight of legal aid services significantly enhances the quality of legal aid. The *American Bar Association's Ten Principles of a Public Defense Delivery System*⁷⁴ set a benchmark against which the quality of a legal aid system can be measured, and the first of these principles calls for independence in the public defense function and in the oversight of the system.

⁷² The models and options presented have been informed by consultations with the MoJ, the Supreme Court, the Afghan Independent Human Rights Commission, NGO legal aid providers, civil society organizations and international organizations linked to international best practice. The author would like to thank all these organizations for their generosity in time, provision of information and support, without which this paper would not have been possible.

⁷³ There are a variety of governmental arrangements for taking responsibility for legal aid. In many countries, legal aid is the responsibility of the Ministry of Justice (or the nearest equivalent body). In Canada and Australia state and federal jurisdictions split responsibility for services. In the USA in some states legal aid (indigent defense) is the responsibility of the executive branch and in other states the judicial branch. However, in the USA generally, experience shows that there is no clear advantage to location in the judicial or executive branch – the most critical factor is the presence of an independent statewide commission (See 'State Indigent Defense Commissions' Spangenberg, December 2006, p. 17).

⁷⁴ See American Bar Association: <http://www.abanet.org/>

The most important role of a successful legal aid body or commission is to insulate the defense function by providing a measure of independence to the legal aid system from political and judicial influence. Without such independence, the likelihood of successfully managing and improving legal aid services is greatly diminished.⁷⁵

Given the perceived lack of credibility of the Afghan formal legal system, an independent legal aid commission would play an important role in providing the perceived independence a defense function will require.

Equally, if a mixed model of legal aid delivery is chosen, including the contracting out of some services to third parties such as NGOs, an independent body would be much better placed to regulate and supervise these parties than the Ministry of Justice.

Next to providing independence, one of the most critical roles of a legal aid commission is to act as an oversight body by monitoring the quality of legal aid programs and the services provided. The extent of a commission's oversight role can vary. A commission may monitor costs and caseloads, but a more active commission may also develop a number of defense standards and oversee compliance with those standards.

In addition to independence and oversight mechanisms, key to effective service delivery and quality services is accountability; uniform policies and procedures; uniform standards; reliable statistical information; administrative efficiency; cost containment; and the ability to provide a central voice for legal aid services.⁷⁶

The ability to maintain and assess statewide data on legal aid is also vital to a legal aid commission's ability to oversee - and to predict - costs and caseloads. Therefore, the quality of a state's legal aid data is a key component to a commission's oversight role.

In defining policy and procedures, the legal aid commission can also be responsible for assuring appropriate delivery models for legal aid.

1.1 Legal Aid Commission Structure

A legal aid commission's membership is also related to its independence, as well as that of its appointee(s) and of the legal aid system or programs that it oversees. Commission members may include a number of categories of persons, including lawyers, non-lawyers, judges, and legislators. However, in determining the categories of persons for potential commission membership, the most important consideration is that the commission has a sufficient number of members so that no single category of members dominates over the others.

A variety of different mechanisms for appointing commission members have been employed in different jurisdictions. In some states in the USA, to help ensure independence of the legal aid commission, an *Appointing Authority* which comprises different

⁷⁵ 'State Indigent Defense Commissions' Spangenberg, December 2006. The concept of independence of the defense function is also recognized by the Legal Aid Department of the Supreme Court of Afghanistan in 'Principles for the Effective Functioning of Public Defender Offices' (Annex 4).

⁷⁶ Spangenberg (2006) p. 18.

governmental bodies appoints commission members.⁷⁷ For example, in Connecticut, USA, responsibility for appointments are shared between the chief justice, speaker of the house, the president pro tempore of the senate, the minority leader of the house, the minority leader of the senate and the governor.

In other jurisdictions, commission members may be nominated by different agencies including the bar association, Supreme Court, senate, civil society interests, etc. In Sri Lanka the majority of members are appointed by the Bar Council.⁷⁸ In New South Wales, Australia, which has 11 Commission members, appointments are made by the Attorney General but include nominees representing consumer and community interest, NSW Bar Association, Labour Council of NSW, Community Legal Centres, plus a member from a university faculty of law.

While there is no magic formula for membership, membership characteristics need to be considered that will aim to ensure independence from political and personal conflict as well as fair and equal representation of the providers of the legal aid services. In South Africa the majority of the Board members are non-governmental appointments.⁷⁹ In England, in appointing members, the Access to Justice Act states that Commission members should include members who (between them) have experience in or knowledge of:

- the provision of services which the Commission can fund as part of the Community Legal Service or Criminal Defense Service;
- the work of the courts;
- consumer affairs;
- social conditions; and
- management⁸⁰

Experience suggests that commissions should have no fewer than five members and at least seven. In some cases commissions have as many as 15 members. During commission start up years, terms are frequently staggered to provide continuity. For example in Kansas, three of the nine initial appointees served one-year terms, three served two year terms and three served for three year terms. All subsequent appointments are for terms of three years. Under some statutes, members are limited to no more than two terms.⁸¹

Generally, commissions will appoint the executive director (or equivalent) of the legal aid commission which again, will help to ensure independence of the body. The statute of the commission will normally delineate the responsibilities of the executive director separately from the responsibilities of the commission members.

⁷⁷ This approach is supported by ABA Standards for Criminal Justice Providing Defense Services, Standard 5-1.3 (b).

⁷⁸ Legal Aid Commission of Sri Lanka, <http://www.lawaid.org/about-lac.htm>

⁷⁹ David McQuoid-Mason, "South African Models of Legal Aid Delivery in Non-Criminal Cases", 2005.

⁸⁰ S1, Access to Justice Act 1999.

⁸¹ Spangenberg (2006) p. 24.

The establishment of a commission which reflects the specific needs and culture clearly takes time to institute. In some situations, *Study Commissions* have been established which include membership of key stakeholders to identify the future commission structure.⁸²

In Afghanistan, if the Ministry of Justice decides to pursue the establishment of an independent legal aid commission, interim transitional arrangements would also be required. For example, while it may be necessary for the MoJ to initially have direct responsibility for legal aid while an independent structure was being developed, one measure of increasing perceived independence that would also support the establishment of the commission process, would be the establishment of a legal aid advisory council to the MoJ which comprised broad representation of key stakeholders.⁸³

2. Legal Aid Models

Assessments, international best-practices and stakeholders input (among others), in regards to legal aid services, suggest the following three options for a model of delivery. In any of the three models, the MoJ could be directly responsible for the provision of services or the service could be delivered by a separate legal aid commission.

1. Legal aid could be entirely provided ‘in-house’ by legal professionals paid salaries directly by the state legal aid authority⁸⁴

Advantages of an ‘in-house’ service include:

- direct accountability for quality of service
- opportunity for direct training and skills development of its staff
- cost effective as offices could be housed in MoJ premises and current MoJ staff may be utilized
- better guarantee in consistency in service
- centralized system to ensure equal workload for professionals
- centralized information system

Disadvantages include:

- current lack of capacity of government lawyers to provide services
- still a need for alternative providers to deal with conflict of interest cases
- limited opportunities for innovation in services
- difficulties in providing incentives for hard / good work

⁸² Spangenberg (2006) p.29.

⁸³ For example see the Law of the Republic of Lithuania on State Guaranteed Legal Aid available at: ec.europa.eu/justice_home/judicialatlascivil/html/pdf/national_law_la_lit_en.pdf

⁸⁴ Initially the ‘in house’ state legal aid authority may need to be part of the MoJ but this responsibility could be transferred to an independent legal aid commission.

- perceived lack of independence of legal professionals

2. Legal aid could be entirely contracted out to other legal aid providers such as NGOs or private lawyers in the community

In an entirely contracted out model of services advantages would include:

- perceived independence of lawyers
- ability for more flexibility and innovation in services
- no issue with conflict of interest
- cost saving since existing staff and infrastructure can be built on
- ability to reach a wide number of people

Disadvantages:

- less control over service delivery
- possibility of little information about quality and quantity of service
- necessity to develop clear and effective regulation
- The need for more complex accountability mechanisms
- higher possibility of inconsistency in service and quality across country

3. A mixed model that would include both ‘in house’ staff and external contracting.

Advantages of the mixed model is that it provides the strengths of flexibility – recognising the current capacity of NGOs, while also providing scope for the development of an ‘in-house’ legal defense service. Disadvantages of this model include the increased complexity of administration, coordination and oversight.

3. Delivery Mechanisms

There are also a range of different mechanisms which can be used to deliver legal aid. These include public defender services; private lawyers (often referred to as *judicare*); pro bono work; and a range of supplements and alternatives to lawyer dominated legal aid.

In many developing countries, lawyer-based systems are unavailable and too expensive, particularly for most rural and indigent clients. Consequently, a variety of means of augmenting resources provided by lawyers and alternatives to the use of lawyers—among them the use of paralegals, law school clinics, and pro bono models—have become of increasing importance to the provision of legal services in the criminal justice system.

These mechanisms, including advantages and disadvantages will be explored below.

3.1 Public Defenders

The term ‘Public Defender’ has many different meanings in different countries which can lead to considerable confusion.⁸⁵ Most commonly, public defenders can be characterized as providing legal representation through salaried lawyers employed either directly by the government or through a legal services authority. Advantages and disadvantages of a public defender mechanism depend on a range of factors, including size of caseload per lawyer, efficacy of management, maintenance of high morale, training, adherence to ethical and professional standards, and independence.

Advantages include:

- public defenders can build up specific expertise, can build up a high spirit, high professional standards and excellent services
- full-time public defenders working exclusively on criminal matters should be able to provide higher quality defense services for the indigent than would private, court-appointed lawyers who do not necessarily specialize in criminal law
- it is easier to budget for fixed salaries and administration costs than other mechanisms
- it is cost-effective when large caseloads are being undertaken

Disadvantages include:

- danger of loss of independence, perceived independence or political interference where no statutory legal aid body is in place
- can be subject to low funding
- in some cases, is characterized by overwhelming caseloads and subsequent poor representation
- can lead to low esteem service with difficulty in attracting high quality professionals
- lack of funding may also deprive agencies of adequate access to training, legal research, investigators, expert witnesses, scientific testing, and other resources necessary to provide adequate and complete client representation
- difficult to give incentives for speed and efficiency
- startup costs are expensive

To mitigate against some of the dangers associated with this model, organizations such as the National Legal Aid and Defender Association (NLADA) and the American Bar

⁸⁵ For example, in Seattle, Washington, lawyers known as public defenders work not for the State, but for one of four not-for-profit agencies, each of which holds a bulk contract (negotiated yearly) to deliver a certain quantity of criminal services. In Israel, the office for the public defender contracts with private practitioners. In England and Scotland, public defender offices are small salaried experimental groups of salaried lawyers employed by the Scottish Legal Aid Board and the Legal Services Commission. They have been devised to be a totally different method of provision from private practice. In San Francisco, the public defender is elected by the people. In Australia, New South Wales, the post is a prestigious one concerned only with higher level advocacy. In many US states and in the US federally, it generally means an independent organization that employs salaried criminal practitioners.

Association (ABA) have adopted national standards for public defender caseloads and proposals for the training and education of public defenders.⁸⁶ Public defender offices that have adopted some of these standards or created their own have often succeeded in providing high quality service and representation to their clients. Additionally, some have sought out alternative sources of funding for training programs for lawyers.

The establishment of a statutory legal aid authority, or legal aid commission which has a Board independent from the government will also strongly assist in the credibility of a public defenders office as outlined above.

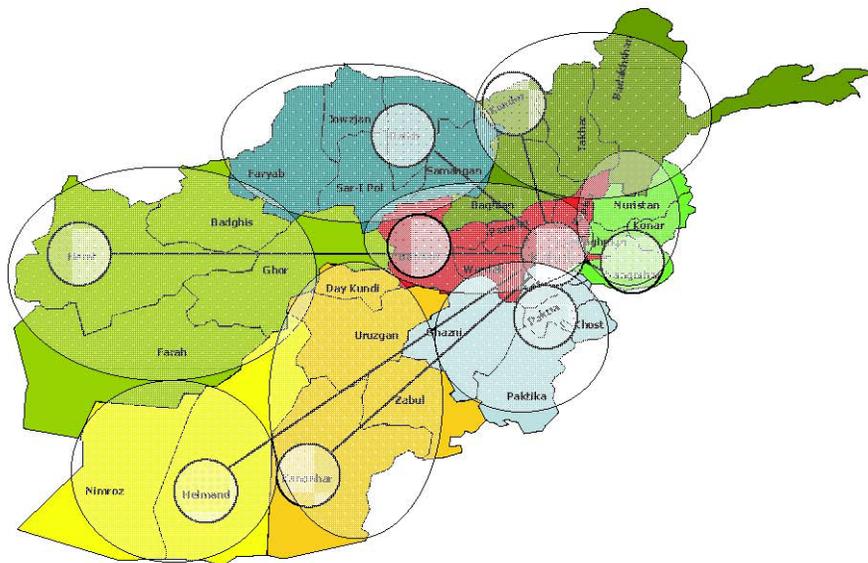
Afghanistan

Public defenders

One option for Afghanistan would be the establishment of a public defenders service administered by a legal aid authority under the MoJ. In addition to Kabul, offices could be rolled out to regional capital hubs such as Jalalabad, Gardez, Kandahar, Lashkargah, Herat, Mazar-e-Sharif, Kunduz, and Bamiyan providing coverage across the country as per the map below.⁸⁷

Additional district offices could be added over time as security constraints, experience and capacity for increasing services expanded.

Proposed Afghanistan Rule of Law Areas



⁸⁶ See <http://www.abanet.org/>

⁸⁷ These proposed hubs and the map below is part of the proposal for the Justice Coordination Mechanism recommended at the Rome Conference. Background paper, June 28, 2007.

NGO and other legal aid providers

Another option that could be considered for Afghanistan is contracted-out public defender services to other legal providers. This could be either *in place of* an in-house service, or *in addition to* an in-house service.

A number of NGOs and legal agencies are already effectively providing these services. As noted, some of the services provide specialized criminal defense, others specialize in civil cases and some providers offer a range of criminal, civil, mediation, advocacy and legal awareness services. Many providers also use both registered lawyers and paralegals to deliver services. However, presently all these providers are privately funded; uncoordinated; and have no common oversight mechanisms to ensure quality of service. They also do not have the capacity to meet demand.

In this mechanism, a legal aid board or commission would greatly assist in meeting needs of both the MoJ and independent providers. A commission would play a crucial role in providing coordination and oversight in order that the MoJ met its legal obligations under Article 31. In addition, an independent commission would provide current NGOs the opportunity of engaging with MoJ without losing their independence.

NGOs and/or other non-state legal providers could be contracted through the legal aid commission to undertake specific services. At the same time, these providers can continue to seek funds from other sources to undertake services beyond the legal aid commission mandate. This would provide a flexibility of approach and the opportunity for providers to continue to experiment with new ideas and specialize on particular issues of concern to their agencies.

In all three sub-components of the public defender mechanism, here are a number of reasons why it has been shown that a salaried component is important in a legal aid scheme. Salaried lawyers are generally cheaper and facilitate the development of expertise in areas of law specifically affecting low income people who are outside the private profession's traditional clientele. Salaried lawyers also tend to provide services which go beyond traditional advice and representation often also undertaking legal awareness, training and advocacy activities which support a broader access to justice agenda. As can be seen in section 'Legal Aid Providers in Afghanistan', many of the legal providers in Afghanistan have been actively involved in these activities and actively participate in processes to support law reform. In designing a legal aid framework, it is important to ensure that these elements are included.

3.2 Private Lawyers

This mechanism delivers legal aid to indigent clients through private practitioners and clients can choose a participating lawyer to represent them. The lawyer is then paid with public funds on a case-by-case basis through the legal aid authority. Payment procedures can vary: payment can be based on the time taken on the case, however more commonly, a fixed fee is provided based on the type of case and the anticipated amount of work involved thereby providing greater control over funding.

Advantages:

- Clients have access to a range of skilled and experienced advocates

- Clients have much greater freedom of choice of who represents them
- Involves private profession in criminal justice system
 - thereby giving them a concern on civil liberties and human rights
 - encourages private lawyer support for ongoing legal aid funding
- Provides flexible service in remote areas where establishment of public defender offices would not be cost-effective

Disadvantages:

- Usually the most expensive form of indigent representation
- Difficult to control costs
- Potential quality control problems – hard to ensure quality service
- Tends to need a reasonably large bureaucracy to manage
- Potential difficulties in finding representation for unpopular cases (such as persons accused of adultery)

One of private lawyers' most significant weaknesses is its expense, particularly compared to other legal aid delivery mechanisms.⁸⁸ However, a number of studies have shown that the higher costs associated with this mechanism do not necessarily result in better quality of services. Studies have found that salaried lawyers spend less time per case than private lawyers with similar outcomes in terms of convictions.⁸⁹ Private lawyers also have less input into law reform promotion.

Afghanistan

At present the Afghan Government does not provide any legal aid through private lawyers. However, private lawyers still may be able to play a useful role in legal aid provision – particularly in rural areas where low caseloads may make the establishment of a legal aid office not cost effective, or where there are benefits in the existence of a second provider in cases where there may be a conflict of interest. Equally, the importance of engaging the private legal community as stakeholders in the criminal justice system is not to be undervalued. One reason why Australian legal aid funding is considered to have survived better than the US is the stake private lawyers had in its preservation.⁹⁰

⁸⁸ In 2002, England was spending \$38 per capita on legal aid as compared with \$2 in the United States, \$9 in Ontario, Canada, and \$12 in the Netherlands. (Bellow-Sacks Seminar: US Legal Services in Comparative Perspective, Nov. 18-19 2002 in Access to Justice Africa and Beyond P.63).

⁸⁹ Salaried lawyers refers to lawyers that receive a salary from an organization undertaking legal aid work, rather than a private lawyer receiving a fee on a case basis. See 'Patterns of Legal Aid' Department of Justice, Ottawa, 1995.

⁹⁰ No matter which form of legal aid is adopted, strategies will need to be in place to provide strong advocacy to ensure that funding needs are emphasized. This is particularly important in a country where the concept of defending the accused is new. It will be all too easy for financial decision-makers to want to give only the minimum to this area of need. See Susan Armstrong (2001).

However, research undertaken by the Afghan Justice Sector Support Program (JSSP) has found the quality of private practitioner provision in Afghanistan to be less than adequate. Research shows that very few of the lawyers in the provinces are registered with the MoJ. Furthermore, these lawyers tend to provide a very limited service. They often do not attend trials or other court proceedings on behalf of their clients and primarily limit the scope of their practice to providing the accused client with a written defense statement for a fee. Most persons interviewed in the JSSP assessment felt that these lawyers provided poor quality services.⁹¹

Compulsory registration of lawyers with the MoJ linked to ongoing training to ensure accreditation may assist with this problem. Also the establishment of an Afghan Bar Association under the Advocates Act will hopefully assist with training programs and the identification of poor performing lawyers. However, given the lack of experience in the Afghan judicial system of defense lawyers and their role, a more proactive approach will probably be required to ensure private lawyers provide an adequate defense. A legal aid commission could play an important role here, for example by limiting legal aid participating lawyers to those which meet minimum standards.⁹²

3.3 Pro-Bono Legal Services

Pro-bono is free legal services provided by lawyers.

Advantages of Pro bono services include:

- Cheap supplement to legal aid
- Can cover areas where paid services do not operate, or where services do not meet demand
- Encourages public service by lawyers and participation in the criminal justice system

Disadvantages include:

- Unpaid lawyers render less efficient service
- State avoids carrying out its legal obligations
- Many lawyers are reluctant to take on pro bono cases

Pro bono schemes provide useful services to supplement paid legal aid services around the world. The ABA has a Standing Committee on Pro Bono and Public Service which provides for the development and promotion of pro bono policies and initiatives which includes fostering the development of pro bono programs and activities by law firms, bar associations, corporate legal departments, law schools, government legal offices and others;

⁹¹ JSSP 'Assessment of Provincial Defense Capabilities in Balkh, Herat, Kunduz, and Nangarhar', (2007).

⁹² In the United Kingdom, the Legal Aid Board developed the idea of 'preferred suppliers' and established the statutory right to inspect these preferred suppliers legal aid files. See 'Justice Initiatives' Open Society Justice Initiative, February 2004, pp. 42 – 47.

analysing the scope and function of pro bono programs; and proposing and reviewing legislation that affects lawyers' ability to provide pro bono legal services.⁹³

Afghanistan

In Afghanistan, Article 13 of the Advocates Act, which is shortly to be passed into law, requires registered lawyers to take 3 cases in each year free of charge. This pro bono work will supplement other legal aid provision. However, many of the registered lawyers will have no defense experience; therefore training programs, for example through the Bar Association, will be important. Another option to ensure quality of services is to link lawyers undertaking pro bono work with other legal aid services such as NGOs, or other salaried legal aid services. This system works successfully in several countries both augmenting the legal aid service and providing support for the private lawyer.

3.4 University Legal Clinics

University legal clinics provide practical legal education for students and free legal services for indigent people. They also provide opportunities to pursue a range of potential social justice benefits in developing countries.⁹⁴

Advantages of university clinics include:

- Improved legal education
- Supplement legal aid services
- Encourage public interest law – may choose clients and not limited to legal aid board criteria for legal assistance⁹⁵
- Can support paralegal advice services
- Enhance access to profession

Disadvantages

- Clinics are usually dependant on donor funding
- Most clinics are not mainstreamed into the legal system

The most commonly known educational benefits of clinics are the practical “lawyering” skills students gain through working directly with clients on specific problems. In addition, the experience can help students to better understand and apply legal theory, as well as to explore weaknesses in legal systems or procedures.

In addition to their educational benefits, university clinics can serve as both supplements and complements to other indigent legal services. In some developing and developed

⁹³ <http://www.abanet.org/legalservices/probono/committeinfo.html#cteinfo>

⁹⁴ There is the potential in many civil cases, to provide services support indigent clients. For example, see Aubrey McCutcheon 'University Legal Aid Clinics: A Growing International Presence with Manifold Benefits' in 'Many Roads To Freedom', Ford Foundation. February 2000.

⁹⁵ Public interest law is related to cases which have a broader public interest. This may include representation of individual cases or class actions which may lead to law or policy reform on a particular issue.

countries, clinics work in tandem with government legal aid, NGOs, and community-based paralegals.

In China, recent experience suggests that clinics add a needed practical component to legal education, provide needed public legal services, and encourage students toward future legal aid or public interest work.⁹⁶ In India, clinical legal services are recognized as so potentially important that the judiciary now actively encourages their development. Some university clinics successfully expand the impact of their work by concentrating services on specific legal issues or population groups.

Another frequent motivation for creating university legal aid clinics is to introduce students to the possibilities of using the law for social justice purposes and to encourage and inspire such future work as lawyers. This creates a pipeline of young lawyers for public interest law and legal aid work.

Afghanistan

In Afghanistan, the pilot program between the Herat University, ILF-A and the Open Society Justice Initiative appears to be producing promising results. In this pilot, university students act as interns within the ILF-A Herat legal aid office.⁹⁷ Plans are also being contemplated to expand the program and link other Universities to ILF-A clinics in other provinces.

University legal clinics linked to existing legal aid providers both augments legal aid provision and provides an important clinical teaching role not available within the University.

3.5 State-funded legal aid interns in rural law firms⁹⁸

Partnerships between the national legal aid scheme and private law firms are a useful way of extending legal aid in rural areas. In this mechanism, piloted in South Africa, private lawyers in selected rural towns are given funding by the SA Legal Aid Board to employ student lawyer interns to do legal aid work. The participating law firms are assisted with the payment of the salary of the candidate lawyers. Student lawyers handled at least 10 new legal aid matters a month for the Board and also performed volunteer work for one day a week. The project proved highly successful. Not only did it expand legal aid services in rural areas, but it also enabled formerly disadvantaged persons to be employed in the legal profession in the areas where they lived.⁹⁹

The legal aid internship scheme involving partnerships between the State-funded legal aid body and private practitioners to employ young lawyers is very cost effective. It is much cheaper to supplement the salaries of soon-to-be lawyers in rural law firms than to establish

⁹⁶ Many Roads to Freedom', Ford Foundation. February 2000, p.189.

⁹⁷ See section: Legal Aid Providers in Afghanistan'.

⁹⁸ David McQuoid-Mason "Lesson from South Africa for the delivery of legal aid in small anddeveloping commonwealth countries".

⁹⁹ *ibid* p.17.

branch offices of a national legal aid scheme in areas where there is a limited demand for legal aid services.

This mechanism may have potential in areas in Afghanistan where other legal aid provision does not exist.

3.6 Paralegals

Paralegals are individuals who have received specific training to undertake specific tasks in the legal field. Paralegals challenge the assumption that lawyers are necessary to assist indigent clients at every stage of the criminal justice process and offer an alternative (and less expensive) method of assisting the indigent. Paralegals can be paid professionals or volunteers.

Some advantages of paralegals include:

- Can undertake many tasks of lawyers, thereby freeing up lawyers for specialized work
- Can extend the reach of legal aid to rural areas where few lawyers are based
- Can be community based and better understand local needs
- Can improve access to justice for women, children and other groups
- Can provide education and training

Some disadvantages of paralegals include:

- Lack of recognized standards of training
- Lack of recognition and authority to undertake tasks
- Often dependant on donor funding
- Not mainstreamed into legal aid system

Paralegals serve many functions, including advising people of their basic rights, assisting lawyers, and providing vital education and training. In addition, community-based paralegals are able to deliver legal services to people outside of the traditional legal system, and to those living in rural or remote areas.¹⁰⁰

Paralegals are being increasingly used effectively in many countries including United Kingdom, Bangladesh, Malawi, Philippines, Nepal and South Africa. Experience shows that properly trained non-lawyers can provide the appropriate advice and assistance to an enormous number of citizens on a range of issues, whether in the village or in the police station (at interview), in court (at first appearance), or on production in prison. Such advice and assistance often does not require the highly specialized knowledge and expertise of a lawyer. Annex 2 provides a list of potential opportunities for paralegals to effectively support the legal process.¹⁰¹

¹⁰⁰ See Ford Foundation (2000) , Penal Reform International (2007).

¹⁰¹ See Annex 2 from Penal Reform International (2007), for opportunities for paralegal engagement in legal process.

In the UK, paralegals are used extensively (termed ‘legal executives’). They sit with suspected offenders during police interviews, take statements from them in prison, and follow up with witness statements. The paralegal thereby frees up time for the lawyers to specialize in court work or the preparation of the defense.¹⁰²

In Malawi, the Paralegal Advisory Service has been internationally recognized by a UN Habitat Best Practices Award.¹⁰³ The Malawi initiative is striking for its success in securing the release of prisoners and for its ability to work in cooperation with court, police and prison authorities. Through its diplomatic efforts, the Malawi Paralegal Advisory Service has successfully convinced prison and court officials that release of prisoners who should not be in prison reduces overcrowding and expense, and improves living conditions within prisons.

Afghanistan

The role of paralegals is recognized in the Afghan Interim Criminal Code and many legal aid providers in Afghanistan are using paralegals as part of their legal aid provision.¹⁰⁴ Individuals and members of other organizations are also being trained as paralegals to provide legal advice and awareness-raising to supplement the activities of legal aid providers.

Other agencies, such as UNIFEM and UNICEF are also planning joint activities with legal aid providers to increase access to justice through the use of paralegals. To support these activities UNIFEM has just completed a detailed paralegal training manual. Da Qanoon Gushtunky and Global Rights are also developing paralegal training manuals.

Given the extreme shortage of lawyers and the extent of access to justice challenges facing Afghanistan, paralegals can potentially play a very important role. Not only can they support lawyers and free up their time, but they can also play a critical role in providing advice and awareness-raising on legal rights and provide linkages between rural areas and formal legal aid services.¹⁰⁵ Paralegal legal awareness and rights awareness-raising can

¹⁰² Penal Reform International (2007) p.20.

¹⁰³ Ibid p.20.

¹⁰⁴ Article 96 of the Interim Criminal Code states:

Up to when in the Country there will be not available a sufficient number of defense counsels, as established in article 18, the suspect or the accused can make recourse to the assistance of an educated person having some knowledge of legal issues.

To this end the President of each Court shall institute a list of persons having the qualities indicated in the previous paragraph following the indications for the Capital of the Ministry of Justice and for Districts and Provincial Courts of Government Cases Department.

Afghan NGOs employing paralegals include: ILF, AHRO, Da Qanoon Gushtunky and NRC, see Section ‘Legal Aid Providers’.

¹⁰⁵ As noted in the Rome Conference Panel on Access to Justice, Legal Aid and Human Rights ‘The majority of Afghans in rural areas are illiterate and uneducated. They have little or no understanding of their rights or the legal and justice system. They also lack basic understanding of the obligations of duty bearers (the police, prosecutors and judges) and the procedures for claiming these obligations. Rights awareness programs are therefore an essential component to any justice program. July 2-3 2007, p.2.

also potentially assist in informal dispute resolution processes such as shuras and jirgas and help ensure that they comply with human rights standards, as noted in the MoJ policy.¹⁰⁶

The Malawi experience of paralegals providing discrete services in support of bail applications and other mechanisms to reduce prison populations also has potential in Afghanistan. Although precise baseline data is not available, evidence gathered from the Afghanistan Independent Human Rights Commission suggests over half of the present prison population of over 10,500 people are in pre-trial detention with a significant proportion being held beyond statutory time-limits.¹⁰⁷ Paralegals could play an important role in reducing these prison numbers in Afghanistan both through identification of detainees who may be released pending trial or identifying detainees being held beyond statutory time-limits. In addition to providing access to justice, this would also assist in reducing the strain on prison services and prison overcrowding.

Paralegals can work in a variety of settings: in paralegal offices, with lawyers in legal aid offices, in paralegal centres, in other organizations, or individually. Paralegals have the potential to be used in any of the three models, as part of MoJ 'in-house' legal aid services, part of contracted out services and also provide privately funded services. However, it is critical that paralegals are well trained and that paralegal roles, responsibilities and linkages to other legal aid services are defined to ensure quality of services. In South Africa, the SA Legal Aid Board, in partnership with the justice centres and university clinics provides support to paralegal services.¹⁰⁸

3.7 Specialized legal aid services

In addition to general criminal and civil law services, many countries have found value in establishing specialized services providing legal aid in both thematic areas such as immigration, housing, social security and public interest and also services aimed at specific client groups such as women, children, refugees and disabled persons.

Advantages of such services include:

- Practitioners build up specialized knowledge in area of specialization
- Centres can provide a focus for advocacy and law reform on specific issues

Disadvantages include:

- Centres may not specialize in areas required by clients

Afghanistan

Specialized services as part of the legal aid framework will be an important consideration to meet the MoJ vision to encourage 'legally aware citizens, better able to demand their

¹⁰⁶ MoJ policy states 'Traditional justice presents some very serious issues for the Government ... - the unacceptable intrusion of the traditional sector into criminal justice and the burden it places on women, often in violation of human rights norms which the Government has agreed to implement. Recognizing these realities, the Government considers that it must engage with the traditional system...' 'Justice for All' p.12.

¹⁰⁷ Baseline data from the United Nations Office on Drugs and Crime in Afghanistan, Sept 2007 identified that the total number of detainees in Afghanistan was 10,591 of which 4,423 were in pre-trial detention.

¹⁰⁸ Penal Reform International (2007). p. 115.

rights and perform their responsibilities'.¹⁰⁹ In Afghanistan the lack of access of women and children to the law make specialized services in this area particularly important.

As noted previously, medica mondial and Afghan Women Judges Association are providing specialized services for women, and Da Qanoon Gushtunkey prioritizes provision for women. UNIFEM is also developing discrete paralegal activities for women linked to national legal aid providers and UNICEF is developing a program to support specialized legal aid lawyers to existing national legal aid providers.¹¹⁰

The large number of refugees returning to Afghanistan also results in specific legal issues which makes specialized services important. In response to these issues, NRC is also providing specialized legal advice on property law to refugees.

Other specialized areas may also need to be considered.

4. Mixed model of legal aid

As outlined above, legal aid services can be delivered in a range of different ways, many of which have application in the Afghan context.

Legal aid public defenders may be provided 'in house'; public defender provision may also be contracted out to other providers such as NGOs; some legal aid may be provided by private lawyers including the provision of pro bono; legal aid services may also be supported by university law and sharia faculty students; and paralegals may also provide legal services. Paralegals may be employed in-house, contracted out, members of other organizations, or even volunteers.

Most probably a mixture of all these services is likely to provide the best opportunity of meeting the Afghan Government policy vision above. Indeed, experience in many countries is showing that a mixed delivery model is the most effective method of delivering services.

4.1 Justice Centres¹¹¹

One example of a state-funded legal service which provides a mixture of delivery mechanisms is the South African *Justice Centres*. The centres provide consumers with a 'one stop shop' instead of sending them from place to place to obtain assistance and have proved to be very cost effective.

South African justice centres are similar to legal aid specialist law firms that have developed elsewhere, except that they are fully state-funded and staffed by salaried lawyers and administrative staff in the employ of a Legal Aid Board. The justice centres provide a full range of legal and paralegal services to indigent clients by bringing together legal aid officers, public defenders, law clinic intern public defenders, professional assistants, supervising lawyers, paralegals, administrative assistants, and administrative clerks under one roof.

¹⁰⁹ See 'Justice for All'.

¹¹⁰ See Section 'Legal Aid Providers in Afghanistan'.

¹¹¹ Penal Reform International (2007) p. 98.

Public defenders deal with criminal cases in the regional courts and high courts. Law clinic interns do both civil and criminal work in the district courts. Professional assistants appear in the regional courts. Supervising lawyers appear in the high courts and the regional courts. Paralegals assist with the initial screening of clients, while administrative assistants and clerks provide the necessary administrative backup. Private lawyers are only used if the justice centre cannot handle a case.

Public defenders are full-time salaried lawyers employed by the Legal Aid Board, an independent statutory body with its own board of independent, non-executive members. This assures the independence of public defenders. However, public defenders remain members of their bar council or law society.

Lessons learned from the Justice Centres is that they work well in the larger cities and towns, but not in the rural areas where there is insufficient work to justify their expense. In such circumstances, other mechanisms, such as cooperative agreements between a legal aid commission and rural law firms, public interest law firms, independent law clinics, or paralegal advice offices, may be more feasible.

One additional advantage of such a mechanism in Afghanistan could be the combining of legal aid and Hukuk civil mediation services together, thereby capitalizing on infrastructure already in existence in the districts.

5. Other issues to consider

- Scope of services
- Means Tests
- Merits Test, for civil cases
- Funding / Sustainability

Recommendations and proposals for next steps

Recommendations

Recommendations which may wish to be considered in the development of a legal aid framework include the following:

1. Structure
 - a. The establishment of an independent legal aid commission to manage legal aid provision
 - b. As an interim arrangement, prior to the establishment of the legal aid commission, the establishment of a legal aid council which includes representatives of legal aid stakeholders. The function of the Council will be to act as an advisory body to the MoJ in matters of legal aid.
2. Legal aid delivery models
 - a. The establishment of a mixed model for delivery of legal aid. This model may include the following elements:
 - i. 'In-house' public defenders
 - ii. Contracted-out legal aid providers
 - iii. NGO legal aid providers
 - iv. Pro bono
 - v. University clinics
 - vi. Interns in private law firms
 - vii. Paralegals
3. Scope of legal aid
 - a. Provision of legal aid at all stages of the criminal process including investigation, arrest, pre-trial detention, bail hearings, trials, appeals, and other proceedings brought to ensure that human rights are protected. Suspects, accused persons, and detainees to have access to legal assistance immediately upon arrest and/or detention wherever such arrest and/or detention occurs.
4. Legal aid in civil cases
 - a. In addition to the legal obligation to provide criminal legal aid, the provision of legal aid in some civil cases as outlined in MoJ policy. The scope of civil legal aid will need to be defined.
5. Means and merits tests
 - a. In criminal cases, a definition of indigent will be required to define eligibility for legal aid.
 - b. In civil cases, both a means and merits tests will require definition.
6. Training
 - a. The prioritization of providing training in defense lawyer skills.

- b. Ongoing training for police, prosecutors and judges in the role of defense lawyers and legal aid.
 - c. The establishment of mechanisms for accreditation of paralegals; including identification of paralegal functions, training needs and supervision mechanisms.
7. Funding
- a. The establishment of a salary structure for defense lawyers presently employed by the government to create greater equity with salaries provided in non-profit organizations.
 - b. The encouragement of donors to provide funding for legal aid services and management structures and to support any transitional arrangements.

Proposals for next steps

1. Consultation
 - a. A Forum on legal aid may be considered with representatives from a broad range of stakeholders. This forum would include experts from other countries with experience in different legal aid delivery models
2. Policy papers
 - a. Development of policy papers by stakeholders may want to be considered on issues such as potential scope of legal aid in civil cases; role and functions of paralegals; and criteria for means and merits tests.
3. Study tours
 - a. Study tours may be considered to inform policy makers on key legal aid delivery approaches.
4. Pilots
 - a. Piloting of some initiatives may want to be considered before developing a larger program.
5. Legislation
 - a. Depending on the outcome of the consultation process and study tours, legislation on some or all of the following may be required:
 - i. Legal Aid Act and regulations
 - ii. Legal Aid Commission
 - iii. Paralegal accreditation
 - iv. Guidelines on supervisory mechanisms for legal interns and paralegals
6. Base-line data
 - a. To enable for planning of legal aid services and to establish legal aid need, a program to gather comprehensive base-line data is required.

Annexes

Annex 1: Matrix of Legal Aid Providers in Afghanistan

Annex 2: Role of Paralegals Following Arrest

Annex 3: Guidelines on the Right to Defense

Annex 4: Public Defenders Standards of Practice