



# Appraisal of Extended Rule of Law Project in Faryab, Afghanistan



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Responsibility for the contents and presentation of findings and recommendations rests with the study team.  
The views and opinions expressed in the report do not necessarily correspond with those of Norad.

**APPRAISAL OF  
EXTENDED RULE OF LAW PROJECT  
IN  
FARYAB,  
AFGHANISTAN**

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*"My sons and successors should not try to introduce reforms of any kind in such a hurry as to set the people against their ruler, and they must bear in mind that in establishing a Constitutional Government, introducing more lenient laws, and modelling education upon the system of Western universities, they must adopt all these gradually as the people become accustomed to the idea of modern innovations, so that they will not abuse the privileges and reforms given to them."*

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<sup>1</sup> Quoted in KHAN, M. M. S. M. (Ed.) (1980) *The Life of Abdur Rahman, Amir of Afghanistan Volume 2*, Karachi Oxford University Press. P. 9

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## ABBREVIATIONS:

AGO	Attorney General Office
AIHRC	Afghanistan Independent Human Rights Commission
ANDS	Afghanistan National Development Strategy
CJTF	Criminal Justice Task Force
CMI	Chr. Michelsen Institute
CRP	Crisis Response Pool (Styrkebrønnen)
CSSP	Correction System Support Program
DoJ	Department of Justice (on provincial level)
DoWA	Department of Women Affairs (on provincial level)
EUPOL	European Union Police Mission in Afghanistan
ICO	Italian Cooperation Office
ICRC	International Committee for Red Cross
IDLG	Independent Directorate of Local Governance
IDLO	International Development Law Organization
INL <sup>2</sup>	Bureau of International Narcotics and Law Enforcement Affairs
ISAF	International Security Assistance Force
JSSP	Justice Sector Support Program
MFA	Ministry of Foreign Affairs (Norway)
MoI	Ministry of Interior (Afghanistan)
MoJ	Ministry of Justice and Police (Norway)
MOJ/A	Ministry of Justice (Afghanistan)
NATO	North Atlantic Treaty Organisation
NJP	National Justice Programme
NJSS	National Justice Sector Strategy
OSCE	the Organization for Security and Co-operation in Europe
PAE <sup>3</sup>	PAE, a Lockheed Martin Company
PDPA	People's Democratic Party of Afghanistan
PJCM	Provincial Justice Coordination Mechanism
PRT	Provincial Reconstruction Team
RoL	Rule of Law
TOR	Terms of Reference
USAID	United States Agency for International Development
UNAMA	United Nations Assistance Mission to Afghanistan
UNDP	United Nations Development Programme
UNODC	United Nations Organisation on Drugs and Crimes

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<sup>2</sup> INL is a US Government institution which is funding both CSSP and JSSP.

<sup>3</sup> PAE is the implementing contractor for CSSP & JSSP programs.

# INTRODUCTION

Since the end of 2001, Norway has increased its engagement in Afghanistan<sup>4</sup>, as part of the international follow-up to the 2001 military intervention. In accordance with the Bonn Agreement, the goal of Norway's engagement was to assist in stabilising and developing the country, and preventing Afghanistan from becoming a base for terrorist operations. Following a 2004 request from the British, the Norwegian Ministry of Foreign Affairs (MFA) engaged in a dialogue with the Ministry of Justice (MoJ) and Police and decided to allocate personnel, mainly prosecutors and judges, from the newly established Crisis Response Pool (CRP)<sup>5</sup> to work with Afghan counterparts involved in persecuting narcotics crimes. The Norwegian legal personnel began working in Kabul in September 2005, in cooperation with the Norwegian police advisors who had arrived there for the first time in 2004 to work with the Germans at the Police Academy. Starting in late 2006, Norwegian prison advisors were also sent to Faryab province, where the Norwegian-led Provincial Reconstruction Team (PRT) is located.

After a visit to the provincial prison in Meymaneh, the police advisors reported to the Norwegian Ministry of Justice (MoJ) on the urgent need for including prison advisors in the CRP in order to improve the otherwise dire situation faced by the prisoners, in particular the female prisoners. The Norwegian authorities decided to send two prison advisors for a one-year period to work with the director and staff of the Meymaneh prison. By end of 2008, the prison advisors were the only remaining element of the CRP in Afghanistan following decision in autumn 2008 by the MFA and the MoJ to terminate the Kabul-based CRP. A separate assessment of the prison advisory project has been made in Norad report 18/2010, issued in October 2010.

During an April 2010 visit to Meymaneh and the prison, the Norwegian Minister of Justice suggested that the prison project should continue. Furthermore, the Minister also suggested that the project be linked to the establishment of a broader Crisis Response Pool (CRP), one tasked with mentoring prosecutors, defence lawyers and judges in the Faryab Province. An outline for such a project has not been developed so far.

In a follow up to these suggestions, the MFA and the MoJ agreed to conduct an appraisal of the proposed CRP in Faryab, with the goal of assessing the feasibility and the likely sustainability of the proposed project and the present levels of national and provincial coordination in the sector. Based on this report and its recommendations, the two ministries will make their final decision regarding Norway's future engagement in the proposed establishment of a CRP in Faryab.

In an August 2010 interview, the State Secretary and the Secretary General of the Ministry of Justice clarified that an established CRP in Faryab would have to be properly adapted to the local conditions and needs, with a focus on recruiting professionals well acquainted with the cultural context and the Islamic law. In the interview, there were some expressed doubts about the ability of the current Norwegian professionals in the CRP to meet these essential qualifications. It was recognized that, in order to find personnel with the appropriate level of cultural and legal knowledge, one might have to

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<sup>4</sup> The terminology is based on the expression used in the Scanteam report from June 2009, which assessed the Crisis Response Pool and its work in Moldova and Georgia. A more comprehensive outline of the concept is provided below.  
(<http://www.norad.no/en/attachment/127549/binary/48501?download=true>) Checked 26.10.2010

recruit professionals from other parts of the world. This would represent a change from Norway's CRP programmes in other countries, where as a rule only Norwegian personnel have been deployed. The State Secretary and Secretary General also stressed the security aspects of such assignments, arguing that force protection by the Norwegian PRT or some equivalent arrangement would need to be in place before establishing the Faryab CRP.

### *The Assessment*

The assessment has been conducted by a team from Norad and Chr. Michelsen Institute (CMI). CMI was selected through a simplified tendering process. A Terms of Reference (TOR), which is provided in Addendum 1, was developed by the MFA in consultation with the MoJ and the Norwegian Embassy in Kabul.

Given the lack of project documentation, the team has drawn on the general outline of the Crisis Response Pool, as described by Scanteam in their June 2009 report that assessed the work of the CRP in Moldova and Georgia. Additional clarifications were also obtained through interviews with the MFA and MoJ.

The team conducted interviews in Oslo with relevant persons in the MFA and the MoJ. Field visits to Meymaneh (Faryab), Mazar-e-Sharif (Balkh) and Kabul were also undertaken in an effort to meet with the relevant Afghan authorities, the various donors involved in the rule of law, the Afghan Independent Human Rights Commission (AIHRC) and NGOs involved in rule of law issues, especially those operating in Faryab. Meetings were also held with the Norwegian Embassy in Kabul and Meymaneh and the Norwegian-led PRT in Faryab. The interviews conducted in relation to the assessment of the prison project in Meymaneh have also helped to highlight some of the more general challenges in the rule of law sector, as well as the potential for broad benefits of a more extensive interaction between the prison sector and other parts of the judicial sector.

The interviews in Norway were conducted by Norad and Arne Strand from CMI. The field visit in Afghanistan was conducted by Norad and two CMI researchers, Torunn Wimpelmann Chaudhary and Orzala Ashraf Nemat. Since the TOR outlined two separate assessments, several of interviews covered the proposed CRP in Faryab as well as the prison project. The recommendations in the two reports are interlinked.

Drawing on available documentation the team developed an interview guide for each of the interviews. Based on a wide range of consultations with an selection of individuals variously engaged in the Rule of Law sector (see Addendum 2), the hope is that this report presents a fairly accurate picture of the project's feasibility and possible sustainability along with a precise illustration of the overall level of coordination in the sector.

## NORWEGIAN JUDICIAL “CRISIS RESPONSE POOL” (STYRKEBRØNNEN)<sup>6</sup>

In 2002 and 2003 the Norwegian Ministry of Foreign Affairs (MFA) took an initiative vis-à-vis the Ministry of Justice (MoJ) to create a roster of justice-system personnel that could be deployed abroad to complement Civilian Police and assist in supporting the whole “chain of justice” (rettskjeden). At the same time, there was a discernable focus only on that part of the justice system dealing with crime and punishment.

In democratic states, based on the rule of law and separation of powers, the criminal-justice chain is a highly complex system. Main components include laws, an assortment of independent yet simultaneously interdependent organs, and a multi-staged investigation, trial and punishment process. The criminal-justice chain is anchored in legislation. The baseline is often located in a *criminal (penal) code*, which describes prohibited acts and prescribes punishments for those acts. The multi-stage process typically spans from the time of arrest, interrogation and pre-trial detention, through indictment, trial and sentencing (or acquittal) to punishment, release and reintegration. The main institutional actors include the police, prosecutors, defence attorneys, judges, the probation service and/or penitentiary department. The interaction between these actors at each stage is highly complex. The steps in the process, along with the roles of the actors involved, are normally regulated in a *criminal-procedure code*, which sets out the methodology for how prohibited actions should be pursued and outlines the rights and responsibilities of the various actors. The goal of the justice-system personnel pool focuses on “strengthening” this chain by upholding or developing its *efficiency* and *human-rights compliance*.

Following the MFA’s initiative, a broadly composed working group was established, which submitted its recommendations in September 2003. Later that same year, the MoJ established the “Norwegian Judicial Crises Response Pool” (Styrkebrønnen). It comprises of judges, prosecutors, police lawyers (politijurister), as well as personnel from the prison and probation (friomsorg) services. In November and December 2003, the first recruitments for the roster took place. The Pool was later widened to include private defence attorneys.

The MFA understood the deployment of Norwegian police and justice-system personnel as an “instrument of foreign policy,” and this understanding is clearly visible in the priorities for deployment. In the spring of 2004, the MFA and the MoJ discussed guidelines for deployments and emphasised “good governance and anti-corruption efforts” as potential areas of focus. In May 2004, the two ministries issued guidelines that set the following priorities for the assignments and tasks of police and chain-of-justice personnel: (1) assignments in connection with the EU and international organisations of which Norway is a member (e.g. the United Nations, the North Atlantic Treaty Organisation (NATO) and the Organization for Security and Co-operation in Europe (OSCE)); (2) assignments in co-operation with Nordic and other compatible countries; (3) assignments in countries where Norwegian police and chain-of-justice personnel might contribute to Norway’s development priorities, including countries with which Norway is engaged in development co-operation or human-

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<sup>6</sup> To a large extent, this section draws on the description on the Norwegian Judicial Crises Response Pool as presented in the June 2009 Scanteam report: Review of The Norwegian Mission of Rule of Law Advisers to Georgia (NORLAG) and The Norwegian Mission of Rule of Law Advisers to Moldova (NORLAM).

rights dialogue; (4) tasks with an emphasis on providing advice and training, although police may also be used for assignments with a controlling character.

The Pool is administered by the MoJ, which maintains the roster and assumes the responsibilities of the employer and remunerator for the line agencies that provide personnel. The MFA refunds the MoJ for incurred expenses. Since its inception the CRP has deployed personnel to Afghanistan, Bosnia, Liberia, Georgia and Moldova.

In August 2004, the British Embassy made a request to the Norwegian authorities to have Norwegian mentors from the Attorney General and the Judges service as part of a Criminal Justice Task Force (CJTF), with a particular focus on narcotics related court cases.<sup>7</sup> British and Norwegian officials also highlighted the need for robust coordination between the international players. While a one-year deployment was agreed upon, a March 2006 discussion between the MFA and MoJ found the MoJ raising serious questions about the need to withdraw the mentors due to security concerns. At the same time, the discussion depicted a very positive response from the Norwegian Embassy and those international actors involved in the CJTF. In fact, several officials referred to the project as “extremely impressive”. One stated that, “when taking the personnel inputs into consideration,” there was “no other project in Afghanistan [with the] same impact [on the] goodwill from Afghan authorities and other donors.”<sup>8</sup>

The CRP started its project in Afghanistan in September 2005 and was active until the end of 2008. The project started out with two judges and two representatives from the Attorney General, and, after the first year, was extended to include a defence attorney. In May 2007, a separate section consisting of two prison advisors was established in Meymaneh.

By May 2008 an internal assessment was conducted, which showed that the Norwegian mentoring work was highly appreciated among the donor community active in the judicial sector. Donors highlighted the value of covering the entire chain-of-justice, along with the fact that work did not come with a particular political agenda. A continuation of the project was recommended, with an added focus on facilitating a clearer understanding of the role of each chain segment and on a tighter cooperation between the various participants. The assessment did note however that the close contact between the CRP and the Norwegian Embassy in Kabul which prevailed at the outset grew more sporadic after the autumn 2007.

Early in the autumn of 2008, the MFA requested an assessment from the Norwegian Embassy in Kabul of the CRP’s work. According to this assessment, the CRP seemed too detached from the rest of the Norwegian development assistance. The pool’s personnel appeared to have a limited understanding of the Norwegian priorities in Afghanistan. The service time in Afghanistan, which was typically six months, was too short to build the necessary contacts and trust. Finally, the assessment suggested that the pool’s focus on the special court for narcotics could serve as a way for legitimating the extensive corruption in this field. In a September 5th, 2008 meeting, the deputy ministers from the MFA and MoJ agreed to close down the CRP in Kabul by the end of 2008. However, it was agreed that the prison advisor project in Meymaneh should continue and be assessed as part of the overall Norwegian assistance to Faryab.<sup>9</sup>

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<sup>7</sup> Note MFA 17.03.2005

<sup>8</sup> Note MFA 30.03.2006

<sup>9</sup> Minutes from meeting MFA 05.09.2008

## THE RULE OF LAW SECTOR IN AFGHANISTAN

In Afghanistan as elsewhere, rule of law reform is a difficult and an inherently political process. Questions related to the shape, organisation and basis of the legal sector hits at the core of important elements of the conflict in Afghanistan. What is the basis for a legitimate government in Kabul? What should be the future balance between the centre and the periphery in the country? How are the interests between different entities balanced? Which legal traditions should be given prominence and which social groups will be empowered as a result? Finally, how is it possible to pave the way toward change without mobilising major interests against such efforts? As described in the opening quote of this report, the experiences of the British during two wars was the basis for Amir Abdur Rahman Khan's advice to his sons in 1900 about the dangers of fast-paced reforms.<sup>10</sup> These experiences were later shared by King Amanullah in the 1920s, King Zahir Shah in the 1960s, the People's Democratic Party of Afghanistan (PDPA) after the Saur revolution in April 1978 and the Soviets after the December 1979 invasion.

The legal sector has been neglected by the international community for many years, quite possibly due to the particular challenges described above. Motivated by the need to tame the opposition to the central government, curb corruption and undermine the narcotics industry, a stronger focus has more recently been placed on rule of law. With increased attention to justice issues and frustration over the slow pace of formal institution building various actors, including the military, has also turned their attention to informal mechanisms of justice and conflict resolution as a supplement to the formal justice system.

### *The legal system in Afghanistan*

Afghanistan's official judicial system was first established by Amir Abdur Rahman Khan in the late 19th century, as part of his efforts to centralise state power. The backbone of this system was the *Ulema* (Islamic scholars). Whereas the Ulema had previously adjudicated more or less autonomously from the state, Abdur Rahman Khan curtailed this autonomy by making the Ulema state employees, thus setting the stage for periods of accommodation, cooptation and confrontation between the state and the Ulema, and between Islamic and non-Islamic sources of law (Dorronsoro, 2005, Olesen, 1995).

Afghanistan's first constitution was written in 1923 under King Amanullah Khan. In an attempt to increase the monarchy's control over the administration of justice, (Gregorian, 1969) Amanullah established Afghanistan's first criminal code,<sup>11</sup> which codified Islamic criminal law and specified punishments.

A dual courts system was also confirmed in the 1964 constitution. The primary courts (*Mahkama Ebtidaya*) continued to be staffed by scholars trained in Islamic law and had a general jurisdiction over

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<sup>10</sup> The statement of Amir Abdur Rahman Khan is quoted at the start of this report.

<sup>11</sup> Criminal code of 1924-25.

civil and criminal cases. Provincial courts (*Mahkama Morafia*) had jurisdiction over specialised fields, such as administration and business, and also functioned as appellate courts for the primary courts. Finally, the Supreme Court (*Stera Mahkama*) in Kabul had powers to review all lower-level decisions.

In 1976, the Daoud government created the civil and criminal codes which remain in force today. The civil code is essentially a codification of *Hanafi Fiqh*.<sup>12</sup> The penal code also proceeds from Islamic law. However, it explicitly states that the code covers only those crimes referred to as *Taazeer*, which, in classic Islamic criminal Fiqh, are crimes where discretionary punishments can be decided by judges. The penal code recognises, but does not regulate, *Hudood*, *Diat* and *Qisas* crimes,<sup>13</sup> which are the three other categories of crimes in Islamic criminal jurisprudence. In practice, *Hudood* punishments, meaning set corporal punishments for theft, adultery, apostasy, etc., were rarely if ever carried out by Afghan governments prior to those of the *Mujahedin* and *Taliban*.

Afghanistan's legal system progressively disintegrated as the country was thrown into political instability and war after 1978. The PDPA government famously issued a decree shortly after coming to power,<sup>14</sup> which banned child marriage and provided a set punishment of six-month imprisonment for violators, a decree that, according to some, resulted in large scale public outcry and support for the *Mujahedin*. The PDPA also established revolutionary organs at various levels intended to dissolve the autonomy of legal institutions. However, there is little knowledge of how revolutionary organs interacted with, metamorphosed or displaced previously established legal institutions. A similar dearth of material concerns the operation of legal institutions in the areas controlled by the *Mujahedin* resistance movement. Roy (1990) suggests that in these areas, the Ulema were able to reassert control over society and that, with the tactical acceptance of the resistance leaders, the Ulema gained more or less of a monopoly over the distribution of justice. However, others emphasise the re-emergence or resilience of customary legal mechanisms (see below), as an explanation for the avoidance of the total collapse of Afghan society during conflict (Barfield, 2003).

The pre-existing courts remained in place under the Taliban government (1996-2001). In practice however, it appears that the courts' powers and jurisdiction over both civil and criminal cases were limited since the ad hoc religious courts established by the Taliban frequently heard and decided cases (Lau 2003). The Taliban did not attempt wholesale legal reform, but instead declared their commitment to Sharia and issued a number of decrees. They also implemented *Hudood* punishments in public.

Since its establishment, the official judicial system has coexisted and correlated with informal or customary law practices commonly referred to as *Jirgha* or *Shura*. *Jirgha* is a Pashto word which refers to a local/tribal institution of decision-making and dispute settlement. A *Jirgha* can be held at various levels and occasions. In its ideal form, a *Jirgha* consists of a group of respected male elders who collectively reach decisions – the embodiment of the egalitarian and autonomous ideology of

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<sup>12</sup> Fiqh is Islamic jurisprudence. It refers to the science of Islamic law derived from Islamic sources. There are four Sunni Fiqh schools, of which one is Hanafii and three Shia.

<sup>13</sup> Islamic criminal jurisprudence operates with four categories for crimes and punishments: *Hudood*, *Diat*, *Qisas* and *Taazeer*. *Hudood* are specific crimes for which there are set punishments, such as stoning or lashing for adultery, amputation for theft and so on. However, the conditions for implementing *Hudood* punishments are generally very strict. For instance, stoning for adultery requires a personal and voluntary confession or four witnesses. *Diat* refers to crimes liable to compensation or 'blood money', *Qisas* describes crimes where retaliation applies, whereas *Taazeer* crimes are ones where the judge (in times prior to codified law) can impose discretionary punishments for purposes of prevention and deterrence. Penal codes in Muslim countries often regulate only *Taazeer* crimes.

<sup>14</sup> Decree number 7.

Pashtun tribal society.<sup>15</sup> The administration of justice through Jirghas is generally focused on restoration, mediation and reestablishment of communal peace. In a murder case for instance, the role of the Jirgha would be to prevent a circle of revenge, and it might decide on a form of compensation, such as the marriage of women from the offender's family to the victim's. The extent to which the Jirghas and Shuras still have currency in contemporary Afghanistan is matter of controversy and is subjected to competing visions of statehood and nationhood. Thus, Jirghas (and to a lesser extent, Shuras) are heralded by some as uncorrupted and authentically Afghan, and denounced by others as patriarchal and out-dated, particularly because of the practice of exchanging women as compensation but also for various other acts in contradiction with the actions of the formal justice institutions and the Afghan laws and formal mechanisms.<sup>16</sup>

### ***The legal sector after 2001***

After 2001, the legal-framework and the justice-sector reforms have been attempted as part of the overall reconstruction and state rebuilding exercise. The 2004 constitution largely confirmed the three tier court structure and the position of the three justice institutions, the Supreme Court, the Attorney General and the Ministry of Justice (MoJ/A). The constitution also laid the basis for legal framework reform, resulting in the adoption of numerous laws for regulating the criminal justice system, including the Criminal Procedure Law, the Police Law, the Prison Law and the Advocates' Law. The criminal code from 1976/77 still remains in place.

A recurrent issue has been a lack of coordination and cooperation between the three main justice institutions, significantly contributing to the lack of a unified Afghan strategy. Of the three justice institutions, the MoJ/A constitutes the minor actor, tasked with drafting laws through its Taqin department and with overseeing the administration of the justice system overall. In contrast, the Supreme Court wields considerable power. It proposes judges for presidential appointment, oversees court administration, runs the professional training course (Stage course)<sup>17</sup> for judges and is the final court of appeal. The Attorney General Office (AGO) is also a highly autonomous institution, which appoints and oversees prosecutors at each level. It also monitors, investigates, prosecutes and appeals corruption cases, particularly the high level cases.

Reform efforts finally resulted in the National Justice Sector Strategy (NJSS), which was adopted in 2008 and developed as part of the Afghanistan National Development Strategy (ANDS). The NJSS is a five-year strategy which identifies three overarching policy reform goals that includes improving the institutional capacity to deliver sustainable justice services, improving coordination within justice institutions and with other state institutions, and improving the quality of justice services. The NJSS is to be implemented through the National Justice Programme (NJP), which establishes an operational

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<sup>15</sup> Whereas the Jirgha is commonly portrayed as a self-contained institution operating in a setting devoid of government intervention, and thus the very antithesis to central government, actual relations have been more symbolically and institutionally interdependent. Noelle-Karimi argues that 20th century Afghan state builders utilised the Jirgha concept to generate political legitimacy. As Noelle-Karimi states, 'by projecting a continuum of nested Jirghas reaching from the village council to the centrally organised Loya Jirgha, the Muhammadzai government effectively tapped the associative content of the rural institution for its own purposes.' NOELLE-KARIMI, C. (2006) Village Institutions in the Perception of National and International Actors in Afghanistan. *ZEF Working Paper Series*. Center for Development Research, Department of Political and Cultural Change, University of Bonn. p. 6

<sup>16</sup> The Taliban to some extent appropriated such 'customary' Jirghas but, in accordance with their Islamic, anti-tribal image, renamed them as Shuras. As a word of Arabic origin associated with the early days of Islam, the name Shuras was used in order to give customary laws and practices a more religious appearance. JONES-PAULY, C. & NOJUMI, N. (2004) Balancing relations between society and state: Legal steps toward national reconciliation and reconstruction of Afghanistan. *American Journal of Comparative Law*, 52, 825-857.

<sup>17</sup> Stage course is a generic term for the mandatory professional training courses for judges, prosecutors and lawyers. In Dari the mandatory professional study for judges is called 'Course –e-Stage Qzayee'.

framework and expected results and outputs. However, by mid 2010 the achievements and relevance of the NJP was increasingly put into question, as the programme was highly ambitious but lacking in expected results. Key personnel were yet to be recruited, levels of implementation were low and national commitment appeared to be on the decline. The 2010 Kabul Conference also generated a new set of ‘outputs’ for the justice sector, albeit ones that represented an attempt towards progress demonstration rather than ones as part of a comprehensive plan for the sector.<sup>18</sup> Despite these limitations however, many regarded the process of arriving at these common outputs as a positive and indicative of the possibilities for closer cooperation between the national justice institutions.

### ***The justice sector in Faryab province***

As is the case for many of the other Northern provinces, Faryab is considered secondary in terms of political and military significance. As a consequence, aid to this province generally and to rule of law specifically, has been relatively modest compared to many other provinces.

While conducting a thorough assessment of the justice sector in Faryab was beyond the scope of this review, the breadth of the team’s research allows space for making a few observations about the justice sector. For starters, several key infrastructural improvements have been completed in recent years. The provincial court building has been thoroughly renovated. A new provincial AGO building has been constructed with Italian funds, and a new provincial prison was being finalised at the time of writing.<sup>19</sup> The Provincial Police Department is well equipped and has been recently renovated by the Ministry of Interior (MoI). Several district court buildings have also been constructed or rehabilitated.

At the same time, the infrastructure and supplies are entirely inadequate in other areas. As a rented facility, the MoJ provincial building with Department of Justice (DoJ) is not considered adequate. The Juvenile rehabilitation centre, which is also located in a rented building, has been recognised by local government officials as needing some serious attention. While the team was unable to travel outside of the provincial capital, the district-level detention centres are reported to be in dire states.<sup>20</sup> Law books and relevant reference literature were in short supply or simply did not exist. Stationary, computers and other office equipment were also lacking.

Finally, security was mentioned as a key challenge by all main actors, who also considered the arrangements put in place by the government as inadequate. For instance, the chief prosecutor argued that the number of police assigned to protect the AGO building was insufficient and judges complained that their residences were unsafe and they lack both guards and transportation.

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<sup>18</sup> The ANDS’s Prioritization and Implementation Plan (PIP), which was a national plan presented to donors at the Kabul Conference, identifies four sub-programme priorities that needs to be accomplished within 2010-2013 in the field of justice and rule of law. These programs are:

- (i) Improving physical infrastructure and equipment, and conducting administrative and organisational reform to improve service delivery;
- (ii) Finalizing commentaries for Civil and Penal Codes, reviewing and revising laws and optimizing the law-making processes, and simplifying operational processes; and
- (iii) Creating a dedicated police force tasked for providing security to judges and other justice personnel; and
- (iv) Improving access to justice to the Afghan people through a range of initiatives, including (i) addressing the urgent need to link together the informal and formal justice systems; (ii) creating legal awareness; (iii) promoting legal aid; and (iv) improving criminal punishments.

<sup>19</sup> Finland financed the construction of a new prison for female prisoners, while Norway is financing the construction of a new facility for male inmates.

<sup>20</sup> From September to December, the Norwegian prison advisors mapped all the detention facilities in the districts of Faryab and presented the results in a separate report. None of the centres were found to be of acceptable standards. The advisors recommended a reduction in the number of district detention centres and the construction of new facilities throughout the province.

## **Capacity**

The team could not thoroughly assess the capacity of each provincial department in the rule of law (RoL) sector during a short visit. However, the need for systematic and comprehensive training was underlined by all parts of the sector. Judges argued that rather than training on text of the law and its theoretical underpinnings, as exemplified by the training courses held in Afghanistan by senior Egyptian experts in Islamic law, more training on the application and practice of law is needed. Senior judges in Faryab explained that from time to time the Supreme Court would decide which judges needed to attend training in Kabul. The judges, however, emphasised that, since they were better acquainted with the knowledge and needs of individual judges in the province, they themselves were best placed for designing training courses and, at the very least, should be consulted when making decisions about training needs. It was also argued that judges faced difficulties because of weak preparation of files by prosecutors and the police.

The Chief prosecutor reported having limited contact with the AGO in Kabul and had little knowledge of national priorities in the sector and the existence of any central capacity-building strategy for the prosecution service. He stated that the AGO in Kabul was in the possession of the necessary competence for capacity building in the provinces and districts. Yet the financial resources necessary for utilising this competence were lacking. According to the AGO in Kabul, they had no detailed overview of the capacity needs in the provinces. However, their general experience was that assistance to build technical capacity as well as legal and administrative capacity would be most welcome, on the provincial as well as district levels. It was also reported that prosecutors and judges at the district level tended to be those with the greatest training needs. In fact, these district-level positions have proven to be difficult to fill due to the dire security situation and the general hardships that accompany these posts. Hence, the situation encourages well-qualified personnel to seek employment elsewhere. Indeed, out of province's 59 judge positions, only 23 were currently filled.

## **Coordination**

In Faryab the governor is facilitating a justice sector coordination meeting on monthly basis. This brings the provincial heads of various justice institutions together to discuss major justice related matters, including the proceedings of particular cases in the court system. It also includes cases introduced by the AIHRC. Some interlocutors expressed doubts about the capacity of these meetings to serve as sufficient venues for developing a mutual understanding between the different institutions. At the same time, others expressed support for these meetings as a positive step forward in facilitating coordination.

Coordination and communication between provincial actors and their national counterparts appears to vary. In general, the Kabul-based observers and the provincial actors themselves suggested that the MoJ and the Supreme Court (SC) maintain closer relationships with the provinces versus the more distant Attorney General Office (AGO).

## ***International support to the justice system***

In 2002, Italy was the 'lead nation' for judicial reform assistance. Yet, as is the case with aid from most of the five lead nations for the main sectors, progress had been and continues to be very slow. With the increasingly dominant role played by US in judicial-sector assistance (Tondini, 2009) overall

judicial aid is now increasingly focused on judicial reform as a tactical move for undermining the strength of the Taliban.

The United Nations Development Programme (UNDP) has justice-sector programmes at the district level, comprising awareness raising, training and infrastructure support. In addition to their support for criminal law reform, the United Nations Organisation on Drugs and Crimes (UNODC) runs shorter criminal justice training courses for the judicial staff.

Other prominent actors within the justice sector are the Bureau of International Narcotics and Law Enforcement Affairs (INL), the United States Agency for International Development (USAID), the International Development Law Organization (IDLO), the Italian Cooperation Office (ICO) and the European Union Police Mission in Afghanistan (EUPOL). The INL has established the Justice Sector Support Program (JSSP) in various provinces, including Faryab. The JSSP trains prosecutors and investigative police through a combination of class instruction and mentoring. Plans exist for extending this training to judges and defence lawyers. In addition, more occasional mentoring of senior staff, such as provincial chief prosecutors and judges, are also carried out. The JSSP also has various programmes at the central level, including technical support, mentoring and advising to the MoJ/A and the AGO. The JSSP is also developing an ambitious case management system which involves setting up a single electronic file for each criminal case that can be used and updated by actors throughout the criminal justice chain.

USAID has recently divided its RoL programme into two parts, one informal and one formal component implemented by two different agencies. Reflecting the tendency of US actors to explicitly argue that the support to the Taliban is linked with the faltering formal justice system, both of these programmes are now focused on the South and East, where the insurgency is the most potent. USAID has previously focused on training judges and will continue activities in this field, although some of work will now be picked up by JSSP.

The IDLO has been a main actor in the areas of training and capacity building. It supports the Independent National Legal Training Centre, which runs the mandatory *Stage* courses for prosecutors and lawyers (The Supreme Court runs the *Stage* course for judges.) In addition, IDLO provides a number of shorter courses for legal personnel. Italy has channelled most of its support through the Italian Cooperation Office (ICO). They have been heavily involved in the development of a national strategy. The ICO's programmes, which involve prosecutor training, will take place mostly in the Herat province in accordance with the Italian governments increased focus there.

As mentioned above, in recent years the international military effort in Afghanistan has taken a keen interest in the justice sector. Military concerns now inform the priorities of much of the donor support, as exemplified in the USAID RoL programme. The International Security Assistance Force (ISAF) regularly holds RoL conferences and various workshops at different levels. The ISAF also has RoL officers in various places, although so far many of these seem largely focused on mapping out possible interventions.

Efforts to provide and develop training programmes for justice officials have taken two forms, one dedicated to strengthening basic education and one focused on supplementary 'on the job' training for those already appointed. While the law required judges to hold a degree from a law or Sharia faculty, some judges are still hired with nothing more than madrasa and high school qualifications. However, since 2006 all new judges are required to complete a one-year training programme in the legal profession. Judges appointed before this time are required to take an intensive one-month course

called the Foundation Legal Training Programme. In theory, all sitting judges have now completed one of these two courses, although according to the United Nations Assistance Mission to Afghanistan (UNAMA), these training ideals are in fact far from the reality. Prosecutors must have a university degree, and are also required to undertake a one-year training course in the legal profession. Again, it appears that a significant share of actual prosecutors do not meet these formal requirements. Similarly, lawyers must have a degree in law or Sharia and must complete the year-long *Stage* training course for lawyers

In addition to these training programmes, a number of shorter on the job training efforts have been provided by various donors and organisations. These have tended to focus more on prosecutor training, sometimes in conjunction with police training, and less on training judges. A lot of these courses have been criticised for being superficial, supply driven, uncoordinated and overly focused on the criminal law. The Supreme Court and the AGO have both attempted to retain greater control over the training content, but they have only succeeded to a certain extent. According to UNAMA this kind of training is rarely evaluated and typically conducted without a baseline, making it difficult to assess its impact. Moreover, the team was frequently presented with calls for training programmes less focused on general theoretical issues and more focused on practical applications. It was communicated to the team that this could best be achieved by combining classroom teaching with practical mentoring on the application of classroom lessons.

Since 2007, calls for state recognition of and support to informal justice institutions have gathered pace, although whether or not and to what extent the Government and donors should relate to the informal system remains a controversial issue. USAID is currently carrying out pilot projects in four districts in the south and east of the country, which explore ways of working with customary justice institutions. The Ministry of Justice in Afghanistan (MoJ/A) is preparing a law intended to formalise relations between formal and informal justice institutions.

As discernable in the paragraphs above, it is widely asserted that support to the formal justice system has not met expectations, whether measured in terms of delivery or results. Today, the justice sector continues to face a number of challenges, including the constant deterioration of security, the lack of protection mechanisms for judges and courts, the persistence of low salaries (although partly addressed for judges), the uncoordinated fashion of international assistance, the continual infrastructural and staffing needs and the frequent political interferences with the judicial institutions, particularly those located in Kabul. Frequent transfers between the provinces and Kabul of senior justice-sector staff adds to the challenges by undermining the possibility of retaining competence and experience locally over time. This will remain a particular concern for the proposed provincial-focused project.

### ***Coordination of the sector***

Within the UN system, the UNAMA retains an overall coordinating role. In recognition of the fragmented way the justice-sector support had been delivered, the UNAMA (formally in collaboration with the UNDP) established the Provincial Justice Coordination Mechanism (PJCM) at the regional level. The PJCM was supposedly functioning to coordinate provincial donor assistance and align it with the NJP, as well as to facilitate communication and information sharing among the parties involved in justice-sector aid. Although there seemed to be a consensus that this coordination

mechanism was needed, high staff turnover, security constraints and varying levels of commitment from the aid participants meant that coordination was difficult to carry out in practice.

The early years of justice reform was characterised by uncoordinated bilateral assistance, reinforced by the lack of a unified strategy from Afghan authorities. This meant that much of the aid was delivered according to what donors were able to provide, rather than according to the needs identified by the Afghan government. The supply-driven nature of aid delivery improved somewhat with the completion of the NJSS, although the practical relevance of this strategy remains in question (see above).

## FINDINGS

### *The security situation*

Faryab has for a long time been seen as one of Afghanistan's more peaceful provinces. In recent years however, signs of the escalating conflict between the government in Kabul, the international forces and different opposition groups have also been evident in Faryab. In particular, the situation has deteriorated sharply in the last six months, and the local population now faces a hazardous security vacuum. The deteriorating security situation is linked to increased tensions between Pashtun and Uzbek areas and populations, tensions partly fuelled by huge differences in development assistance levels. Moreover, a mixture of provincial-wide opposition and criminal activity is on the rise. The result is a dramatic restriction of movement not the least among local NGOs, who, in August 2010 were limited to operating in Meymaneh and its immediate surroundings.

The attempts by a presidential decree to establish local security forces (*Arbakai*)<sup>21</sup> with links to local strong men have received mixed reactions from the population. Several statements indicate the fear that this might lead to competing militias increasingly involving in local power struggles, undermining any attempts to strengthen the security.<sup>22</sup>

### *The proposed programme in the provincial context*

So far, the proposed RoL programme in Faryab has been conceived in rather vague terms and presented as such to the research team. No concrete plans describing the programme's focus, objectives, organisation or scale have yet been formally articulated. As a consequence, the team decided to structure the review around a broad discussion regarding the current needs and priorities of the justice sector in Afghanistan generally and in Faryab in particular. The review represents an assessment of how a provincial RoL programme facilitated through a Crisis Response Pool in Faryab might fit into this landscape. The team made efforts to obtain the views of relevant Norwegian officials on exactly what a CRP in Faryab would entail. The content of previous Crisis Response Pool programmes in other countries formed another point of reference for the team's review.

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<sup>21</sup> *Arbakai* is the name of a tribal militia organised at the order of the elders in the village in south-eastern and eastern Afghanistan. GIUSTOZZI, A. (2008) *Koran, Kalashnikov and Laptop: The Neo-Taliban Insurgency in Afghanistan*, London, Columbia University Press.: 171-172

<sup>22</sup> The Afghan Analysts Network circulates several articles covering this issue, like Thomas Ruttig, *Another Militia Creation Gone Wrong*, posted on 18.10.2010 (<http://aan-afghanistan.com/index.asp?id=1234>) and Martine van Bijlert, *Enclaves of Optimism*, posted on 19.10.2010 (<http://aan-afghanistan.com/index.asp?id=1238>) Checked 22.10.2010

The CRP in Georgia and Moldova has mainly operated on the national level. It has extended support to the national justice-sector reform processes, such as the development of a new criminal code, establishing strict routines for pre-trial detention, etc. Given resource needs and demands for uniformity, it is obvious that these types of initiatives cannot be undertaken solely at the provincial level.

However, since the RoL field at Afghanistan's central level is getting increasingly crowded, it could be argued that in Afghanistan, working at the provincial level might be a more appropriate strategy. It was clear that the justice sector in Faryab has, until now at least, received comparatively little attention from the international community. Not surprising, assistance in any form was generally welcomed by most provincial actors. The Prosecutor's office and the Chief Judge in Faryab voiced their specific support to the RoL programme.

A provincially-based CRP would undoubtedly require certain adjustments in its approach compared to earlier CRP programmes implemented mainly at the national level in other countries. First, the personnel profile should be somewhat different from the profiles of the mentors sent to support national-level actors. At the provincial level, the focus would be on improving the functioning of the provincial justice institutions in their every-day work rather than conceiving and supporting large reform processes. Therefore, personnel who are senior experts in their field would not be necessary. Instead, legal personnel in the middle stages of their careers and with some years of practicing would seem more relevant and appropriate. Moreover, all the people consulted for this report made it clear that mentors must be willing to commit for at least one year, preferably longer. One person interviewed stated that six-month deployments would simply be a waste of time.

Knowledge of Islamic law, which constitutes the basis for Afghan criminal law, is another important consideration when accounting for the professional competence of future advisors. In an August 2010 interview, the State Secretary and the Secretary General of the Ministry of Justice specified that the establishment of a CRP in Faryab would have to be properly adapted to local conditions and needs, with a focus on professionals well acquainted with the cultural context and Islamic law. There was some expressed uncertainty about whether or not a sufficient number of the current Norwegian professionals in the CRP had the necessary background, particularly in Islamic law. Perhaps professionals from other parts of the world would have to be recruited for meeting this qualification. Other legal-sector programmes in Afghanistan have made extensive use of Egyptian legal professionals, as Egypt's legal system is based on the same Islamic school of law as Afghanistan's. The team found some expressed support for the notion that the Afghan institutions rather than foreign experts were better suited for training district-level judges. However, others were concerned that senior Afghan experts would not be available for deployment outside Kabul for extended periods. Some were also concerned about the prospects of sending junior Afghan professionals for training purposes. Their junior status would most likely meet negative responses from those senior judges in the districts not wanting "youngsters telling them how to do their job". A combined approach might be more useful, one where foreign mentors train the junior personnel in cooperation with senior Afghan officials. Whatever the approach might be, ensuring availability of appropriate personnel appears to be a key condition for the establishment of a successful programme. This would then most likely imply recruitment from outside the pool of legal personnel presently available in Norway in order to secure programme success.

In the view of the team, and of those Afghan and international professionals working with similar programmes elsewhere in Afghanistan, a fundamental prerequisite for a successful mentoring

programme is the establishment of mutual trust. Mentoring must not be turned into supervision, where mentors use their leverage to attempt to make their counterparts undertake actions that they, for political, monetary or security concerns, are unwilling to consider. If there is an absence of 'political will' to develop professionalism in this sector, there is little reason to believe that mentoring can succeed. In other words, the integrity of key Faryab justice actors must be assessed thoroughly in advance of setting up a programme. Likewise, the programme should emphasise a balanced approach that accounts for all the institutions in the RoL sector. Any institution that is selected should be based on Afghan national plans and priorities and in close coordination with the concerned parties on the national level and in the province.

Furthermore, in the prison advisor project the team found that the presence of international advisors prompted a heightened interest among other institutions in the sector for developing relations to the prison leadership. It was indicated that this related to the fact that the prison leadership were in close relation to the PRT and the Norwegian advisors.

There are however, a number of risks that such a programme is likely to face. During the interviews, the team was exposed to several examples of rivalry and lack of trust between institutions within the justice sector. The mentors could become pawns in these rivalries between institutions. Indeed, some of the interest in the programme expressed by various justice actors in Faryab could to some extent be grounded in such agendas. For instance, the police expressed hope that a Norwegian legal advisor could strengthen their standing vis-à-vis the other legal institutions, as they felt their views were not respected. Mentors were also welcomed on the basis that they could play a role in ensuring resources and help represent the interests of the provincial justice actors vis-à-vis the centre, especially in relation to funding allocations. Here, there is a risk that the mentors themselves will contribute to the emergence of a parallel system that bypasses and undermines due process in terms of relations between Kabul and the provinces.

### ***Relations to national actors and processes***

In addition to the above recommendations, the relevant institutions must be consulted in developing the programme. It is also important that, during its implementation, the programme is linked up with and feeds into national processes and forums. Here, it is also crucial that the experiences harnessed by other organisations are incorporated into the Norwegian programme. For example, one aspect of the Faryab justice system that features prominently in the Norwegian media and in the concerns of visiting Norwegian delegates are the number of women imprisoned for so-called 'moral crimes', such as adultery, running away from home or even rape. However this issue has also raised considerable consternation across Afghanistan and among a number of actors, including some of the prosecutors. Organisations like AIHRC, JSSP, UNODC and UNIFEM have made considerable efforts in addressing this situation. One key lesson to be taken from their efforts is the importance of legal aid provision as many defendants continue to have no access to a lawyer.

While the programme would be implemented at the provincial level, anchoring the programme to national actors and ongoing national-level processes would nevertheless be of crucial importance. Both the SC and the AGO argued that the programme should be developed in close consultation with them, ensuring that it meets the needs of the sector, reinforces existing strategies, includes capacity-building priorities and does not duplicate other efforts. In addition, it will be essential to have the buy in of central institutions for ensuring continuity of the staff in Faryab. If a programme is initiated in

Faryab, there will be an absolute necessity to have a designated follow-up person at the Norwegian Embassy in Kabul in order to ensure a strong element of coordination at the national level.

### ***Allocations for equipment and infrastructural developments***

Norwegian mentors should have funds at their disposal. Having access to basic working equipment, such as stationary, legal texts, etc. is vital for ensuring their ability to perform core duties. Moreover, complete absence of such funds may generate some resentment among the national counterparts. One individual consulted for this study pointed to the potential resentment brought about where a national counterpart finds the Norwegian government willing to spend thousands of dollars on sending one person to Faryab, yet the same government “will not even give me a pen to write down the advice he is giving me”. With the experiences of the Meymaneh prison advisor project in mind, any running-cost allocations to any of the institutions should be granted in a transparent manner and in scale with national budgets and priorities, thus avoiding the creation of an excessive imbalance between different provinces. Likewise, if a programme is established, Norway should be ready to allocate funds for making infrastructural improvements in the sector in Meymaneh as well as in the districts. Again, this support should be in line with national standards and priorities.

### ***Security concerns***

The most serious challenges are those related to security. The need for force protection for the ability to work in Faryab, even if the work is limited to Meymaneh, will increase the burden on the PRT. Clarification must be made as to whether or not the MoJ and MFA will be in a position to allocate additional funds to cover these expenses. There should be additional clarifications with regard to the PRT’s capacity to organise force protection for the project or the ways in which the limitations in force protection might limit the effectiveness of an established CRP. Upcoming decisions related to the future and orientation of the Norwegian PRT in Meymaneh might have fundamental consequences for the possibility of establishing the proposed project.

### ***The need for planning***

Finally, the complexity of the rule of law field, along with the myriad of donors, initiatives and actors, demands proper programme planning. The programme must be clear on just what the needs and possible achievements are. It must formulate objectives, priorities and strategies according to those needs and intended achievements, and it must be sure to draw upon existing knowledge and experience. The recruitment of appropriate personnel must be given a considerable amount of thought. Attention needs to be paid to ensuring that the personnel are well informed and thoroughly coordinated with other actors and ongoing efforts within the sector.

In order to have a meaningful impact, the team believes that the programme must run over several years. Equally important is the establishment of formalised procedures for reporting and handing over information and responsibilities to others, thus ensuring the development of a sustained “project memory” and avoiding scenarios where each new team is forced to build from scratch their knowledge of and familiarity with the justice-sector landscape nationally and in Faryab.

## CONCLUSIONS & RECOMMENDATIONS

### *Conclusions*

The possibility of a Norwegian engagement in the rule of law sector is generally welcomed by Afghan and international interlocutors and is seen as positively related to the actual needs within the sector. More specifically, a mentoring programme with a focus on key justice-sector institutions is widely viewed as a positive contribution to the rule of law. The fact that the programme would run only in Faryab, as opposed to the mainly national focus of CRP programmes elsewhere, could be seen as an argument against launching this programme. However, there is a limited understanding of what the concept of a Crisis Response Pool in Faryab might actually be in practice. Should a decision to develop the project further be made, commitment to articulating a detailed project proposal and a robust planning process would be essential. Planning will have to be based on a broad examination of those factors that might impact the project, including legal factors, considerations of good development aid practice in a conflict area and factors related to the overall provincial and national context.

Likewise, the project will have to be built around **strong commitments to coordination**. Indeed, the importance of linking up with central institutions, like the Supreme Court and the Office of the Attorney General in Kabul, has been emphasised by all parties. A dedicated focal point at the Norwegian Embassy in Kabul and at the Embassy office in Meymaneh will be vital for ensuring that the programme is not conceived and implemented in isolation from other national and international actors and experiences. The proposed establishment of a Crisis Response Pool at the provincial level in Faryab also raises obvious questions about what kind of **qualifications** will be needed. Do a sufficient number of the available CRP personnel have the relevant knowledge and experience demanded by particular judicial issues of an Afghan and an Islamic context? If not, there is the possibility that recruiting staff from outside of Norway will be required. This would seem to be contradictory with the original idea behind the establishment of the CRP. Clarifications on these questions would be a first step in any further planning of a CRP in Faryab.

The **security of the personnel** deployed in the field is another issue of special concern for their employer, the MoJ in Oslo. Close support from the Norwegian-led PRT in Meymaneh is seen as a precondition for any CRP establishment in the province. The view of the PRT is that the present capacity of the Meymaneh camp is sufficient to service three to four additional CRP personnel. The first and foremost limitation will be the lack of available force protection for the personnel when moving from the camp to various sites within Meymaneh. Planned movements to district administrations outside Meymaneh will, however, require additional resources for logistics and protection. In its present capacity, the PRT will probably not be able to cover these additional needs. Therefore, a CRP project would have to budget for additional logistics and force protection.

The need for security personnel highlights the intimate connection between the CRP and the PRT. Any decision regarding the future existence and shape of the PRT in Meymaneh would therefore profoundly impact on the proposed CRP in Faryab. Therefore, further CRP planning must be tied to developments of and timeframes set for the PRT.

## *Recommendations*

An extended Rule of Law project in Afghanistan, one that establishes a Faryab focused Crisis Response Pool, seems to be **an appropriate response** to the existing challenges in the judicial sector. If built around robust coordination with key donors and national-level Afghan institutions of justice, a CRP initiative might even establish models capable of informing other programmes in other parts of the country.

Any extended Rule of Law project must recognise that the complexity of the justice sector and the extensive but fragmented donor assistance would **demand a long-term commitment**. This includes a commitment from the Norwegian Embassy in Kabul as well as from the Embassy office in Meymaneh. Furthermore, additional resources would have to be allocated by the MoJ in Oslo in order to manage such an engagement. This is especially important in relation to the allocation of resources in Faryab, allocations that need to be guaranteed prior to initiating any project. Project planning would have to be a joint MFA and MoJ exercise and would have to draw on relevant development expertise.

Assessments should take into account the **availability of resources** within the established pool in Norway. Will the pool's expertise be sufficient enough or, as indicated by the MoJ, will better qualified personnel have to be recruited from elsewhere? If recruitment from outside Norway takes place, will this then be in accordance with the guidelines and aims established jointly by the MFA and MoJ?

The team concludes therefore, with aforementioned concerns and challenges, with the development and **security uncertainties** in Afghanistan in general and Faryab in particular, and with the questions currently being discussed about the future of the Norwegian-lead PRT in Faryab, that the conditions for establishing the proposed Crisis Response Pool are not sufficiently favourable.

While there are clear signs that an extended rule of law project would, under certain conditions, yield some benefits for the justice sector, it is plainly clear that **there are simply too many uncertainties for the team to recommend that the MFA and MoJ proceed with the proposed project**. Important concerns related to the **feasibility**, and as a consequence the **sustainability** of a Norwegian engagement as presently outlined, remain.

# **Addendum 1: Terms of Reference**

28 May 2010

## **Terms of Reference for Review of the Prison Advisory Project in Meymaneh and Appraisal of the proposed establishment of a wider Rule of Law Project in Faryab**

### **I. Background**

The Norwegian Rule of Law pool was established in 2004 in co-operation between the Ministry of Justice and the Police and the Ministry of Foreign Affairs. The rationale for the establishment of the pool was to strengthen Norway's contribution to international crisis management operations, based on the belief that rule of law is a prerequisite for development of stable democracies. The Rule of Law pool is a roster, comprising 80 - 90 experts. There are judges, prosecutors, defence lawyers and prison advisers on the roster.

In Kabul in Afghanistan a project under the Norwegian Rule of Law pool was implemented in the period 2005 to 2008. Up to five Norwegian experts worked together with Afghan, US and UK personnel for the Criminal Justice Task Force – a specialised court/prosecutor's unit for drug related offences.

In 2007 the Prison Advisory Project was established in Meymaneh, Faryab as a bilateral project. One important reason for the establishment of the project was the fact that Finland had financed a new prison ward for women in Meymaneh. However, Finland was not able to provide any training of the Afghan prison personnel. Since Norway had prison advisers available in the Rule of Law pool, it was decided that Norway should take on the responsibility of training and mentoring the prison personnel.

The Review/Appraisal will cover the following:

#### **a) The Prison Advisory Project**

The overall objective of the project is promoting human rights by improving the treatment of prisoners, with a special focus on female detainees and their children.

The project consists of two advisers from the Norwegian Correctional Services. The main activities cover training of Afghan prison personnel, improving prison conditions and providing meaningful activities for prisoners.

The annual budget for the project amounts to approximately NOK 3,3 mill (salaries, benefits, travel, and accommodation etc. for two Norwegian advisers).

#### **b) The proposed establishment of a wider Rule of Law Project in Faryab**

The idea of a wider Rule of Law Project in Faryab came up as a result of the recent visit (April 2010) to Afghanistan of the Minister of Justice and the Police, Mr. Knut Storberget. Based on his earlier visits to other Norwegian Rule of Law Projects, the Minister felt that it was worthwhile considering establishing a project along the same lines in Faryab.

The Norwegian Pool of Rule of Law Advisers has been able to provide advice and assistance regarding institution-building in every part of the criminal justice system. The objectives are democracy-building and establishing rule of law in countries that have been subject to war or internal

conflict, or in countries in transition from totalitarian regimes to democracy specifically in the following fields:

Advice and assistance in developing an independent judiciary.

Advice and assistance with training at all levels in international human rights law and the application of international human rights conventions at all levels of the criminal justice chain.

A bilateral Rule of Law Project would typically consist of judges, public prosecutors/police lawyers, defence lawyers and prison advisers.

For the time being there are ongoing bilateral projects in Georgia and Moldova. The cultural and political context is obviously extremely challenging in Afghanistan compared to the situation in Georgia and Moldova. Scanteam conducted an independent review of Norlag and Norlam (Final report June 2009). Both projects have introduced many reforms. Although the projects have supported further improvements in legislative frameworks, the main thrust has been to improve knowledge of new laws, stimulate the appropriate mind-frames, and help counterparts adapt practices to fit new requirements. Both projects are often said to have a catalytic effect on the role-understanding among drivers of change across the range of legal chain actors.

One of the lessons learnt from Georgia and Moldova is that national authorities' political will and motivation for the reform process is a prerequisite for obtaining reform of the justice sector. Promoting good governance and strengthening the rule of law in these two European countries is of course very different from the situation in Afghanistan. Another important difference between a new project in Faryab compared to the projects in Georgia and Moldova, is the fact that in Faryab one would have to work at the provincial level. Legislative and other judicial reforms would normally start at the national level. It would seem important that a project at the provincial level be linked to national authorities and their priorities.

The main objective of the Norwegian engagement in Afghanistan is to support the Afghan authorities in their responsibility to ensure stability, security and development. Afghan national and local development plans form the basis for Norwegian assistance. Afghan ownership, sustainability and co-ordination of Afghan and international efforts should be ensured. According to the "Strategy for comprehensive Norwegian civil and military efforts in Faryab province, Afghanistan", Norway aims to be a driving force in the development of models for strengthened national ownership ('Afghanisation') and for support to UNAMA's lead role as a co-ordinator of international efforts, also at the provincial level (May 2009). A bilateral Rule of Law Project in Faryab should be considered on the basis of these established political principles for Norwegian development assistance to Afghanistan.

## **II. Purpose and objectives**

a) The main purpose of the review of the Prison Advisory Project in Meymaneh is to have an assessment of this particular development project and to provide guidance as to whether this assistance should continue, and if so, how it should be organized in the future.

Objectives:

- Assess effectiveness of the project in relation to national plans for reform of the prison sector, with particular focus on the actual prison in Meymaneh and, if relevant the prison sector in the Faryab province

- Assess the extent of co-ordination among Afghan authorities and other international donor efforts in this field.
- Assess the impact of the project on the awareness of human rights in the prison administration and among the prison wardens in Meymaneh. Assess the impact on the treatment of prisoners in general and female prisoners and their children in particular – in the prison in Meymaneh, and to the extent possible in prisons in Faryab, and to what extent these changes through the experiences in Meymaneh may influence national policies.
- Assess the efficiency of the project
- Assess to what extent the project could serve as a pilot/model project to be used by Afghan authorities in other provinces

b) The main purpose of the appraisal of a proposed extended Rule of Law Project in Faryab would be to assess the relevance of the project in relation to Afghan development plans and priorities, its feasibility, assess the possibility of national ownership and sustainability, possible risks and how such a project could be co-ordinated with other donor efforts.

Objectives:

- Assess how and to what extent the project could contribute to reform of the justice sector in the Faryab province.
- Assess the sustainability of a provincially focused project in a national context.
- Assess the extent of co-ordination among Afghan authorities and other international donor efforts in this field.

### **III. Scope of work**

a) The review of the Prison Advisory Project should include the activities implemented since 2007 in Faryab.

The review should include the following elements:

- Effectiveness i.e. the extent to which the purpose has been achieved or is expected to be achieved. To what extent has the project had an impact on the treatment of prisoners in the prison in Meymaneh? To what extent has the project had an impact on the prison system in Faryab? How has the objectives been achieved?
- Relevance i.e. the extent to which the objectives of the projects are consistent with the national development plans and priorities locally identified and prioritised needs and donor's priorities.
- Co-ordination i.e. the extent of co-operation and co-ordination with other international donor efforts within the prison sector.
- Efficiency.
- Sustainability i.e. the probability of continued long-term effects after the project has been completed.

The conclusions should indicate the major strengths and weaknesses of the Prison Advisory Project.

The recommendations should provide guidance as to the continuation or discontinuation of the Norwegian assistance through the Prison Advisory Project, and to the usefulness of the project as a pilot or model project for other provinces.

b) The main purpose of the appraisal of the proposed extended Rule of Law Project in Faryab is to have an assessment of this proposed provincially focused development assistance in the justice sector in an Afghan context. Is it deemed to be a realistic and sustainable approach to concentrate on judicial reform solely in one province?

The appraisal should include the following elements:

- Relevance i.e. the extent to which the objectives of the project are consistent with national development plans and priorities, locally identified and prioritised needs and donor's priorities.
- Feasibility, including co-ordination i.e. the extent of co-operation and co-ordination with other international donor efforts within judicial sector
- Sustainability i.e. the probability of continued long-term effects after the project has been completed

The conclusions should indicate the major strengths and weaknesses of an extended Rule of Law Project in Faryab. The recommendations should provide guidance as to the establishment of Norwegian assistance through a wider Rule of Law Project.

#### **IV. Implementation of the review/appraisal**

##### Organisation

Norad will conduct the review/appraisal on behalf of the Ministry of Foreign Affairs.

##### Team

The review team should consist of three members, including a local consultant. The team should preferably comprise expertise on the Afghan context, judicial reform, development co-operation and aid effectiveness. The team will be headed by Norad.

##### Data collection

In Norway, the review should include document reviews and interviews with relevant officials in the Ministry of Justice and the Police (MJP), the Ministry of Foreign Affairs (MFA) and former prison advisors to Meymaneh. The review should include field visits to Faryab, with focus on Meymaneh and if possible one or two additional districts, and Kabul. The team should meet with and interview main stakeholders in Meymaneh, including prisoners, and Kabul, international donors such as EUPOL-A and UN agencies, as well as the Norwegian Embassy in Kabul and the civilian component of the PRT Meymaneh. Key players within civil society in Afghanistan should be identified and interviewed, with a particular focus on women organisations. The Afghanistan Independent Human Rights should be consulted. An overview of informants should be developed in consultation with the MFA, MJP, the Embassy in Kabul and the civilian coordinator in the PRT Meymaneh.

Field work in Afghanistan should take place during August 2010. A draft report on the Prison Advisory Project should be presented within 1 September 2010, whereas a draft report on a wider Rule of Law Project should be presented within 1 October 2010. The Ministry of Justice and the Police and the Ministry of Foreign Affairs could comment on the draft reports within two weeks after the presentation, before the reports are finalised.

The report on the Prison Advisory Project should be approx. 10 pages, plus an executive summary in addition to relevant annexes. The report on a wider Rule of Law Project should be of no more than 20 pages, plus an executive summary, in addition to relevant annexes. Both reports should be written in English. The reports should be submitted electronically to Norad.

#### **V. Budget**

A separate budget will be agreed upon for the services from the external consultant and included in the contract between Norad and the consultant.

## **Addendum 2: Overview of Informants**

### **Norway**

#### Ministry of Foreign Affairs:

- Janis Bjørn Kanavin, Director General, MFA
- Torun Dramdal, Senior Advisor, MFA

#### Ministry of Justice and Police:

- Terje Moland Pedersen, State Secretary, MoJ
- Morten Ruud, Secretary General, MoJ
- Sissel Wilsgård, Senior Advisor, MoJ

#### Prison Advisors:

- Cathrine Gangstø, Bjørgvin Prison
- Karen Marie Eek-Larsen, Bjørgvin Prison
- Kennet Johansen, Bergen Prison
- Mette Buhagen, Trondheim Prison, Section Leira
- Bjørn Haugen, Trondheim Prison

#### Others:

- Stephan Torp, Deputy Director, Directorate of Customs and Excise (former Legal Advisor attached to the PRT in Meymaneh)

### **Afghanistan**

#### **Kabul:**

##### Attorney General's Office:

- Mr. Popalzai, Head of Policy, Planning and External Affairs Department
- Mr. Abdullah Ibrahim Khel, Advisor to Attorney General
- Mr. Edris Arib, Legal Officer, EUPOL

##### Ministry of Justice:

- General Amir Muhammad 'Jamshid', Chief of Central Prison Directorate

##### Supreme Court:

- Dr. Abdul Malik Kamawi, General Chief Administrator of Judiciary

##### Afghanistan Independent Human Rights Commission (AIHRC):

- Dr. Sima Samar, Chairperson Commissioner
- Mr. Ahmad Nader Nadery, Commissioner
- Mr. Mohammad Farid Hamidi, Commissioner

##### Red Crescent Society of Afghanistan:

- Ms. Fatima Gailani, President

UNAMA:

- Ms. Stephanie McPhail, Acting Head of Rule of Law
- Mr. Michael Schuetz, Judicial Affairs Officer Rule of Law Unit

UNDP:

- Mr. Ahmad Masood Amer, Assistant Country Director Democratic Governance Unit

UNODC:

- Mr. Rafidullah Hamid, National Project Coordinator
- Mr. Collie Brown, International Project Coordinator Prison Reform Project
- Ms. Heather Elizabeth Barr, Acting Criminal Justice Programme Manager

International Committee for Red Cross (ICRC):

- Ms. Katja Gysin, Protection Coordinator
- Ms. Gwen Fontana, Detention Coordinator

British Embassy:

- Mr. Frasier Hirst, Justice Advisor DFID Afghanistan

Royal Norwegian Embassy:

- Kåre Aas, Ambassador
- Siv Kaspersen, Counsellor
- Bjørn Christian Rydmark

USAID:

- Mr. Alex Newton, Rule of Law Team Leader

Corrections System Support Programme (CSSP):

- Ms. Beth Presson, Senior Ward Advisor
- Mr. Michael Runnels, Director

Bureau of International Narcotics and Law Enforcement Affairs (INL):

- Mr. William Zalman, Head of Correctional Unit, US embassy

Justice Sector Support Program (JSSP):

- Ms. Sandra Feiznig, Gender Advisor
- Ms. Renee Carrico, Section Leader Ministry of Justice Assistance Section

International Development Law Organization (IDLO):

- Mr. Shafeek Seddiq, Programme Manager
- Mr. Abdul Hamid Darwesh Head, Training Support Unit

## **Mazar-e-Sharif**

Attorney General's Office, Balkh:

- Mr. Mohmmad Zahir Nadir, Provincial Chief Prosecutor

Corrections System Support Programme (CSSP):

- Mr. Warren Everingham, Balkh Team Leader
- Mr. Wayne Odegard, Training Officer

Justice Sector Support Program (JSSP):

- Mr. Joe Scoleri, Balkh Team Leader

## **Faryab:**

Independent Directorate of Local Government (IDLG):

- Mr. Abdul Haq Shafaq, Governor of Faryab

Provincial Court:

- Judge Haji Khudayar, Provincial Chief of Justice (Supreme Court)
- Judge Ghulam Farooq, Head of criminal division
- Judge Mohammad Sharif, Head of civil division

Provincial Department of Attorney General:

- Mr. Abdul Wali Rashidi, Chief Prosecutor

Department of Justice:

- Mr. Assadullah Hamnawa, Chief Provincial Department of MoJ

Provincial Prison:

- Mr. Haji Sardar, Director, Provincial Prison Sub-directorate
- Mr. Akbar Khan, Deputy Director of Provincial Prison Sub-directorate
- Mr. Aminullah Khan, Logistics Officer of Provincial Prison Sub-directorate
- Mr. Ibrahim Khan, Administrative Officer of Provincial Prison Sub-directorate

Ministry of Interior:

- Mr. Afzal Khan, Provincial Department of MoI (Head of investigation unit at Provincial Commander, Chief of Police)

Ministry of Women Affairs:

- Ms. Sharifa Azimi, Head of Provincial Department of MoWA

UNAMA:

- Ms. Reiko Hirai, Political Affairs Officer Provincial Office of UNAMA
- Mr. Sakhi Mohammad, Head of Provincial Office UNAMA
- Mr. Ahmad Zubair, Human Rights Officer Provincial Office of UNAMA

Meymaneh:

- Rune Solberg, Commander of PRT Meymaneh
- Sigurd Marstein, Civilian Coordinator, Norwegian Embassy
- Alexander Leirfall, Political Advisor, Norwegian Embassy
- Tameem Lamba, Programme Advisor, Norwegian Embassy
- Roy Hetlelid, Norwegian Police
- Thea Etterlid, Norwegian Police
- Ellen Holtebu, Norwegian Police

USAID:

- Mr. Stephen Meade Smith, General Development Officer for Faryab

Afghanistan Independent Human Rights Commission (AIHRC):

- Ms. Farukh Leqah, Provincial Office of AIHRC

Norwegian Refugee Council:

- Engineer Hashim, Programme Manager, ICLA
- Mr. Mohammad Nasir Hakimi, Legal Counsellor

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