

Independent Evaluation of the UNDP JHRA Phase II Project

by Kerry Abbott and Aziz Naderi

15 October 2017

Kabul

Abbreviations and Acronyms

AGO	Attorney General's Office
AIBA	Afghanistan Independent Bar Association.
AIHRC	Afghan Independent Human Rights Commission
ANDS	Afghanistan National Development Strategy
ANP	Afghan National Police
AWP	Annual Work Plan
BCPR	UNDP Bureau of Crisis Prevention and Recovery
CDC	Community Development Council
CEDAW	Conventions on Elimination of Discrimination Against Women
CMS	Case Management/Tracking System
CPD	Central Prisons Department
CRC	Child Right Conventions
DLC	District Level Components
EUPOL	European Police Mission to Afghanistan
EVAW	Elimination of Violence Against Women
FRU	Family Response Units
GiZ	Deutsche Gesellschaft für International Zusammenarbeit
GIRoA	Government of the Islamic Republic of Afghanistan
HRRAC	Human Rights Research and Advocacy Council
HRSU	Human Rights Support Unit
Huqooq	Ministry of Justice Law Department
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Econ., Social and Cultural Rights
IDLO	International Development Law Organization
ILAB	Independent Legal Aid Board
ILF-A	International Legal Foundation-Afghanistan
ILO	International Labor Organization
INLTC	Independent National Legal Training Center
JI	Justice Institutions
LAD	Legal Aid Department
LAGF	Legal Aid Grant Facility
LOTFA	Law and Order Trust Fund for Afghanistan
LoA	Letter of Agreement
MOE	Ministry of Education
MOFA	Ministry of Foreign Affairs
MOHE	Ministry of Higher Education
MOI	Ministry of Interior Affairs
MoJ	Ministry of Justice
MOLSAMD	Ministry of Labor, Social Affairs, Martyrs and Disabled
MOUs	Memorandum of Understanding
MOWA	Ministry of Women's Affairs
NDS	National Directorate of Security
NJP	National Justice Programme
NJSS	National Justice Sector Strategy

NPP	National Priority Programmes
OECD	Organization for Economic Cooperation and Development
PLAU	Public Legal Awareness Unit
PPD	Planning and Policy Department
RoL	Rule of Law
ROLIS	Rule of Law Indicators Study
SC	Supreme Court
Taqnin	Legislative Drafting Department
UNAMA	United Nations Assistance Mission to Afghanistan
UNCAT	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNICEF	United Nations Children Fund
UNODC	United Nations Office on Drugs and Crime
VCA	Vulnerability Corruption Assessment

Table of Contents

Abbreviations and Acronyms

<i>Executive Summary</i>	5
1. Background and Rationale for the Evaluation	9
2. Methodology	12
3. Capacity Building	13
3.1 Training needs	14
3.2 Training by UNODC	15
3.3 Assessing Capacity Building Methods	18
3.4 Legal Clinics	20
3.5 EVAW Units	22
4. Legal Awareness	23
4.1 Public Legal Awareness Units (PLAU)	23
4.2 Dual Systems	26
4.2.1 Traditional and Formal	26
4.2.2 Law Faculty versus <u>Sharia</u> Faculty	27

5.	Legal Aid	31
5.1	Independent Legal Aid Board (ILAB)	32
5.2	Legal Aid Department (LAD)	33
5.3	Afghan Independent Bar Association (AIBA)	37
5.4	International Legal Foundation- Afghanistan (ILF-A)	39
5.5	Sustainability	39
5.6	Pro Bono Cases	40
5.7	Legal Aid Database	40
6.	Legal Aid Grant Facility (LAGF)	41
6.1	Abuses of Legal Aid Funding	42
6.2	Assessing Need	42
6.3	Monitoring Data	42
7.	Legal Aid Database	43
7.1	LAGF Database	43
7.2	ILF-A Database	53
8.	Human Rights	54
8.1	Human Rights Support Unit -HRSU	54
8.2	AICHR	56
9.	Street Vendor Rights	57
10.	RoLIS	61
11.	Findings	63
12.	Recommendations	67
13.	Conclusion	69
14.	Annexes	70

Executive Summary

The UNDP's involvement in the Rule of Law sector in Afghanistan has included partnerships with several institutions through a variety of programmes that aimed to build the capacity of the Government and its civil society partners to provide a functional formal justice sector. In the Justice and Human Rights in Afghanistan Project (JHRA), phases I and II, the UNDP supported the development of frameworks for delivering legal aid, building institutional capacity in the courts, Attorney General's Office and the Ministry of Justice, expansion of access to the formal justice system at the district level, the promotion of human rights and legal remedy for violence against women, and other initiatives. The UNDP continues to promote some of these efforts through the current Afghan Access to Justice project (AA2J). The Project also included a Rule of Law Indicator Survey (RoLIS) conducted jointly with UNAMA, which contributed another measure of public perceptions of the rule of law sector.

This evaluation was conducted two years after the end of JHRA Phase II, and, therefore, is an ex-post evaluation. While some respondents could not recall precisely what JHRA II did compared with JHRA I or the current AA2J project, of interest is what evidence remains of the projects and how they adapted and evolved over time and trial.

The rule of law sector in Afghanistan faces many obstacles, including a lack of trust from the mostly rural population, who tend to rely on informal or traditional justice mechanisms to resolve disputes. Even those who do opt to use the police and courts may find the process lengthy and riddled with irregularities, and the judgment unenforceable. These issues are discussed at more length in the report. There is more reliance on the formal justice sector amongst the educated and urban populations, and JHRA II aimed to expand public exposure by building capacity with district-level institutions in several provinces.

The UNDP provided training for various legal professionals and judges through UN Office for Drugs and Crime (UNDOC) courses, but they were not sufficiently targeted to be of maximum utility. JHRA helped the Ministry of Justice (MoJ) uphold its obligation to provide legal aid under Article 31 of the Constitution by establishing a Fund to pay for free legal aid, and by training prosecutors and defense attorneys. JHRA also contributed to the Legal Awareness department of the Ministry of Justice, as it aims to increase public familiarity with the law and the availability of free legal aid. The UNDP also supports legal aid through the Legal Aid Grant Facility (LAGF), which is a group of stakeholders who give

funds to the Afghan Independent Bar Association (AIBA) to provide legal aid through some of their registered lawyers, to supplement the work of the MoJ Legal Aid Department. Extending legal aid, and thereby access to the justice system throughout Afghanistan, is perhaps the most notable effect of the JHRA II project. However, there are questions about the comparative quality of legal aid provision by the MoJ, AIBA and NGOs. Inadequate tracking of cases prevents a clear analysis.

The establishment of EAW courts was begun under JHRA II but only completed in the last year, and some donors have raised questions about their financial sustainability. However, if set up with proper controls, they could be run with more transparency and integrity than other courts. As a later development, the use of Legal Clinics at Law faculties to allow third-year students to gain experience in court procedures, investigation, and legal representation, is expanding. This practicum should include AIBA legal aid lawyers who have little court experience.

The human rights work of JHRA focused on the Human Rights Support Unit (HRSU) of the Ministry of Justice, which sought to assure international humanitarian law was embedded in the laws of the country and that the Government adhered to international human rights conventions. UNDP financial support for the Unit ended in September. JHRA II also supported the Afghan Independent Commission for Human Rights (AICHR), the civil society human rights watchdog, by introducing them to similar commissions in the region through partnership visits and regional conferences.

The UNDP and UNAMA carried out a Rule of Law Survey (RoLIS) which had a mixed reception. While it was better than similar efforts in other war-torn societies, its perspective and utility were limited by the disproportionate input from Government officials. Clearly, governments are reluctant to endorse such a project if they believe it will reflect poorly on their record. All justice sector surveys have indicated low public confidence in the police and judiciary and the Evaluation Team also heard charges against prosecutors and defense attorneys entering into financial deals with judges to gain a favorable outcome in a case. The high conviction rate and monetization of the legal aid service means that there is money to be made from arresting people and holding multiple trials.

At the same time, the Evaluation Team heard how evidence collection is erratic, sharing of evidence with the defense team non-existent, preparation of pre-trial motions is unreliable, and even basic concepts such as motive are not

established. In security courts, there may be open hostility from judges and prosecutors towards defense attorneys for representing accused terrorists. In sum, the court process lacks quality control systems and does not assure justice has been served. The alternatives--traditional leaders and shuras or even Taliban speedy justice--may be preferred by the public. Lawyers said they are used by uneducated rural people. However, most people are uneducated and live in rural areas and find that judgments passed in city courts may not be enforceable in their village, where the central government lacks control.

JHRA II aimed to build the capacity of district level institutions, but only addressed some links in the process chain. A systemic, functional review could help clarify the role of each party in the process, from the police, with their poor evidence collection, to the Attorney General's office, which examines the process and grounds for prosecution, to the scheduling of court cases, the system of assigning defense attorneys for legal aid provision, the time the legal aid defender has to prepare for the case, etc. Each department in the judicial chain at the district level needs a professional development strategy--not just training courses.

Findings and Recommendations

These are combined to make the linkage clearer, and the course of action to be taken:

1. Finding: Capacity building focused too much on central institutions and not enough on the rural areas where most Afghans live, without an indication of the unique value of the training.

Recommendation: Capacity building can be more focused at the local level in observing and then providing correction in legal process and court procedures every step of the way, through local legal affairs officers, who rotate through the provinces and districts.

2. Complaints over the justice sector are more based on integrity and process than on lack of knowledge of the law.

An assessment should be conducted of content and focus of training and of the effectiveness of capacity building of Ministry officials to see whether trained professionals actually behave differently and improve the process; professional bodies should hold lawyers and judges to ethical standards.

3. Lawyers graduate with little practical knowledge of court proceedings.

Professional organizations, such as AIBA and a Judges' Association or Judicial Academy, should be assisted to provide ongoing continuing education to lawyers and judges to assure they know both civil and criminal law, the Constitution, and court procedure, and are monitored and censured for misdeeds.

4. Legal Clinics are being supported with professional legal staff so that the next generation of lawyers is equipped with the practical knowledge and experience to handle cases in court.

Part of their training should involve monitoring legal aid cases in court, to compile a record of how those cases are handled, and AIBA legal aid lawyers should be included, due to their lack of experience.

5. Public Awareness of the legal system has improved due to success of messages presented on radio, television, in the mosque, and in street theater.

A more targeted strategy of message and audience (by region, ethnicity) should be made, and include a team of GoA and sharia authorities to discuss practical issues and common constitutional and sharia law remedies, to educate the public about critical legal and moral issues and how much the legal system of the Islamic Republic of Afghanistan agrees with Islamic traditions.

6. Lack of knowledge of the law does not only pertain to the Constitutional framework but also to Islamic jurisprudence, even on basic issues dealt with by informal justice.

More coordination can be devised between traditional religious and community elders as they confer on interpretations of law and how much national laws enshrine Islamic practice.

7. A number of issues plague the legal aid system, including absentee cases clogging the docket and a lack of timely information to enable lawyers to effectively defend cases in Primary Courts.

Changes to the legal aid payment system should remove the incentive towards multiple cases, with superficial legal input.

8. Questions arise as to whether people are making false arrests to profit from the legal aid subsidy.

Police should not be paid for handling legal aid cases. The UNDP needs to revise the LAGF framework to prevent abuses and to phase out its support in

favour of a system the Government can fund or sustain through required pro bono services.

9. Many questions exist as to why so many convictions occur in Primary Court and why they are overturned on appeal. The legal aid programmes should be better tracked, with more complete case data, and compiled in a database by the MoJ with UNDP assistance, so that the net effect can be known.

10. The framework for paying lawyers by the case may be geared for profiteering by all concerned, and inflate the number of court cases.

LAGF should be phased out and AIBA should ensure lawyers handle the three pro bono cases required by the Constitution for legal aid (or more), and link it to recertification for licensing.

11. Legal Clinics exist at the university faculties in Kabul, Jalalabad, and Herat, but it is unclear how many students can participate and for how long.

The UNDP can help to promote strategic alternatives, such as interning in law offices, with judges or the MoJ LAD, in order to understand the process and share the work load and provide witnesses as to the transparency of the process.

12. Lack of confidence in the formal justice sector, lack of access, and enforcement issues mean that informal justice remains the way most disputes are handled by a mostly rural population for decades to come.

A programme that discusses with village leaders how their traditions fit the formal legal framework could be a fruitful initiative that leads to the courts entering as a judgment some rulings of the *shura*.

1. Background and Rationale for the Evaluation

The goal of JHRA projects was to increase the capacity of national and district officials in the justice sector to deliver justice and uphold international standards of human rights. In the process, the hope was to increase public trust in the Afghan formal justice system instead of traditional justice processes.¹ The UNDP has devised a range of projects relating to justice reform in Afghanistan, including the Rebuilding the Justice Sector of Afghanistan

¹¹ Quoted from the Public Perception Survey Report, Justice and Human Rights Assessment Balkh-Herat-Kabul-Nangarhar. See Documents list in Annexes.

(RJSA) project in 2003, the Strengthening the Justice System of Afghanistan (SJSA), and the Access to Justice at the District Level (AJDL) projects in 2006. There has been a bifurcated approach, of building the institutions of state at the national and also the district level.

The Justice and Human Rights in Afghanistan (JHRA) project was launched in its first phase in mid-2009 with \$36 million to be invested over three years with the aim of strengthening national capacity so that:

- National justice institutions effectively deliver justice and uphold human rights.
- The Government of Afghanistan (GoA) fulfill international human rights obligations in a coordinated manner.
- District level justice sectors effectively deliver justice and uphold human rights.

These are high expectations, dependant on multiple institutions acting in a concerted and coherent manner. The JHRA project enjoined as its primary partners the three main pillars in the exercise of justice: the Ministry of Justice, the Attorney General's Office, and the Supreme Court, and was aligned with the Afghanistan's National Justice Programme (NJP) within the Afghan National Development Strategy (ANDS). As a result, the JHRA project focused on the needs at the district level for improved infrastructure, public legal awareness, and technical capacity of judicial professionals.

JHRA Phase II began in January 2013, with a three-year programme, and the aim of continuing to expand formal justice provision at the district level. The worsening security situation, however, limited field access by UNDP staff and meant that much of the effort was focused on urban centers such as Jalalabad, Mazar-e-Sharif, Herat, and Kandahar.²

Security concerns have a critical impact on the rule of law sector, as physical access to the formal justice system is limited in areas not under Government control. Without an enforcement mechanism, the formal legal system cannot serve the majority of people in the country. They then rely on local jirgas, whose decisions are quick and familiar, or Taliban speedy justice, which is unpredictable. Therefore, the ideal outcome would assure that a reliable and respected justice system is within the reach of all Afghans.

² Phase I included Faryab, Jawzjan, Bamyan, Kunar, Badakhshan and Nangarhar.

However, there is also the matter of trust. Even if the formal justice system were accessible to all, not all Afghans have confidence in it. Those who have experience with it have noted that it is lengthy, the lawyers and judges seem to be corrupted by payments, and it may not correspond with their cultural concepts of justice. Indeed, most primary court cases end in conviction and are appealed to the secondary court. Public opinion surveys indicate that Afghans are not surprised when asked to pay to assure the outcome of their case but they are unhappy when someone else can pay more to win a case.

In addition to building the capacity of judges, prosecutors, and defense attorneys, the Project aimed to support the provision of legal awareness and legal aid, which is a right enshrined in the Constitution. The public first needs to know what their rights are and how the formal justice system works, and they need access to the services of defense attorneys in a timely way and with a level of quality that ensures fair representation.

For various reasons, access to justice is not assured in Afghanistan. If the formal justice system is not accessible, fair, and functional, Afghans refer to traditional legal methods. This division, between the more modern option of formal justice--found in cities and endorsed by more educated people--and traditional justice practiced by village shuras is a mark of the progression of the rule of law. As much as legal practitioners would like to dismiss informal justice as an unenlightened practice of the past, most disputes are solved that way.³ Attempts by donors and development agencies to introduce modern standards and controls into the informal justice sector, to make it a hybrid of the formal rule of law, met with opposition by the Government. However, it still seems to offer an approach that can ultimately integrate the two systems.

The evaluation will help to inform the UNDP, its donors, legal professionals and GoA partners of the value of their multiple efforts in this sector. This assessment comes at an important time for the rule of law sector, as UNAMA is all but eliminating their work in governance due to limited funding and a perceived lack of impact. Under JHRA II, the UNDP and UNAMA undertook a Rule of Law Survey (RoLIS) which underscored weaknesses in the system and lack of public confidence in the integrity of justice sector staff and processes. Other research confirms many challenges in the legal aid system that need to

³ Examining the nature of most disputes--relating to minor property disputes, messy inheritance cases, public morals--it is good that they do not congest the courts.

be addressed in a strategic way.⁴ As the field work for this evaluation took place, the UNDP was on the verge of reformulating its large LOTFA project to include other aspects of rule of law, a move which donors encouraged. What did the investment in these issues teach about the conceptualization of the legal process and options in Afghanistan? What does it reveal about how conflicts are viewed and handled? How is the legal aid system manipulated for private ends as a foreign creation instead of an indigenous system held accountable by local communities? How have capacity building efforts worked to address flaws and build more functional systems? These are some of the questions this evaluation found as relevant and seeks to answer.

2. Evaluation Methodology

Conducting the field work necessary to evaluate a multi-faceted development project requires access to partners in the field. In Afghanistan, this is the biggest challenge to conducting successful programmes. As this ex-post evaluation was conducted two years after the project ended, many of the beneficiaries involved had little clear recollection of the specific components of the project, but it was possible to examine those aspects that continue to function--primarily, the human rights bodies, legal awareness, and the legal aid programme.

The Evaluation Team consisted of an international evaluator who has contributed to several rule of law projects in countries in conflict, and a local evaluator who has dealt with many aspects of building institutions in Afghanistan. The Team Leader began with a review of Project documents, and with the help of the Programme Manager identified contacts who had worked with the Project in order to conduct interviews.

The Team attended most meetings together, with the Afghan team member serving as translator. After the departure of the international Team Leader, the Afghan evaluator met with local officials and conducted follow-up discussions with officials to clarify issues. He provided an analysis of the status of a legal aid database by comparing the work of various legal aid providers. He interviewed lawyers for the Government Legal Aid Department (LAD), and spoke with street vendors. This provided more evidence to add to our field visits.

⁴ See Asia Foundation's Legal Aid Roadmap.

Field visits to Jalalabad and Herat were scheduled, in order to assess the needs of different provinces and districts. A list of interviews and details of the field visits are found in the annexes.

The Project seemed centered on the provision of legal aid services, and building capacity to improve the formal justice process. As a result, the Team spent time collecting the files that document the court cases handled by legal aid, in order to assess the type of case, patterns in the judicial process and problems that limit quality of service. Ancillary efforts, in helping street vendors or dealing with the special needs of domestic abuse cases, were also reviewed, although evidence was limited.

Many staff were no longer accessible but other key persons were contacted via Skype. Memories could be hazy, which may lead to some factual discrepancies in this report. Overall, assessing what remains of a project a few years after its conclusion is a useful exercise that provides distilled information about what lasts after an intervention.

A large amount of documents was shared, many of them not reviewed until after the field work phase had ended. One lapse by the Team Leader was in not arranging to meet certain informants, such as the NLTC, or the Street Vendor Committee heads (their contact details only uncovered much later in a file). It may have also been useful to track down some of the officials who had taken the training courses to see if they had practical impact.

3. Capacity Building

The JHRA Phase II Project had many Government, UN, and NGO partners through which it carried out its ultimate aim of building the capacity of national and district justice and human rights institutions, to better serve public needs. The theory was that building the capacity of the justice sector to provide improved services would increase public confidence. The primary targets were:

- a. training of staff at the Supreme Court, Attorney General's Office and the Ministry of Justice (staff and lawyers).
- b. increasing the capacity of the MoJ to provide legal awareness to the public and legal aid.
- c. increasing the capacity of the MoJ to assure adherence to international human rights norms through national legislation and international conventions.

It must be recognized from the outset, however, that even if the rule of law institutions in Afghanistan were functional, reputable, and accessible, most Afghans--a rural, uneducated population that does not travel more than 20 km. from their home--would probably not make use of them. The security situation also prevents people from traveling far, or means they live in an area not under Government control. A legal process that is accessible and enforceable in a provincial capital may not be useful to citizens living elsewhere in a district. Therefore, the provision of access to justice has to be more complex than improving the legal knowledge of prosecutors and defense lawyers, even at the district level.

As traditional people, living according to their understanding of Islamic law, Afghans prefer to have their disputes handled by community and religious elders and shura committees. These are people whom they know and trust, who mostly share their values, who are accountable, and who, with the community, collectively enforce a judgment. There is no reason for them to seek an alternative.

There is some evidence that if the shura does not decide in their favour, they may seek a remedy through the formal justice system. This may apply more to women, who are better informed about the legal framework through public awareness programmes carried on television and radio, and who seek solutions to problems related to domestic violence. However, women generally have limited ability to travel on their own to access such services.⁵

Therefore, another capacity building approach to improve access to justice and respect for human rights would be to enter into consultations with community and religious leaders to improve their knowledge of Islamic law and discuss how it corresponds to the Afghan Constitution. For instance, if a point in law is unknown, the Constitution refers legal authorities to consult Hanafi jurisprudence.⁶ How well Afghan law and its practice match Islamic interpretations of justice seems to be an important factor as to whether people will accept the formal justice system.⁷ Perhaps the Law and Sharia faculties of Afghan universities could provide a framework for discussion of common ground with community leaders.

3.1 Training Needs

⁵ Most known, through media reports, were Family Response Units.

⁶ There are several schools of Islamic thought that could be invoked, including the Shia Family Law.

⁷ According to the Perception study conducted by JHRA I in Balkh-Kabul-Herat-Nangarhar.

The formal Justice system includes those services run by the State, including the Courts, Attorney General's Office, and the Ministry of Justice. JHRA provided basic and ongoing support to the Ministry of Justice in legal drafting and translation, which it also provided to the Supreme Court.

The Huqooq Department is part of the MoJ and resolves disputes arising out of debts, property, and family issues, according to the Civil Code and the Law on Acquisition of Rights, and is also represented in the provinces and districts. The role of the police in making arrests and collecting evidence is essential to support cases, and the chain of evidence is often weak, indicating the need to improve police functionality in support of legal procedure. The integrity of the entire system depends upon the solid performance of each link in the chain.

The JHRA Strategic Plan asserts that 50% of districts lack judicial representation, and many courts are inoperable or understaffed.⁸ It has been estimated that only one-third of judicial officials have been trained beyond secondary school. Yet, they are practicing as lawyers and judges.⁹ Even current graduates of the Law and Sharia faculties of universities seem to lack practical knowledge of legal procedure.

That weakness is being addressed through Legal Clinics, which will give third-year students the opportunity to work for three months in the courts where they can learn how to prepare briefs, observe court procedures and help defense attorneys prepare their cases. Other opportunities to learn more about legal procedures, perhaps as a legal clerk or intern, could be arranged with judges and in the Prosecutor's office.

3.2. Training by UNODC

JHRA Phase II capacity building efforts focused on training officials from the Supreme Court, Attorney General's Office (AGO), Ministry of Justice (MoJ), and Police at the central government and district level. After discussions beginning in 2011, the UNODC identified suitable trainers and offered seven training sessions throughout 2014, two each in Nangarhar, Helmand and Herat, and one in Balkh. The total number of trainees was 165, and disaggregated data indicates that nine participants were women.¹⁰ It is not clear if trainees were

⁸ According to the 2012 document. p.12.

⁹ JHRA Final Report, although the Supreme Court official told us those older judges had all been retired.

¹⁰ Four female prosecutors(3 in Herat, 1 in Balkh), 1 female legal aid provider in Balkh, 1 female defense lawyer in Herat, 2 female CIS in Helmand, and 1 female Huquq official in Balkh. No female judges were included. A recommendation for future trainings was better coordination

selected based on their lack of experience, willingness to attend, or other factors.¹¹

However, knowledge of the subject matter should have been tested before the courses were designed, according to profession, and trainees chosen based on those scores. The courses then could have been designed to match the knowledge gaps of each group. Although pre-tests were given before the courses, they were administered to a mixed group of attendees--police, prosecutors, judges, etc. The judges may have scored very high and the police very low, resulting in an average score that was not indicative of professional performance or needs.

The first training session was held in Nangarhar over three days in March, for 13 prosecutors and four legal aid providers from the provincial Ministry of Justice. They studied the Code of Conduct and Professional Standards for Prosecutors of the AGO and investigation in criminal cases. Pre-tests and post-tests were given and the participants had the highest pre-test knowledge (48%) of all the training classes. Nonetheless, they improved their knowledge base after the training by 18%. The next training, in Helmand, over three days in June, included five prosecutors, one legal aid provider from the Helmand Justice Department, five CID (criminal investigation) police officers, six defense lawyers and one legal aid advisor. It also covered the Code of Conduct and Professional Standards, as well as investigation principles and the Police Code of Conduct. The pre-test returned the lowest scores in all the training sessions, at 26%, but also one of the highest levels of improvement, at 50%. This indicates improved knowledge of the law but does not assure compliance in practice. Nor was it disaggregated by profession to indicate what the CIDs knew versus what the lawyers knew. The testing, therefore, had little value as an indicator of capacity.

In August, training was held in Herat for seven prosecutors from Baghdis and eight from Herat, four legal aid providers from the Herat Justice Department, and three defense lawyers from Herat. They also studied the Code of Conduct and Professional Standards for Prosecutors, and investigation principles. It is not clear how topics for study were chosen. The Herat participants had one of the highest scores on the pre-test, at 44%, and nearly doubled that after the

with the Supreme Court in selecting trainees, according to JHRA/UNDP/UNODC Legal Training Report, p.11.

¹¹ Many training courses pay participants, so to be included is a reward, not based on need.

course, to 81%. Herat and Kabul are the two urban centers best equipped with legal professionals.

The next training was for three days in October, in Balkh, where participants knew one-third of the responses on the pre-test but only 60% of the answers on the post-test--the least improvement and the lowest score in all of the trainings given. Only one training session was offered in Balkh, although the results suggested more effort was needed.

The fifth training session returned to Helmand in October, and included 38 judicial officials, made up of 18 judges, seven defense lawyers, and 13 prosecutors. They studied the New Criminal Procedure Code, rights of victims, rights of Suspected and Accused persons, conflict of interest, criminal detection and investigation, and case management in Primary Court. All of this material was covered in only two days.¹² The inclusion of case management suggests that the administrative officers of the court could also benefit from management training.

The sixth training returned to Herat, in November, and included 23 justice officials from Ghor (eight prosecutors, one legal aid provider, one defense lawyer), Baghdis (five prosecutors), and Herat (four prosecutors, two legal aid providers, two defense lawyers). The subjects included a new topic--the legitimacy of detention--as well as criminal detection and investigation, initiating a criminal case, and Codes of Conduct for Prosecutors and Police. The last training was in Nangarhar, for eleven prosecutors, four legal aid providers, three CID police and two defense lawyers, and covered the same topics as the training in Herat.

JHRA also used EUPOL in Herat to train prosecutors, Family Response Unit (FRU) staff, professors, and others on crime scene management between police and prosecutors, crimes against women and EAW law. Although the course lasted for four weeks, participants still said it lacked enough detail on process and procedure to establish a functional case management system.¹³ Also, many participants were not literate enough to master the material, as presented. This raises questions about the selection of attendees and the value of these

¹² It is not clear if the after-test had the same questions as the pre-test, which would enable trainees to search for answers they did not know, or if it reflects a general doubling of their knowledge on the topics.

¹³ It was the first coordination between JHRA and LOTFA (the UNDP programme for Police), in Herat, August 2013, according to the report by Doel Mukerjee.

courses, and suggests that ongoing input in the workplace would be more useful to educate staff on the whole process and not piecemeal.

Instead of an information exchange, the training has to offer practical ways for each trainee to introduce that knowledge or practice back in their office, ministry, or court room. When there is a lack of knowledge of the Constitution or the law, that may be remedied by a course. The capacity building change needs to be reflected in improved practice, with more reliable legal outcomes. The real benefit, in terms of better services rendered, should be ascertained through follow-up visits to participants. Training could have also consisted of a more practical component dealing with courtroom or clerical processes that would improve aspects of court procedure that generate complaints, such as lack of timely notification of lawyers about court dates. Training should include a provision for the measure of effectiveness or change when participants return to work, as with an ex-post test.¹⁴

3.3 Assessing Capacity Building Methods

So much has been written about capacity building of state institutions. Most important is to gear the method to the setting. Many agencies provide capacity building training in this sector.¹⁵ One hopes that UNODC chose topics that they knew had not been offered by others. Although the training report indicated that other topics were included, it is very useful to have a Peer Consultation approach, where sessions are based on participants raising dilemmas they have faced and seeking advice from their peers and other legal experts on the best response. Likewise, one can compile a book of legal case studies drawn from real Afghan case experience, written up as a full scenario, from arrest, through primary court, and the appeal and final verdict. No mention was made of this approach to teaching, which requires participants to reason aloud with their peers. Legal clinics could also do this, as well as continuing education courses by AIBA.

A distinction should be made, along with a theory of change, as to how this added training will address a specific shortcoming, along with an assessment method to determine if it was effective. By now, there should be a thick compendium of capacity building methods and efforts tried in the governance sector in Afghanistan in the past 15 years that track the progression of results-

¹⁴ Ideally, the Evaluation Team would have obtained the names of trainees and gone to their offices to try to identify how their practice had changed as a result of the training--or not. Often, trainees are not equipped to make changes in their office, or lack the authority to do so. However, setting up the meeting with UNODC was all that was done.

¹⁵ Many, such as IDLO, backed by US Government funds,

-the successes and failures--to guide others who would duplicate the same mistakes. The UNDP, as a major practitioner of capacity building, should have developed such an archive.

Evidence seems to indicate that the biggest impediment to public support for the formal justice system is not the lack of technical knowledge but of professional ethics. Therefore, a careful conceptualization needs to be developed as to how a system functions and fails, and where along the line capacity must be built in terms of oversight and safeguards. Where are the professional bodies that investigate the ethics of their members--lawyers and judges--and hold them accountable? What is the disincentive to profit-seeking?

There is no shortage of evidence on the failings of capacity building in governance. Indeed, UNAMA was closing its governance unit at the end of the year due to its perceived lack of impact in the sector. However, what do donors expect of a traditional society that is far from any Western liberal concept of governance and social compact? It is not clear the Afghan people, divided between ethnicities and regions, have many expectations from a central government. The idea that all governments can become legitimate if they provide needed services, in exchange for which people offer their confidence and loyalty is yet unproven. Many Western interventions are based on false assumptions drawn from the world donors know. Instead, if donors looked at the systems in their own countries before the modern, developed era--perhaps 200 years ago--they would recognize that they passed through the same hardships and struggles.

It is not a matter of awakening to a new world reality of life as invented in the West, and thinking it is better, and trying to copy it. Development is based on a process of self-discovery that happens in stages. Observing how people live and think, including their attitudes on the role of women and the rights of children and minorities, offers indicators of the real level of development. Instead, the tendency is to force the superficial adoption of certain laws and conventions that reflect modern attitudes, even though they are not endorsed by most people in a traditional country, and not enforced.

The staging element is critical in capacity building, beginning with a correct assessment of the current level of thinking, by all parties in the system, not how the donor thinks things should be. Instead of trying to impose the Western model of ministry and governance, it would be more useful to assess the functions that are performed under the prevailing system and see how they

address real needs. What gets done and what is left undone, and why? What is recognized as useful? What are the practical solutions, other than trying to build the central institutions of state through training its employees? How can capacity-building of government functions be de-centralized to meet the needs of the people where they are? The assessment of capacity needs should be made locally.

For instance, in current legal practice, the lack of evidence collection enables people to manipulate the system by presenting false claims that lead to the arrest of an innocent party, and which require the family of the accused to pay a bribe to the accuser, in order to have the charges dropped. How could that problem be fixed within the current system where the police lack judgment on how to assess a charge? By an experienced magistrate who reviews every charge, for strength of evidence, before a person is detained? Capacity building should begin with the examination of the long list of real stories of abuses and gaps in the system, and construct a functional solution for those problems, one by one.

3.4 Legal Clinics

Legal clinics offer promise for building the capacity of the next generation of lawyers and judges. They are meant to give senior law students a chance to work in the court and gain practical experience of court procedures and case management. Many agencies are supporting the concept, but it is not clear if their initiatives are coordinated.¹⁶

AIBA says that it trains classes of 20-30 fourth-year law students over two to three months in two or three clinics per year. During the field visit by the Evaluation Team to Jalalabad, the JHRA Regional Coordinator also spoke of his role with students at Nangahar University in the expanding Legal Clinic programme.¹⁷ He plans to train 30 students (half from Law and half from Sharia faculties) for a few weeks in basic skills, such as how to read a case and find facts, take statements, interview, write defense statements, and prepare clients for trial. He could use them to assist in taking statements from legal aid clients and witnesses and conducting public legal education. They could also help with the legal aid programme, in finding clients in police stations, prosecutor's offices, detention centers and prisons. With more experience, they

¹⁶ ILF-A has involved U.S. universities in the development of programmes.

¹⁷ That programme was licensed by ILB.

might be able to reconstruct an evidence chain, and monitor the legal aid process.

Students from the Legal Clinics should make a practice of monitoring for several months the legal aid cases in court, interviewing the lawyer, prosecutor and defendant, and filing a report on what happened. They could compile their own case studies, and perhaps help to improve the system.

JHRA sponsored a Legal Clinic symposium in Herat University for three days in November, 2014, for Law and Sharia students from Herat, Kandahar, Kapisa, Takhar, Balkh, Helmand and Nangarhar provinces. The aim was to combine theoretical legal knowledge and practical skills.¹⁸ The Legal Clinic in Herat was meant to lead to the establishment of a branch of the National Legal Training Center (NLTC) that is in Kabul.

Unfortunately, after a long series of discussions from mid-2013 until mid-2014, between JHRA, Herat University and the NLTC, an agreement could not be reached, due to a problem with covering costs for a building and staff, as well as resolving whether it would come under the authority of the NLTC or the Ministry of Higher Education.¹⁹ A curriculum had already been proposed, which can be taken up by the Legal Clinic, which includes Legal Ethics, Media and Environmental Law, international instruments to which Afghanistan is a party, and the study of real cases tried by the courts. Supposedly such a practicum is mandated for prosecutors and AIBA-certified lawyers.

Legal Concepts

Evidence

Teaching law, in a system that has traditional morality differing by region and ethnicity, and a constitutional system based on varied forms of Islamic jurisprudence, means that the logic of law will vary. What makes sense to one person may not be justified or credible to another. This may also be why people will prefer the local legal system, reflecting shared local logic.²⁰

Much of the evidence in the cases the Evaluation Team heard was unsubstantiated. Many charges were attempts to extort money through false claims. Some cases made no sense at all, including those told to us by more

¹⁸ As reported by Zahibullah Karimullah.

¹⁹ According to a May 2014 report by Doel Mukerjee.

²⁰ In Saudi Arabia if a foreigner is in a traffic accident, he is immediately assigned 50% of the blame. The logic states, had he not been there, it would not have happened.

experienced lawyers and professors.²¹ The notions of culpability are clearly at variance, depending on who commits an act, and in response to what provocation. Law classes teach case law according to IRAC--Issue, Rule, Analysis, Conclusion. Nowhere is there a mention of motive.

Case Study: The confused pursuit of justice

Was this an "inheritance" case that really was a murder case, where no motive was provided? The case of a young man, charged with the sudden murder of a distant relative, was initially dismissed, but returned to court on appeal, and the defendant was then convicted. No motive was presented, only the evidence of a phone call from the purported murderer that was traced to the defendant's mobile phone, as proof of a contract between the two to commit murder. That the call could have been arranged--after the dismissal of the first case--to set up the accused and create a false link with the guilty parties was not entertained by the court.

The father of the accused said his son was set up by relatives who wanted his inheritance. If they could get him imprisoned for the murder of their brother/cousin(which they arranged for someone else to do), they could ask for blood money (dia) in exchange, in the sum of his inheritance--which he was only due to receive upon the death of his (still living) father. In other words, the brother and cousin of the murdered man hired someone to kill him so that they could blame it on another relative and demand his as-yet-uninherited-inheritance as dia. Why the accused would have wanted to kill his distant relative--motive--was never explained, as though not a normal part of criminal logic. The actual killers-for -hire were supposedly beyond the reach of the court, in territory controlled by the Taliban.

The lawyer for the accused admitted that at the appeal, a girl came forward and said in fact her father had killed the murdered man as part of an honor killing because he had been her boyfriend. But the court did not pursue that lead. The man convicted on appeal is still in prison. His father told of us the case. No dia money has exchanged hands. The plot failed in its aim of enrichment.

Anonymity

One recurring feature of meeting with recipients of legal and--and sometimes their lawyers--is how people think they can lie in the formal justice system, relying on it to not know details of their lives. That relative anonymity is missing in the informal justice system, where one faces a community of peers

²¹ That is, it made no sense to the international Evaluator.

who know the history of the family and the background to many disputes. It is difficult to lie to the village shura, and easier to mislead the courts.

3.5 Elimination of Violence against Women (EVAW) Units

JHRA sponsored a number of efforts, including consultations with AGOs in Kabul, Herat, Mazar-e-Sharif and Nangarhar, to establish more EVAW units and assure their minimum operating requirements.

Other proposed measures were:

1. Preparation of standard operating procedures for improved coordination between Family Response Units/Criminal Investigation Department (CID) officers and EVAW prosecutors;
2. Overall trainings for Family Response Units and prosecutors on EVAW Law, investigation processes and ethics, in collaboration;
3. Training for prosecutors on the preparation of indictments based on available evidence;
4. Mediation/settlement introduced as an acceptable alternative dispute mechanism, with a definition of proposed cases to be settled;²²
5. Engage with the Supreme Court on the issue of possible establishment of special EVAW courts.²³

JHRA agreed with the EVAW Prosecution Office to provide training in the preparation of SOPs, Settlement, Indictment, and EVAW Courts. By the time this evaluation was conducted, at the end of 2017, an EVAW court had been established in Kabul. However, different accounts were provided as to how it worked, whether it was held in an existing criminal courtroom, whether it had dedicated staff, and how many branch courts existed. SDC, a major donor in the RoL sector, voiced reservations about the ability to adequately fund and source EVAW courtrooms separately from the existing criminal justice infrastructure.²⁴

4. Legal Awareness

Legal Awareness is a concern on two levels: lack of adequate knowledge of constitutional and sharia laws by justice officials and lack of public awareness by citizens at the district level of their legal rights.²⁵ JHRA worked on both

²²The Gender Equality Project of MoWA runs 24 Legal Help centers staffed by paralegals

²³According to JHRA reports by Karimullah in April 2014, Bahemuka, June 2014, Bohieman, August 2014.

²⁴ In an interview with the Evaluator.

²⁵ According to JHRA Strategic Plan p. 12.

levels, by providing training to legal professionals and by supporting the Legal Awareness Department of the Ministry of Justice in its public awareness efforts.

4.1 Public Legal Awareness Unit (PLAU)

The Legal Awareness component of JHRA II occurred through a formal public campaign by the Ministry of Justice (MoJ) Public Legal Awareness Unit (PLAU) that aimed to educate the public about the formal justice system. This consisted of a range of activities meant to be part of a comprehensive public outreach campaign led by the PLAU, and aligned with other key State and non-State institutions²⁶.

PLAU has three main objectives:

1. to raise public awareness on their rights and responsibilities towards the laws.
2. to raise people's awareness about the judicial system, including the Attorney General's Office, defense lawyers, courts, police, and how a case is followed
3. To make the public aware of the authority and responsibilities of different institutions in the judicial system--what they can and cannot do-- to avoid abuses.

The PLAU has 58 staff members; 25 are based in Kabul and the rest are based in the other 33 provinces of the country. In Kabul there are the four Board members of the PLAU, three Publication team members, and seventeen Public Legal Awareness Officers.

The Board is developing public legal awareness tools such as brochures, posters, and booklets. The Communication Department designs them, according the strategy of the PLAU. Members of the Board and the Public Legal Awareness department train the Public Legal Awareness Officers on the usage of the materials produced. It was not clear who received these publications.

The Public Legal Awareness Officers in Kabul are undertaking awareness-raising sessions (based on their quarterly plan) in different locations, such as mosques, schools, university compounds, youth centers, and prisons. PLA Officers fill out a form about the activity they organized. After the session, a form is certified by a representative of the public setting and their report is

²⁶ According to the Public Perception Survey introduction.

approved by the PLAU head. There is second form which the monitors fill out to certify the occurrence and quality of the awareness-raising sessions.

JHRA aimed to build capacity at the district level. In each provincial capital there is only one PLA Officer. Not all of them can travel to districts to provide awareness raising, due to insecurity and lack of transportation.

The PLAU has many documents, including a Public Legal Awareness-Raising Strategy document, developed in 2014 with the support of JHRA, for 2014-2018 period. It talks about the vision of the PLAU, the objectives, mission, legal messages, staff persons, medium of communication, approaches and methods of conveying messages, and monitoring and evaluation of the activities of PLAU.

The key messages communicated in PLAU documents are:

1. Rights and responsibilities of the citizens in accordance with the law and Sharia

- 1.1 Women's rights (women's right to education, women's right to work, elimination of violence against women, elimination of illegal and un-Islamic practices).

- 1.2 Basic rights of citizens (basic rights of citizens and their equal treatment by the law, responsibilities of the citizens)

- 1.3 Child rights (prevention of child labor, right to education, right to custody and protection of children, violence against children, child rights).

2. Ownership and Inheritance rights (right to tangible and intangible property, conditions of right to ownership, preventing land grabbing, contract types).

3. Rights of Suspected and Accused(right to a defense lawyer, to knowing the accusation. to remain silent and have an interpreter, to information about court rules, other penal rights).

4. Legal Aid (access to free legal aid in criminal cases for the indigent, including women and children).

5. Introduction to procedures in judicial departments (Police, Attorney General's Office, Court, Huqooq Dept.)

They also have brochures on:

1. Judiciary Structure and Personnel

2. Cases based on public rights, illustrating how such cases are identified and processed.
3. Child rights
4. Introduction to the Huqooq department of the MOJ
5. Processing applications of civil and financial cases in the central Huqooq dept.
6. Inheritance rights
7. Elimination of violence against women

They also produce illustrated posters on preventing forced marriages (a translation of Prophet Mohammad's saying in Dari), the financial rights of women, the right to dowry (mehr), the right to expenses (nafaqa), and inheritance.

Thousands of these documents are printed but it is not clear who receives them. Surveys indicate that most people learn about the legal system through messages on radio or television. ²⁷As to the impact of their varied methods, the head of the Legal Awareness Unit stated that when the PLAU was just established ten years ago, the Huqooq department in Kabul handled around 1,800 cases per year. Now it receives 20,000 cases per year, which he thinks is a result of increased legal awareness.

4.2 Dual systems

4.2.1 Traditional versus Formal Justice

In a country whose population is mostly rural, illiterate, and uneducated, teaching people about the alien formal justice system of the Government is a challenge. Most disputes are resolved locally through an informal traditional justice system delivered by village elders--maliks, shuras, mullahs and imams-, a fact that the international community tried to acknowledge through efforts to integrate the two systems.

Neither system has very credible rules of evidence, however, and the formal justice system lacks trust, with its professionals charged with ineptitude, partiality, and taking bribes. Even those who have trust in the courts may find that their judgments are not enforceable back in the village, in areas beyond

²⁷ AIBA provides legal awareness information via radio programmes in several provinces.

Government control. These issues of legitimacy, accessibility, and enforceability were beyond the reach of JHRA, and undermined results in the legal sector. In addition to building up the formal justice sector, it may be effective to hold discussions with leaders of the informal justice sector about the Constitutional system and how it fits Afghan culture, to enable their thinking to evolve more with formal legal practice.

However, practitioners of formal justice, educated in the law or sharia faculties of universities, as well as legal providers in the GoA, resisted efforts to give legitimacy to the widespread practice of informal justice. They insist that only uneducated people support the traditional system--but that is a vast majority of the population.²⁸ In fact, even educated people use traditional methods and networks for resolving certain local disputes. Court may be their first recourse for criminal cases, where one does not want to compromise on matters relating to public safety.

The options may be confusing. When do you go to the Huqooq Department, or the Family Response Unit? Both deal with family issues. Domestic violence is a criminal offense, handled by the criminal court, and also now in the new EVAW courts.²⁹ Many cases are a complex mix of issues, including inheritance cases that involve murder, and abandonment cases that invoke various schools of Islamic thought. One cannot downplay the lack of basic knowledge, even of Islamic law. One man who had attended a JHRA public awareness presentation said that he learned that, in Islam, girls have to agree to marry and they cannot be forced to do so for money or other personal considerations.³⁰ He seemed to indicate that he would follow these precepts when his daughters married.

Massive efforts would be needed to educate rural people in the alternative, formal justice system, which may be more difficult if its integrity is in dispute. Although, as a parallel system, informal justice is faster, cheaper, and more rooted in local custom than the decisions handed down by the courts, it may violate human rights through the application of traditional values. This is also seen to be the case with the "rapid justice" delivered by the Taliban in the areas

²⁸ The educated people who told the Evaluation Team this were all from the legal profession, and may be biased.

²⁹ Mostly established after the end of JHRA II.

³⁰ As quoted in the JHRA I Final Report, p.16.

under their control, where decisions are issued hastily based on rather arbitrary interpretations of sharia law.³¹

4.2.2 Law Faculty versus Sharia Faculty

There is another duality in the system, the effect of which is not entirely clear. Some lawyers are trained in the Law faculty of the university and some in the Sharia faculty. Some analysts say that the highest scoring students in university study in the engineering or law faculties, and the lowest performers study in the departments of sociology and sharia law. Others object to this characterization and suggest the choice of faculty is more a matter of religiosity.

Lawyers from both faculties interviewed suggested that sharia-trained lawyers handle better complex cases of inheritance, which follow Islamic law. However, different Islamic schools of thought have differing laws. So, a Shia woman may declare her husband has abandoned her after one year of absence, but in the Hanafi school (Sunni), a woman has to wait three years. Some interpretations of the text say she must wait 70 years--i.e. never give up awaiting his return. It is not clear how these varied interpretations of the application of sharia law in keeping with the Constitution in an Islamic Republic will affect the formal justice system.

Criminal cases are perhaps more the domain of lawyers trained in the Law faculty. In a criminal case, does a sharia-trained lawyer apply the remedies of the Criminal Code, or of sharia jurisprudence? Sharia also has rules for criminal cases, which may not comport with constitutional interpretations and legal norms. There is a deeper problem with a system that has lawyers and judges trained in parallel systems of the Law faculty--which includes the constitution and code of law developed by the legislature and Presidential decrees-- and Sharia law. This creates confusion in the system and there is no clear means of reconciling the two. How both frameworks for decision making coexist or clash is a matter for more nuanced study, and should be evidenced in the cases that are appealed.³²

³¹ Under the Taliban system that is found in all areas outside of Government control--perhaps 60% of the country--, concerned parties are given time to appeal, but in practice fear to do so.

³² The EVAW law was not passed by the Legislature but by a Presidential Decree, whose validity is in dispute. It was done that way because it was deemed unpopular with traditional lawmakers and unlikely to pass.

It would be interesting to conduct a study of cases and decisions by judges from the law faculty versus the sharia faculty, to see if certain cases are referred to each of them by the AGO, according to their purported specialties, and whether the strength of the decision varies, upon appeal. Does the training at university equip some lawyers to handle certain cases better than others? Is this borne out in court case data--which is inadequate? How will that affect efforts by the Legal Clinics, that seek to prepare law students to be better equipped in court?

4.3 Public Perceptions

There are various documents provided by JHRA that give an indication of the public profile of legal awareness. One of them was a Public Perception Survey conducted in 2010 by the UNDP in Balkh, Herat, Kabul, and Nangarhar.³³ Public Perception Surveys have become a popular tool used by the UNDP and other development agencies, supposedly to gauge how people think in less accessible areas.³⁴

The methodology was problematic and it is not certain how valid the views are, given that the sample was also small. It does conflict with some findings in other studies, by the Asia Foundation. Nonetheless, it offers the possibility of comparing opinions with more recent surveys to assess a change in views.

The aim of this initiative was to identify gaps in public knowledge of the roles and responsibilities of State justice institutions, and the level of trust in them, as well as to identify how people form their opinions.

Respondents knew little about their legal system and rights. Only a third knew about the Constitution and legal framework. Questions, however, asked about the system as it should be, as opposed to how it is. Seventy to 90% said they had not received information on the role of various Government institutions in defending their rights (depending on the province)³⁵. Most did not know that criminal cases were filed through the police and AGO.

Women were more aware than men, receiving their information at home from television. Although they have less access to any justice mechanism, they say they prefer formal justice to traditional elders. That suggests a dissatisfaction

³³ See in Documents, Justice and Human Rights Assessment-Balkh, Herat, Kabul, Nangarhar. Dec 2010.

³⁴ This evaluation will consider the findings of other such studies, by the Asia Foundation and the Rule of Law Indicator Survey (ROLIS) by the UNDP and UNAMA.

³⁵ Ibid, p.8.

with the system they have tried. Those who had gone through judicial proceedings complained about "corruption and unfairness," but this would have to be documented to assess whether what they perceived as unfair was a violation of their legal rights or their perception of fairness with an unfamiliar law.³⁶ Complaints were not about technical incapacity of justice personnel, although, it is not clear if the average person could assess that, given his limited knowledge of the law and legal procedure.

Judges and attorneys offices were seen as most corrupt and the MoJ less so-- although the Ministry also provides defense attorneys. Half of people find it acceptable to pay bribes, but felt it unfair if someone else could pay more and win the case.

The Survey is not clear in explaining why people answer as they do. For instance, it says women prefer going to court than to elders and, in general, urban people are better informed than rural people. However, then it says that women in Kabul seek legal advice from elders more; as urban women they should be more inclined towards the courts than to traditional leaders. The report did not differentiate on the type of elder.

Finding elders with standing in the community, who can endorse some aspects of formal justice and speak about the legal codes and Constitution, seems a far more influential way of reaching people. In Herat, Balkh, and Kabul, television is the prime medium of information. In Nangarhar, it is radio. If the messages of credible elders were spread by television, radio, and in the mosque, that would offer broader access, and may be the way to begin to integrate formal legal practice into traditional life, on areas where one can find agreement.

The MoJ insisted that their legal awareness efforts led to more people filing cases in the courts, although it lacks the comprehensive data to support this claim. There are more cases in the courts but they may be due to appeals from the primary courts, given the high conviction rate, and the presence of legal aid funding.

The Rule of Law Indicators Survey (ROLIS) conducted by the UNDP and UNAMA did not poll people who had interacted with the court to gauge how they found out about that option. It did--along with a noted Asia Foundation study-- gauge their satisfaction and found a degree of mistrust.

³⁶ Ibid. p.9.

While people unaware or uninformed about the formal justice system may be wary of it, so are many people who have tried it. Charges of corruption against judges, prosecutors, and defense attorneys means that judgments may not be based on law at all, but on a payment or inducement. Moreover, the conduct of the police in making arrests and collecting evidence is problematic, and misuse of the system by opportunistic individuals is widespread.

Knowing the law and how to apply it to the fact in evidence is one matter, and evidence collection, in general, is weak. Filing false charges against someone is a common way to extort money. The police arrest the accused party on the basis of hearsay evidence offered by the accuser, resulting in detention of the accused for weeks. In the meantime, his family are contacted by the accuser who seeks payment in exchange for dropping the charges. This is a practical experience related by those who have used the formal justice system.³⁷

Urban life also allows for more anonymity, and criminals can get away with misdeeds in cities because they are not known, as they are back in front of their community shura. That is why the formal justice system needs to have capacity from the moment of arrest and evidence collection, not only when it reaches the court and Prosecutor's Office. Under the current system, people can be falsely arrested and imprisoned, without access to legal aid, for weeks before a trial is set.

These excesses have nothing to do with legal awareness because they occur outside of the law, and in a legal system where not all parties are competent to perform their job. All stages of the process need to be functional for the formal justice system to be credible, including adequate legal knowledge by lawyers and judges, integrity in professional conduct, and competency in making arrests, evidence collection and filing charges.

5. Legal Aid

Legal aid provision is enshrined in Article 31 of the Afghan Constitution, which dictates that “in criminal cases, the state shall appoint a defense attorney for the indigent”.³⁸ It is supplemented by a Legal Aid Regulation promulgated under the authority of the Advocates Law, which mandates the Legal Aid

³⁷ Many such cases were relayed to the Evaluation Team during field visits to Jalalabad and Herat.

³⁸ Afghan Constitution of 2004.

Authority under the Ministry of Justice to provide legal aid to the indigent accused.³⁹

Providers of legal aid include Ministry of Justice staff lawyers employed by the Legal Aid Department; lawyers who are licensed members of the Afghanistan Independent Bar Association (AIBA), who are assigned cases by them and paid out of a special Legal Aid Grant Facility (LAGF) fund; international and Afghan NGOs; and Afghan university law clinics.⁴⁰

Although the law requires that the Government provide legal aid to needy people in a way that is accessible, affordable, credible, and sustainable, it does not provide enough funds to the MoJ LAD to do so.⁴¹ More people know about the purported availability of legal aid than before, but it is often not accessible by someone imprisoned, unless a lawyer happens to be notified of the need by a family member of the accused, or by someone else in the preliminary judicial process. It is not uncommon to find people who ultimately received legal aid had spent weeks in prison before being helped, or who lost legal aid when the LAGF budget for the project phase ended and their legal aid lawyer was no longer getting paid, and so, quit the case.⁴²

Legal aid is neither affordable nor sustainable, as foreign donors provide funding. Credibility seems to pertain to the quality of legal representation provided. The quality and integrity of the legal process are prime issues, given the high number of convictions and the rate of overturned verdicts on appeal. Is the high conviction rate in Primary Court due to the inexperience of lawyers and judges and to a court process that does not offer defense attorneys adequate time and evidence to prepare their cases? Are there financial incentives that enable lawyers and judges to profit more with each case they handle? In absentia cases currently constitute a high volume of cases for which there is no direct benefit, as the accused are not in the country and there is no means of enforcement.⁴³ Excluding those cases from the court docket makes

³⁹ The Government also mentions entire categories of people eligible to receive such assistance, including Government employees, women, children, etc.

⁴⁰ ALAAN, established in 2015, is a platform of legal aid providers, country-wide.

⁴¹ Free legal aid for all indigent in criminal cases and also for women in children in civil cases. JHRA funds legal aid Defense lawyers through AIBA, the World Bank funds LAD staff defense lawyers, and pays a higher salary than normal Government rates.

⁴² As reported by two legal aid clients provided by AIBA in Jalalabad. AIBA concedes that there are gaps in payments received from LAGF, during which the lawyers do not continue working. However, they should.

⁴³ According the study of legal aid by the Asia Foundation Legal Aid Assessment and Roadmap, 2017. However, lawyers are eager to take on in absentia cases, as they assure a quick payment.

the caseload manageable. To determine legal aid needs, one has to consider the number of cases versus the number of lawyers, and how payment by case creates the incentive to generate more cases.

The Legal Aid system now relies on a mixed-method approach that supplements the legal aid lawyers of the Ministry of Justice with private lawyers provided through AIBA, and NGOs such as ILF-A, Da Qanoon Ghush-tonky, Medica, and others. While there seems to be a consensus that having a mix of legal aid providers suits current needs and capacity, The Asia Foundation study indicates that the best quality legal aid is provided by ILF-A, and then the Legal Aid Department. This raises questions about the competence and motives of the lawyers provided by AIBA through LAGF.

5.1. Independent Legal Aid Board (ILAB)

The Legal Aid Regulation also establishes an Independent Legal Aid Board (ILAB) with the mandate to coordinate, monitor, and evaluate the provision of legal aid through these different providers and on which all four categories of providers are represented, along with the Ministry of Women's Affairs and the Afghanistan Independent Human Rights Commission. However, the ILAB seems unable to provide the coordination and oversight role deemed necessary, for a variety of reasons linked to its composition and vested interests. The current representation on the Board may conflict with its intended purposes.

ILAB was meant to hold monthly meetings and was reviewing the legal aid provision law based on lessons learned when this evaluation was taking place.

⁴⁴An advisor at the MoJ stated that the main function of the ILAB was to provide oversight to legal aid provision in the country and to identify cases where fraud was suspected. Nonetheless, the ILAB has not charged any cases so far.⁴⁵ If ILAB could serve as a capable and credible Secretariat, to oversee Legal Aid, it may be the logical host for a Legal Aid database.

5.2 Legal Aid Department (LAD)

⁴⁴ It began holding regular meetings when GiZ decided to pay members a handsome sum to attend them. This is how foreigners introduce false incentives into a process that otherwise is not supported.

⁴⁵ It is supposedly not possible for a judge to declare a case closed while it is still under process or the ILAB would spot it. Rumors related to AIBA's work that are not yet proven relate to two lawyers taking the same case with one of them illicitly receiving the payment, and a closed case that was charged twice.

The Legal Aid Department of the Ministry of Justice employs more than 100 lawyers as legal aid defense attorneys serving across the 34 provinces. The number of cases they handle is highly variable, and their salaries are a flat monthly rate, varying from the standard government rate of \$200 per month to \$750 for the highest amounts paid by the World Bank--with the purported aim of retaining more experienced lawyers.⁴⁶ However, this posed morale problems amongst legal aid defense attorneys at the MoJ, as the selection of the highly-paid lawyers did not seem to be based on years of experience, and seemed to favour members of one ethnic group.

According to Mr. Mansoori, more experienced and competent defense lawyers could not be hired to work on the government salary. Therefore, the Minister of Justice proposed 30 extraordinary positions of defense lawyers to the Presidential Office for higher salaries. The positions were publicly announced, with specific criteria for experience and other competencies, for competitive selection. MoJ staff, including the existing defense lawyers, were encouraged to apply. He was unaware of existing staff defense lawyers being prohibited from applying for the new positions.

Mr. Mansoori said that the newly-hired defense lawyers were more competent and experienced, were handling more cases, and were more accountable in their work. He declined to comment on whether the difference in salary scale affected the morale or work flow, but said he had not heard complaints.

However, the World Bank says their ARTF programme was paying 65 LAD lawyers--at the current exchange rate--around \$500 per month, and the project is now closed. Some of the new staff were hired by the MoJ through NTA with their own funds. The Ministry said they would be opening new positions in their Tashkeel for the rest of the lawyers.⁴⁷ Thus, the number of LAD lawyers and the current pay scale is not clear.

LAD Lawyers Speak

Lawyer 1, 48 years old, has practiced law for 20 years and has been with the Legal Aid Department for five years. He studied sharia law in Pakistan. He thinks he is supposed to handle at least seven new cases a month (84 a year),

⁴⁶ Some said the maximum salary paid by the World Bank was \$1200; the Bank says the rate is \$500 at current exchange rates, as payment is in Afs. The amount most often cited by LAD lawyers was \$750.

⁴⁷ According to Atiqallah at the World Bank.

but usually he handles 120-180 cases per year and is now at Bagram Detention Facility. As a staff lawyer, he earns around \$200 per month.⁴⁸

Every day he has a case. He engages in every case from the beginning, at the investigation stage. He meets with his clients a few times before the court session and each time a few days before the session, because he thinks it is important to develop a common understanding with his client.⁴⁹

He thoroughly investigates and weighs the evidence against his clients and tries to identify flaws in the procedures of the prosecution (i.e. forced confession, fingerprints on weapons, pictures of weapon on file, etc). Most of his clients are accused of crimes against internal and external security. Almost 100% of the cases are appealed. A case takes between two and four months until the appellate court issues its decision. Mr. Nizammudin says a successful case means enabling a fair court decision (which may or may not result in the release of the defendants). He gains the release of more than 20 prisoners a year.

He complained about the differential pay scale and said the newcomers do not have sufficient experience and are paid at least \$750/month, and some are paid \$1000-1200. He said these lawyers are now MoJ employees and not funded by any project (in fact, they were funded for a time by World Bank).

He also stated that private defense lawyers are the main parties involved in corruption apart from judges, by falsely promising the defendants to obtain their release in exchange for a large sum of money. The defense lawyer will then try to bribe the prosecutor or the judge to change the course of the case. It is a main reason he does not want to practice as independent lawyer and he prefers to work for the MoJ, and hopes he will get his pension once he is retired.

He is worried about his safety and security because most people recognize government lawyers (including his defendants, who also do not trust them).

Lawyer 2, is 58 years old, and a graduate of Law and Political Science from Kabul University. He has practiced law for the past 25 years, and has been working with Legal Aid department for five years.

⁴⁸ The limit of seven cases was introduced by the ILAB, but protested by lawyers who are paid by case. Staff lawyers are paid a flat rate no matter how many cases they handle, but the ILAB limits are not enforced by the MoJ.

⁴⁹ A list of best practice questions for the defense lawyer can be found in the Asia Foundation book, Legal Aid Assessment and Roadmap, p.168-70.

Lawyer 3, is 35 years old, and has been practicing law with LAD for five years.

Both of them also work at Bagram and expressed that they had the same workload, salary, and courtroom experience as the first lawyer.

Lawyer 4, is 37-years old and has practiced law for the past nine years, during which time she worked with Legal Aid department She graduated from the Law faculty of Kabul University in 2006.

She has handled around 900-1000 cases in the last nine years; 800 of them were criminal cases. She said the workload had been heavy, but for the last 3-4 months she is only handling seven cases a month.

She said it is difficult for her to meet with her clients (especially those who are in prison) two to three days ahead of court sessions. She can only meet with her client for 30 minutes before the court session starts, because she cannot travel to the prison; only men can.

She is now experienced enough to assess how a case was filed against her defendant. She can spot the flaws of prosecutors and, based on that, she prepares her defense. She can recite her entire defense statement, which she says the judges do not want to hear in the first place.⁵⁰

She thinks achieving a fair trial (and winning a decision in the appellate court) means a case was successful. She has only managed to prove 200 not guilty, and she thinks those court decisions were fair. The remaining decisions she thinks were unfair, because the judge only asks about the demand of the defense lawyer and will not study the file or listen to the defense statement. A cases takes three to four months until the appellate court issues its decision.

She finds the different salary scales are unjust, and earns only \$200 a month. The newcomers are inexperienced and not equipped to talk in front of judges. She had wanted apply for the new positions (the salary of which started at \$750), but the Minister of Justice asked them not to apply.

Lawyer 5 has practiced law for the last 10 years, nine of which were working with the Legal Aid Department. She graduated from the Law Faculty of Kabul University in 2005. She has received several certificates of excellence (from the Minister of Justice) and was one of the top students in her class.

⁵⁰ Sometimes defense lawyers are threatened with death by prosecutors, or denounced s terrorists due to the client they are serving. AIBA has recorded dozens of such cases.

She thinks achieving a fair trial and getting a decision from the appeal court means a case was successful. She has managed to prove 10% of her clients not-guilty in the court. In most other cases, she thinks the decision are unfair, because the judges will agree with the prosecutor and will not listen to the defense lawyers. In essence, the judge becomes their opponent in the cases. A case takes a few months until the appellate court issues its decision. Almost 99% of the cases are appealed. Only a few go the Supreme Court.

She also thinks the different salary scales are unjust, and earns only \$200 a month. She also was told not to apply for the new posts that paid \$750/month.

Lawyer 6 is 25-years old and has practiced law for the last two years with the LAD. He studied Law and Political Science at Alberoni University in Kapista province, and graduated in 2015.

In the last two years he has managed 170 cases: 36 cases in 2015, 95 cases in 2016, and 40 cases in 2017. The work load is lighter in winter.

Most--95% --of his cases are assigned to him by the court, and 5% of his cases are in absentia. Thus far, he has proved 20 defendants not guilty. Most of his cases are related to narcotics and public security. Cases on narcotics take one month to complete, while cases of public security and anti-corruption may take up to six months.

He believes the defense lawyers do not have any meaningful role in such cases because in most instances the prosecutors present solid evidence of the committed crime (such as narcotics in the abdomen, or a confession by the defendant). The defense lawyer is not given any opportunity to investigate or develop the case. The prosecutor completes the file and hands it over to the court.

Lawyer 7 is 28-years old and joined the MoJ three months ago. She studied Sharia Law at Kabul university and graduated in 2012. She completed her Masters degree in Law from a private university in Kabul (Kateb University). She has four years of experience in legal aid and previously worked with NRC.⁵¹ She found the workload at NRC was too much to handle along with her other responsibilities. She has not had any cases with the LAD yet. Her starting salary is \$750 and she expects to earn more.

Lawyer 8 graduated from the Law Faculty of Kabul University in 2012. She joined the MoJ three months ago, and is based in a Juvenile Center in Kabul.

⁵¹ NRC legal aid deals only with civil cases.

She has handled 23 cases so far, and thinks most of the decisions were fair. Her salary is also \$750/month.

Lawyer 9 is 28-years old and graduated from the Law faculty of Alberoni University. She joined the MoJ three months ago and has handled 21 cases so far at a Juvenile Center, and twelve cases have closed. She thinks the court decisions have been fair. Her salary is \$750/month.

5.3 Afghan Independent Bar Association (AIBA)

Many of the lawyers to whom AIBA gives cases have little experience and only handle a couple of cases per year. They are law school graduates and licensed by AIBA, but when one sees what the Legal Clinics are now teaching--all the practical aspects of handling a case--one wonders how a simple graduate can manage in court. AIBA aimed to use lawyers with two years of experience but lowered that to one year, to recruit enough lawyers. They do not specify how many--if any--cases they have handled in that time, the type of case, or the outcome. The legal representation offered may be of a very low level.⁵² Clearly, the criteria for selection should be based on experience handling court cases not the amount of time since graduation.

However, not only lawyers are paid for legal aid cases. The LAGF database indicates in Bamyan a large number of cases handled by police as the arresting officers, and they are claiming the legal aid payment from AIBA. Some asserted that the harsh winter climate and distances between villages and the court made officers willing to settle cases outside of the court process. Yet that introduces a primary conflict of interest for the arresting officer who then gets paid for dismissing the case.⁵³

There is much talk about deals between prosecutors and judges to divide the legal aid payments between them and accounts of cases reported as closed and paid when the file was still open. There were also reports of defense attorneys paying judges for favorable decisions. Some lawyers said that these charges were made by parties who did not like the judgment handed down, but every analyst of the system acknowledges abuse, usually of payments to the judges. The availability of money to pay the legal aid defense attorney, from 5000 to

⁵² They do assert that in felony cases, the assigned lawyer must have handled--but not necessary won-- felony cases.

⁵³ The LAGF Mid-Term Review also feared trumped up charges were a valid concern.

12,000 Afs,⁵⁴ depending on the stage of the case, seems to be corrupting a well-intentioned process.

As lawyers in primary court cases are only paid between 5000 to 7000 Afs, there is an interest in a conviction, which leads the case to an appellate court, where the cases cost from 10,000 to 15,000 Afs.⁵⁵ The incentive for generating more cases disappears when the lawyers are paid a flat monthly salary, as are the lawyers of the Legal Affairs Department, or the legal staff of NGOs. Clearly, there is a profit motive in advancing a legal aid case.⁵⁶ There is an incentive for abuse.

Assigning an attorney through AIBA is a perfunctory exercise that says Legal Aid is being provided. But if the quality of the lawyer is questionable and the integrity of the court process is not ensured, it wastes time and money and undermines the confidence of the parties involved. This was launched as an "interim" process that foreigners sanctioned and funded, but which continues without correction.

5.4 ILF-A and other NGOs

The International Legal Fund-Afghanistan (ILF-A) is another civil society legal aid provider, and other international and Afghan agencies also provide legal aid in various provinces of Afghanistan, as funding permits.

Providing access to legal aid is not the same thing as providing access to justice. Legal aid offers some access to the flawed formal justice system that exists. NGOs are motivated by legal principles and a sense of mission. They are not highly paid, and earn a fixed wage to pay for their services, the way a lawyer for the MoJ does. Some analysts believe that NGOs such as ILF, Da Qanoon Ghush-tonky and Medica offer the best legal aid services.

ILF-A has offices in the provinces, as do other NGO providers. As their funding shifts so does their ability to keep more offices open. They have compiled the best database of all legal aid providers and offer the possibility of quality defense lawyers in a system that limits their role.

⁵⁴ \$1USD equals Afs 38 so Afs 6000 equals \$160.

⁵⁵ Not usually appealed to the same judge, we were told.

⁵⁶ One should examine whether the LAD cases of the MoJ also have a high conviction and appeal rate.

5.5 Sustainability

Legal aid needs to introduce a sustainable model, which means requiring all licensed lawyers to conduct pro bono cases, enforced by AIBA at the time of the annual renewal of their license. That might provide enough coverage, were superfluous cases cut from the court caseload.

Were in absentia cases not admitted and Primary Court weaknesses addressed, the caseload would be almost halved. The high number of cases overturned in appellate courts indicates flaws in Primary Court procedure or a lack of competent judges. Defense lawyers need to have adequate access to clients and evidence, or be able to request a continuance to postpone the case.

However, it must be considered that there is no incentive to alter the above practices because the current system offers financial incentives for more cases, as lawyers and perhaps judges are paid for their role in each case. Even the limited data presented in the AIBA database of cases paid for by LAGF indicates questionable practices that have arisen out of the financial offerings of the current system, as well as a lack of transparency of the process.

More experienced lawyers face the challenge of being given little information on the case before going to trial and may only meet the client in the courtroom. If the defense attorney has no ground to offer a defense--no knowledge or evidence of the case--it is no wonder that the case ends in conviction and then is appealed.

5.6 Pro Bono Cases

It seems that the Ministry of Justice thought it could meet legal aid needs by requiring all licensed attorneys to offer three pro bono cases per year to clients in need. The Evaluation Team was told that most lawyers do not comply, the penalty for which is a fine of Afs 2000 per case, for a total of Afs 6000, which they pay to AIBA. However, providing pro bono cases could be a requirement for license renewal, so that the country can meet its Constitutional obligations for legal aid. One could imagine many excesses of the system might disappear quite quickly if legal aid provision were a shared obligation instead of a donor subsidy. As the current system of foreign funding offers an incentive for the court to generate more cases, delinking the profit motive from the number of cases going to trial could cut legal aid costs dramatically.

The Ministry of Justice LAD is the Government office responsible for meeting legal aid needs, but their staff lawyers are too few in number to handle the

current volume of cases. Cutting the caseload with reforms and requiring all lawyers to do pro bono cases in order to be licensed would be a way to make legal aid sustainable, and perhaps more credible.

5.7 Legal Aid Database

It seems there are many databases, each serving different needs and none centralized and universally accessible.

1. JSSP, funded by USAID, has established the CMS (Case Management System) which tracks cases from arrest, detention, prosecution, trial and imprisonment, and provides statistics for each province and for the whole country. The Supreme Court should manage it, but does not have full access.
2. EUPOL has created NIMS (National Information Management System) which is not as detailed as the CMS.
3. The Afghanistan Government database, which does not link up with either CMS or NIMS.

The MoJ is determined to develop a central database on legal aid provision to instantly compile data from all legal aid providers.

Many questions arise, the answers for which would be provided through the inspection of the legal aid case database--except it does not exist.⁵⁷ Neither the Ministry of Justice nor AIBA, which hands out cases and payment for LAGF, have databases of their cases that adequately reflect the parties to the case, the charges, the process, the lawyers involved, the timeframe, the judge, and the outcome. The MoJ says it keeps some records on paper, and does compile them into reports. It says some preliminary work has been done in this regard through IDLO support, but data entry has not begun, primarily because the MoJ has failed to reach a consensus with other legal providers that the MoJ should lead and manage the database.

Among the answers a database could reveal: Are the legal aid defenders the same in both the primary court and appellate trials? Are primary court judges less capable in their knowledge of the law than appellate judges? Is better knowledge of the law and courtroom performance linked to training received by judges and lawyers? Is more evidence made available to defense attorneys by the second trial? What percentage of convictions are actually overturned on

⁵⁷ AIBA has a limited database. Only ILF-A has a database with enough information about the cases they handled to be illustrative. See the section on LAGF database.

appeal? People who now avoid the formal justice system complain about the length of the process.

6. The Legal Aid Grant Facility (LAGF)

JHRA Phase II established the Legal Aid Grant Facility (LAGF) to fund private lawyers providing legal aid, especially in rural areas, as an alternative to the Legal Aid Department of the Ministry of Justice. In the process, the LAGF fund also supports the Afghan Independent Bar Association (AIBA) to set up field offices, as AIBA assigns cases and distributes the funds to legal aid lawyers. LAGF was meant to be an interim measure until a more comprehensive national implementation plan on legal aid services could be devised.⁵⁸ The LAGF Committee, made up of six members, deals with policy concerns and allocations of funds to AIBA. Provincial LAGF offices actually help AIBA to assign cases and assist with logistical matters. LAGF was identified under the draft National Priority Programme as a cost-effective management approach.⁵⁹

Private lawyers and CSOs are able to play a useful role in the provision of legal aid, particularly in rural areas where lawyers may not be available, or where there are benefits in the existence of a second provider to avoid conflicts of interest. LAGF has two tiers of funding:

1. To cover AIBA operational costs at the central and provincial level, with the aim of providing legal aid services in all provinces. The funding also includes capacity development of AIBA provincial lawyers as well as those working for the Ministry of Justice. A further aim is to support legal clinics at universities and apprenticeships for law students, which is a recent strategy to improve the quality of new lawyers.
2. To directly fund legal aid services for indigent clients by AIBA lawyers in Kabul, Balkh, Nangarhar, Herat, Helmand, Ghor, and Badghis.

The Evaluation Team could not assess the capacity building efforts of AIBA for provincial lawyers, but those methods are important to review. A Bar Association should assure the quality standards and integrity of the profession, and offer ongoing professional formation for annual recertification. According to the LAGF Evaluation, LAGF spent \$60,025.65 or about 37% of its total budget on trainings for defense lawyers and law clinic students, despite

⁵⁸ According to Steering Committee report of Nov 2013.

⁵⁹ Although more than 70% of its budget supports AIBA offices.

the fact that several other funders and the universities are also offering training for them. Capacity building in this sector needs to be very closely examined for effectiveness, cost, overlaps, gaps, and results. At the same time, the capability of legal aid lawyers needs to be demonstrated.

6.1 Abuse of the Legal Aid Funding

The Mid-Term Review of LAGF mentioned many aspects of case law that were troubling, but which may apply more to LAGF-funded cases. There are some concerns with the Legal Aid system as it exists.

AIBA cases show high conviction rates and many cases that were handled by the police. Either they are misdemeanor cases that are resolved, or unsubstantiated cases generated by the police for profit. Indeed the Mid-Term Review of LAGF recommends that the case records include not only acquittals and convictions but reductions in sentences and charges withdrawn.⁶⁰

Most of LAGF funding--75%-- covers the overhead of AIBA offices; only 14% pays defense lawyers to provide legal aid. That is a high administrative cost for work that could be done by a couple of AIBA officials, perhaps in an office shared with another legal organization. AIBA has expanded its number of offices with money from the LAGF grant, but can always count on income from licensing fees for lawyers, continuing education classes, and fines from those who did not perform pro bono cases. AIBA may be so consumed with assigning paid cases to its members that it fails to play its oversight and capacity building role, enforcing proper standards and conduct.

From the outset the UNDP had concerns about AIBA's ability to provide monitoring and evaluation, quality control, and oversight of the lawyers providing legal aid, due, in part, to their lack of experience. The LAGF and its administrator must be seen to provide a transparent process, with redress if clients are not content with the service.⁶¹As of now, without an adequate case tracking system and with the involvement of AIBA in assigning cases, its impartial role is compromised, as is its ability to handle complaints.

6.2 Assessing Need

⁶⁰ Especially in Herat, Nangarhar, Balkh, and Helmand. LAGF MTR, p 4. This data should be included in any future LAD database.

⁶¹ Discussion held as LAGF was being set up. Reported by Jenny Bjerlestam, June 2013. There is no grievance procedure for clients who want to complain about the legal aid process.

In the limited access of the Evaluation Team, we found only one case of a person who seemed to not need assistance to pay for a lawyer. He had been arrested suddenly when his car came in contact with someone on a motorbike. There were no apparent injuries but later, the man on the motorbike decided to press charges. Meanwhile, his family approached the family of the accused for money. As the arrest was sudden, the accused ended up in jail, where a legal aid lawyer found him and offered assistance.

Since identifying cases for trial is an opportunity for a legal aid lawyer, there is no incentive for means testing. In another case about inheritance, where a man was seeking legal representation for his son. the man said he looked poor so no questions were asked. However, the case was about relatives of his who wanted his assets, which would be inherited, suggesting he was a man of means. ILAB set the limit for legal aid at earnings of \$300/year, but many challenged this limit as too low for urban settings, where living costs are higher.

6.3 Monitoring Data

The next section provides an analysis of the LAGF database, comparing it with two NGO databases (one U.S. and one Afghan), since there is no GoA database at the Ministry of Justice Legal Aid Department.⁶² The MoJ plans to formalize the records they keep, but it is surprising that donors did not make a database a priority, to assist with accountability, evaluation of the state of law, and monitoring of the results of development interventions in the sector. What might it indicate about capacity of lawyers and judges, and cooperation between the different offices of the legal sector?

7. Legal Aid Databases

by Aziz Naderi

7.1 LAGF Database

1. Comparison of LAGF database with MEDICA Database

Aspects analyzed	Medica Database	LAGF database
The database format	A relational database that is made of several tables linked with each other (perhaps in MS	A simple database in MS. Excel, with only one table of information

⁶² The Supreme Court has one set up by the U.S. Government, but most aspects of it are confidential. It is not clear how comprehensive it is.

	Access or another database software)	
Information on clients	Has significant details about the legal aid clients; their full identification, addresses, economic, and occupational background, and socio-economic conditions	Poor background info on the clients; only name, father's name; no complete address of the client . Not even ID numbers were used, which made it difficult to trace duplications in the database
Contact numbers (to trace duplications)	Space provided	Column provided for contact number but only 14.7% (of 2850) clients had a contact number.
Misspelling and different spelling of names	-	Names of the clients were misspelled or spelled differently in numerous instances; for instance, <ol style="list-style-type: none"> 1. Neymatullah 2. Naimatullah For the same client; first for primary court and second for appeal court (the father's name is the same and the contact number is the same)
Data Entry	Automatic (and fixed) entry	Manual entry with the possibility of entering multiple spellings for a place or fixed procedures; such as the appeal court, the appeallete court, the app court, or Dikundi, Dykundi, Daikundi,
Referred by:	-	A definition of each reference is needed to distinguish how the clients found out the LAGF; Need to distinguish: Direct reference?

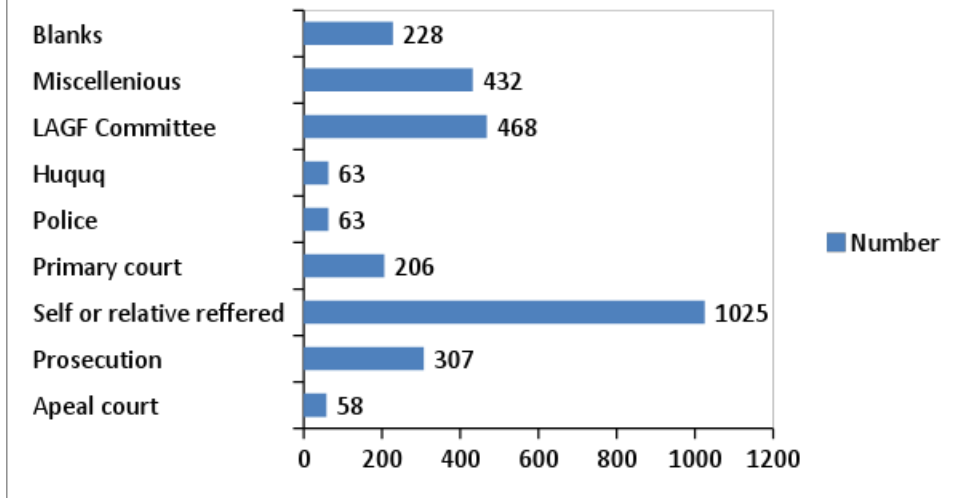
		Indigent person? Relatives?
Information on defense lawyers	-	Name, license number, and contact number only, with no indication of experience--years and types of cases
Date format	Fixed	Not fixed; several forms of date entries
LAGF procedures and mention of database		No reference to the LAGF database in the LAGF procedures document- which may be why it is not an important issue for JHRA II.

Non-fixed entries make it impossible to run pivot chart functions and easily analyze the database. A manual analysis of the provided data indicates:

1. Cases referred by:

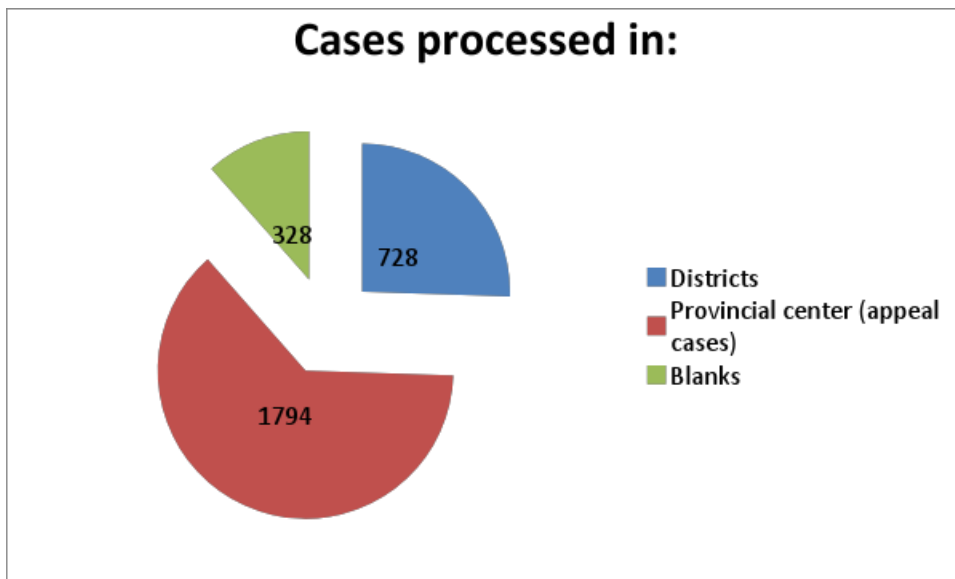
The following chart shows the different sources of cases referred to LAGF. There were at least 228 blank entries. There at least 7-10 different spellings for appeal court (including entries in Dari and Pastho), and 10 different spellings for primary court (or court in general, without indication if it was primary court or appellate court). There were also different spellings for prosecution/ attorney general's office.

the 2850 cases referred by:



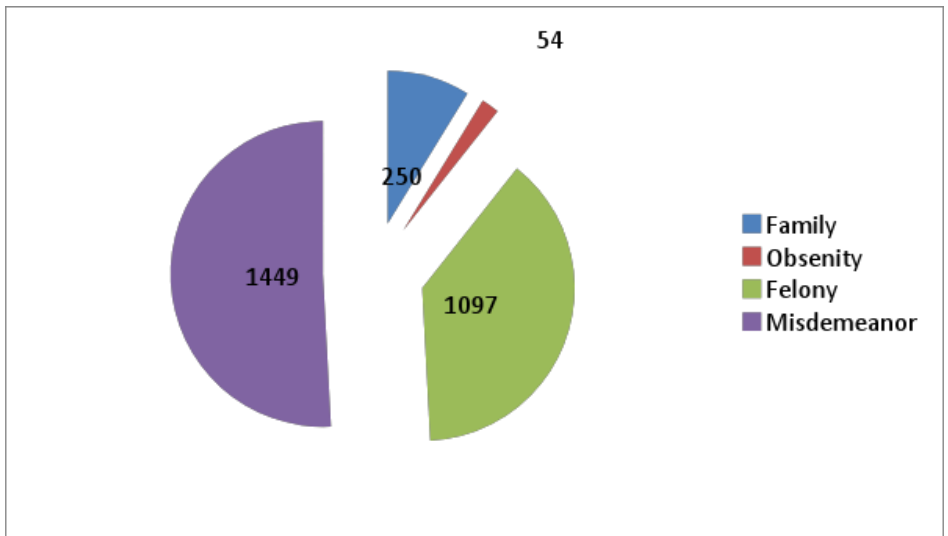
2. Processing place column

This is an interesting column, related to the question of LAGF's relevance. LAGF was supposed to provide legal aid in rural districts. But this chart shows otherwise, only 26% of all cases. There are 328 blank entries, which could relate to districts or provincial centers.

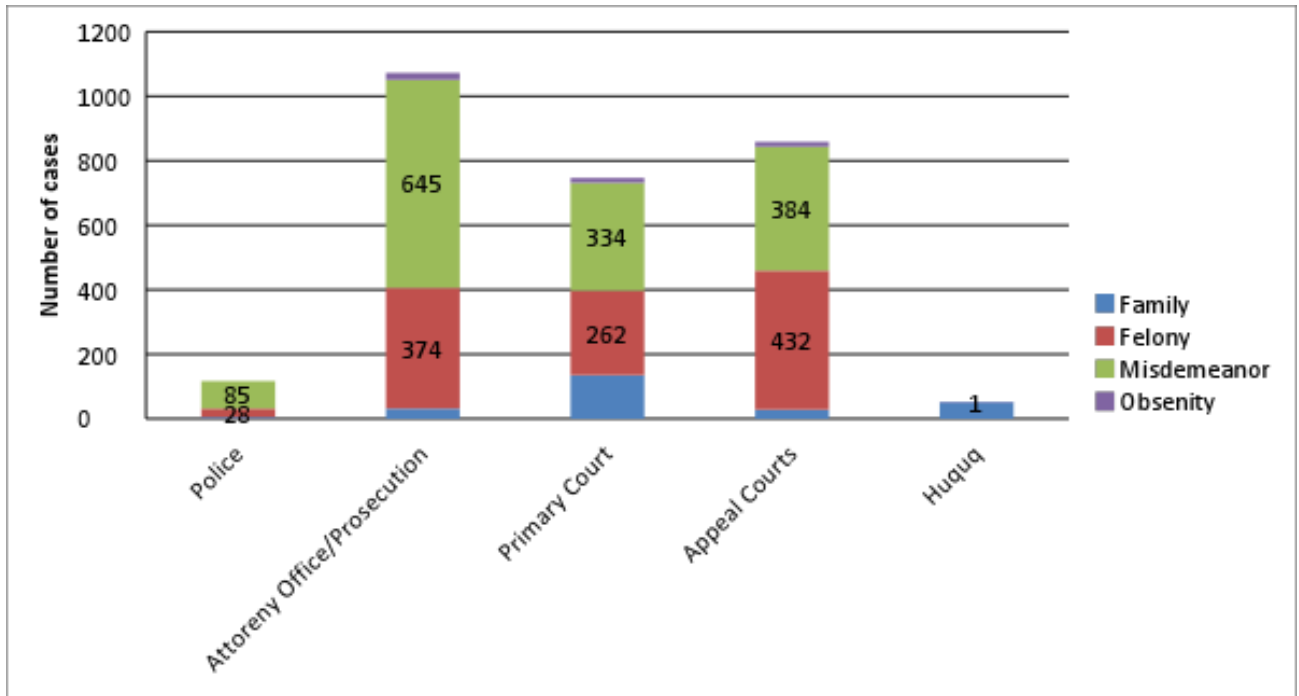


3. Types of cases Processed by LAGF

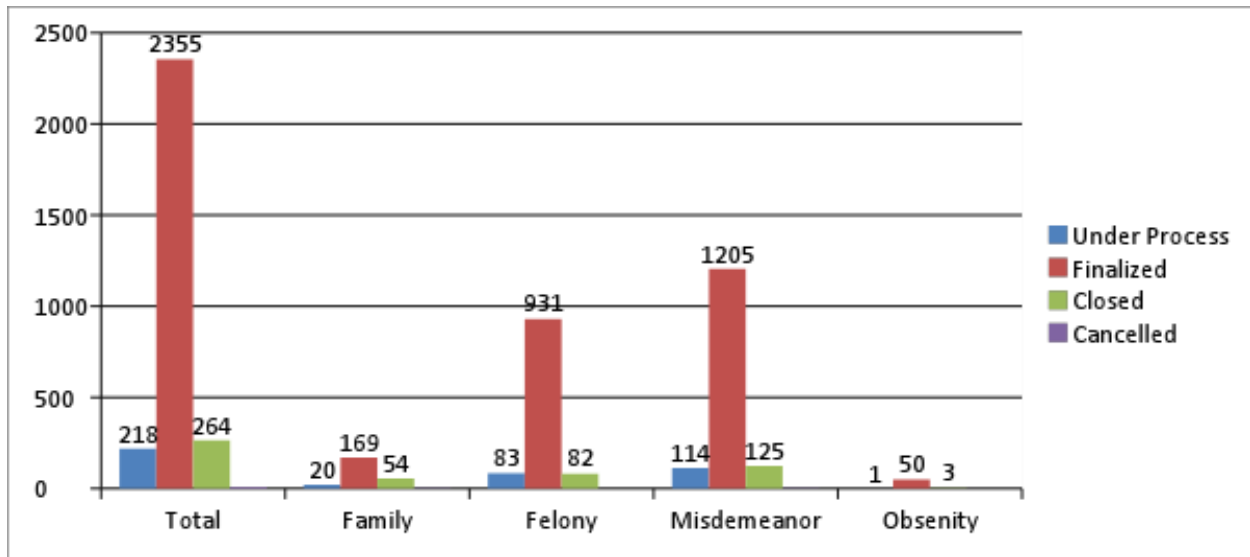
This chart shows the different types of cases processed by LAGF



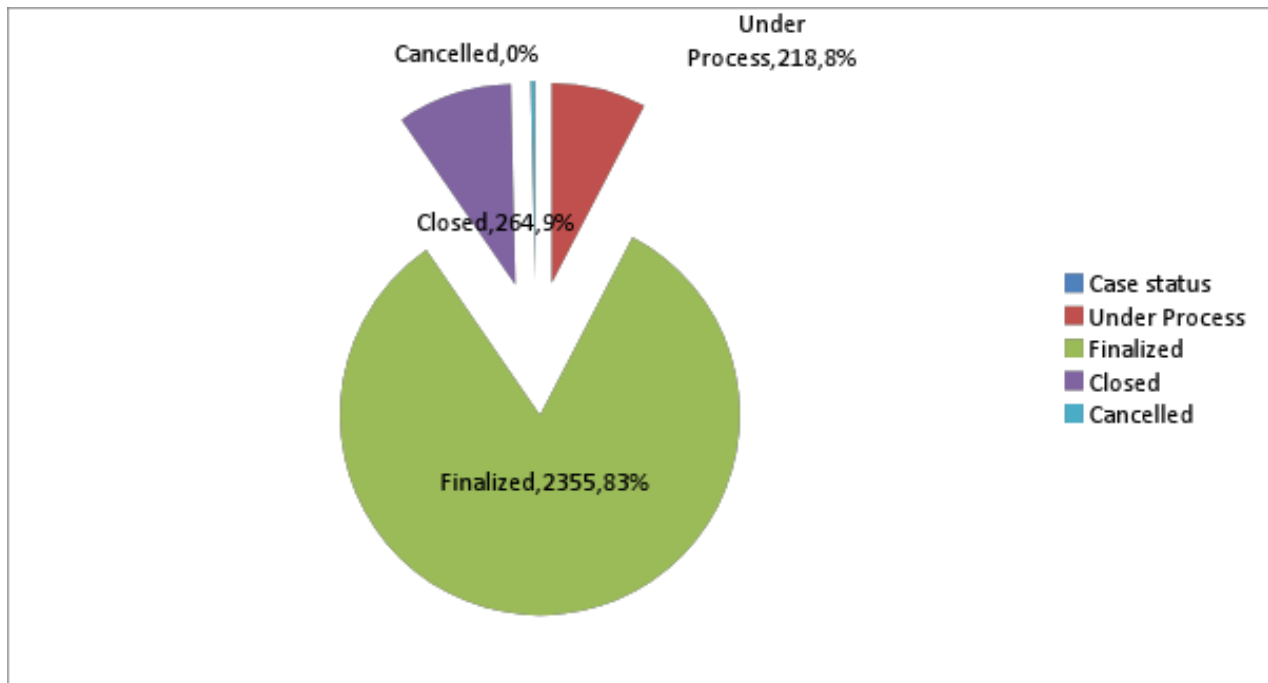
4. Cases handled by different institutions:



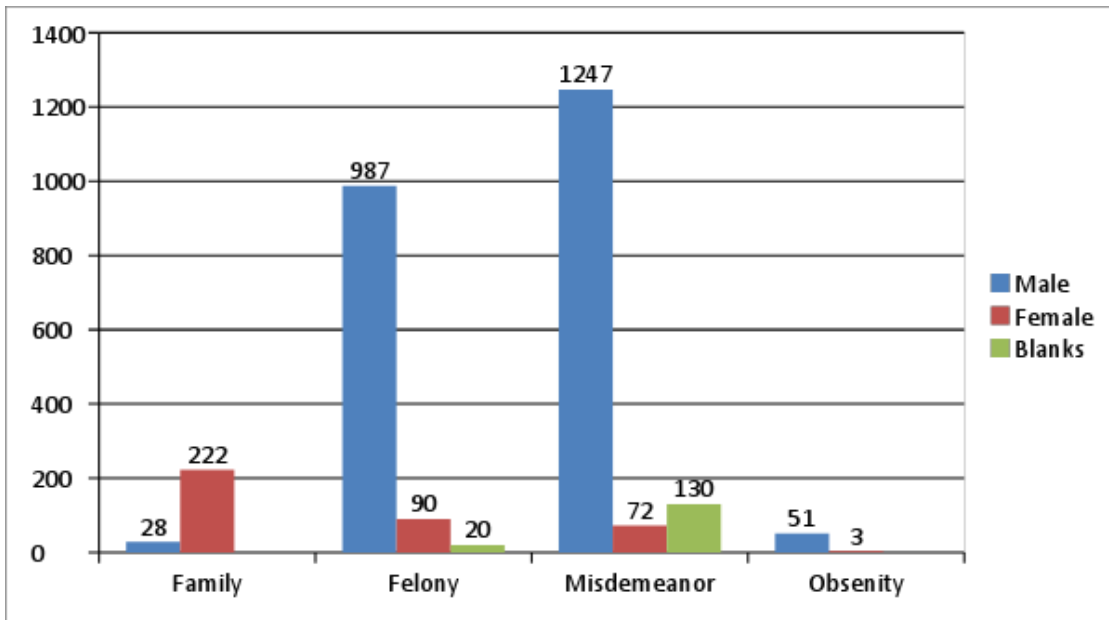
5. The status of the cases: this chart shows the status of the cases as of the end of JHRA-ii Project:



6. The following is a cumulative chart of the status of cases:



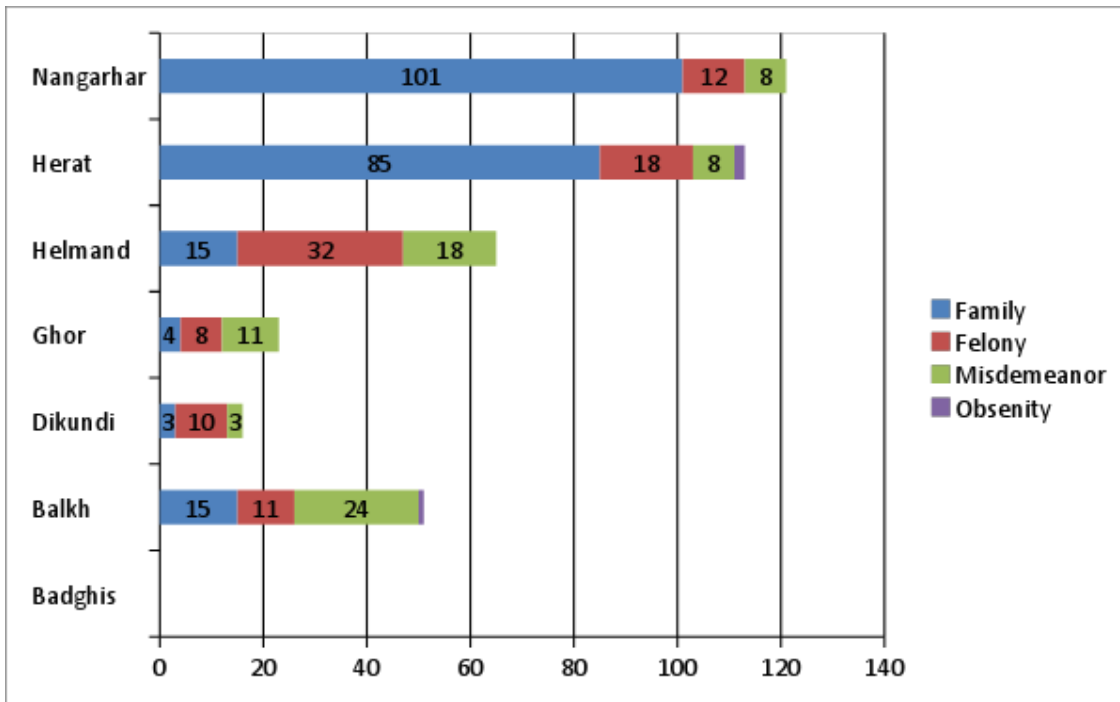
7. Gender of clients: Note the blanks (and the low quality of database/data entry throughout other columns). Women only made around 14% of the total clients.



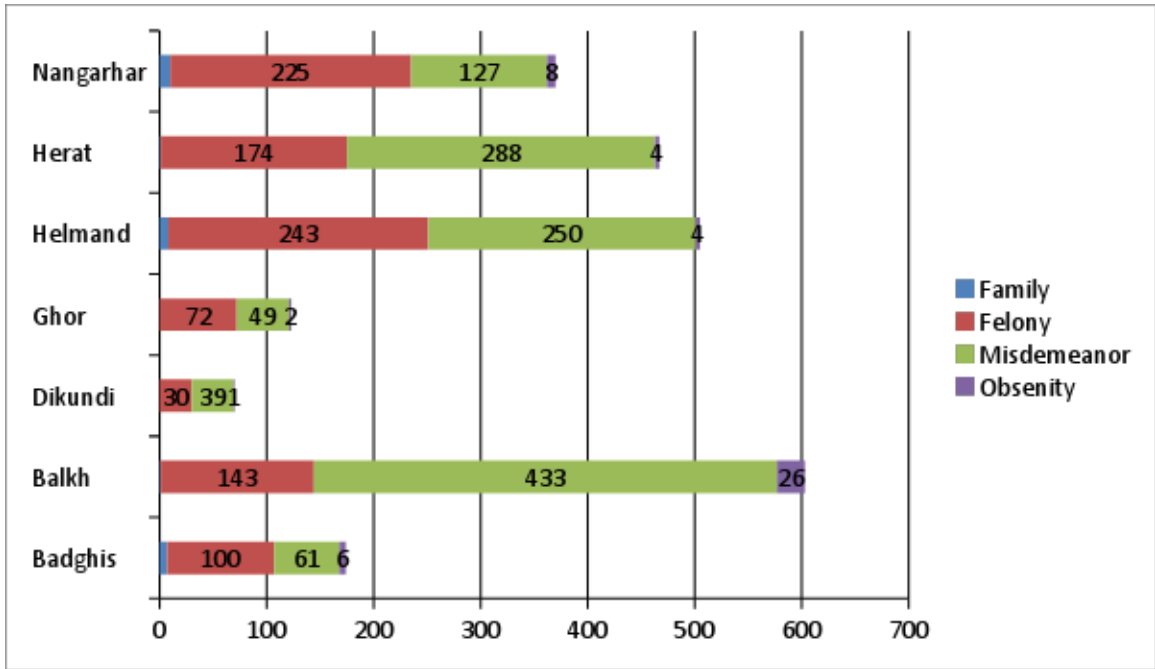
8. Provincial distribution of cases

8.1 Female clients in target provinces

Note that there are no women clients in Badghis. The majority of clients are in Herat and Nangarhar.

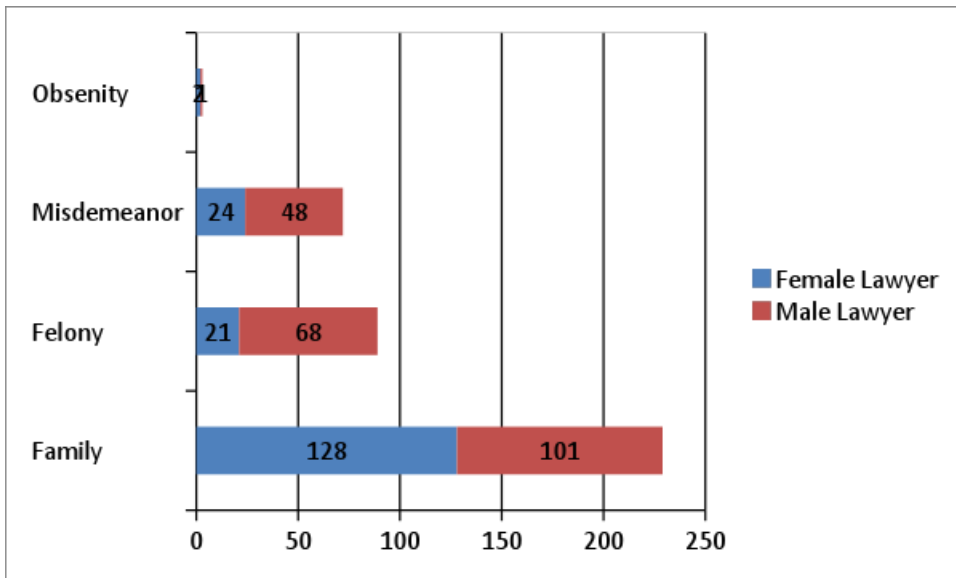


8.2 Male clients in target provinces

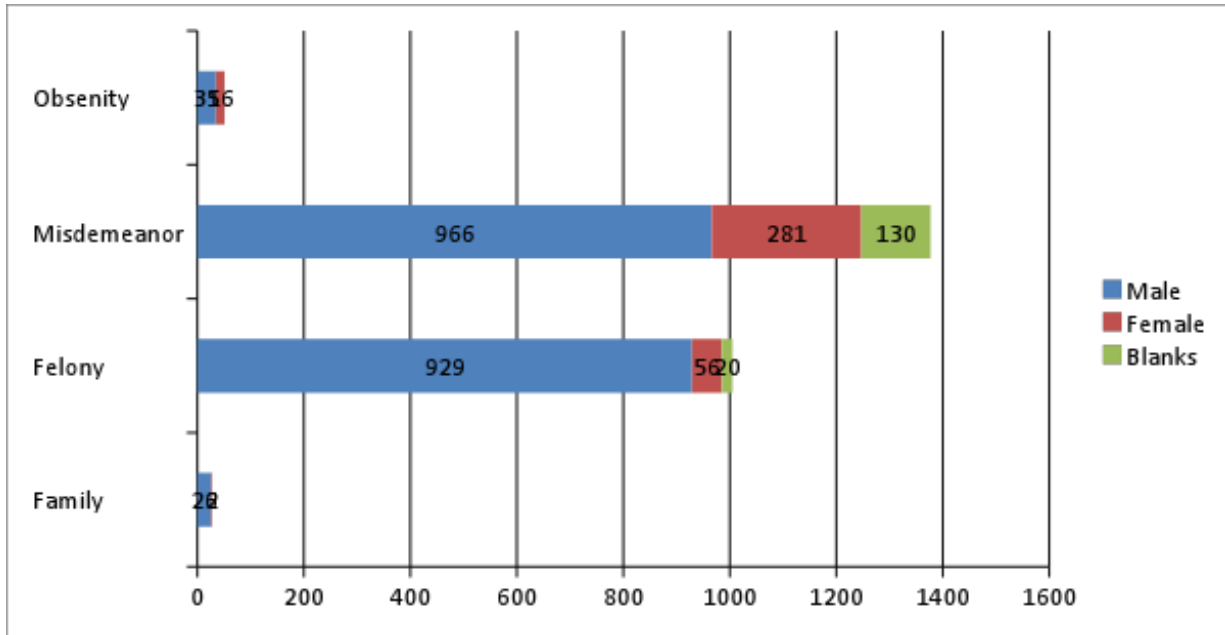


9. Female/Male Lawyers and Female/Male clients

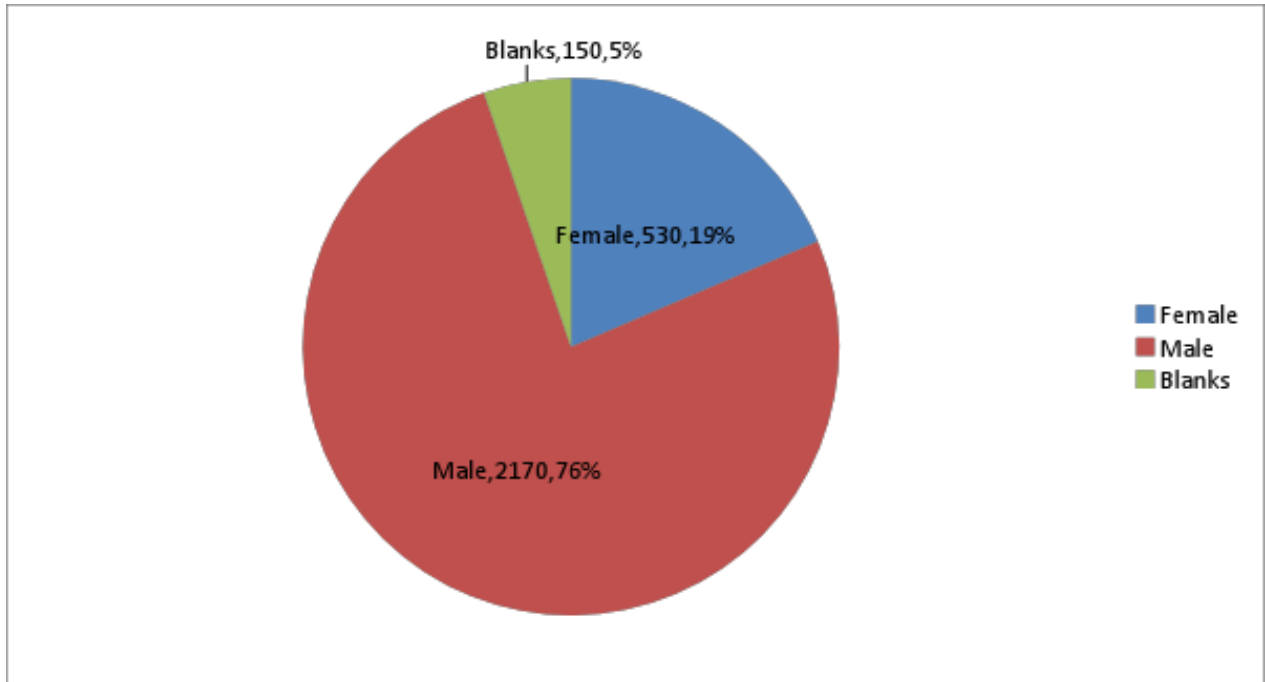
9.1 The number of female clients handled by the male and female defense lawyers in AIBA:



9.2: this chart shows the number of male clients handled by male and female defense lawyers in AIBA

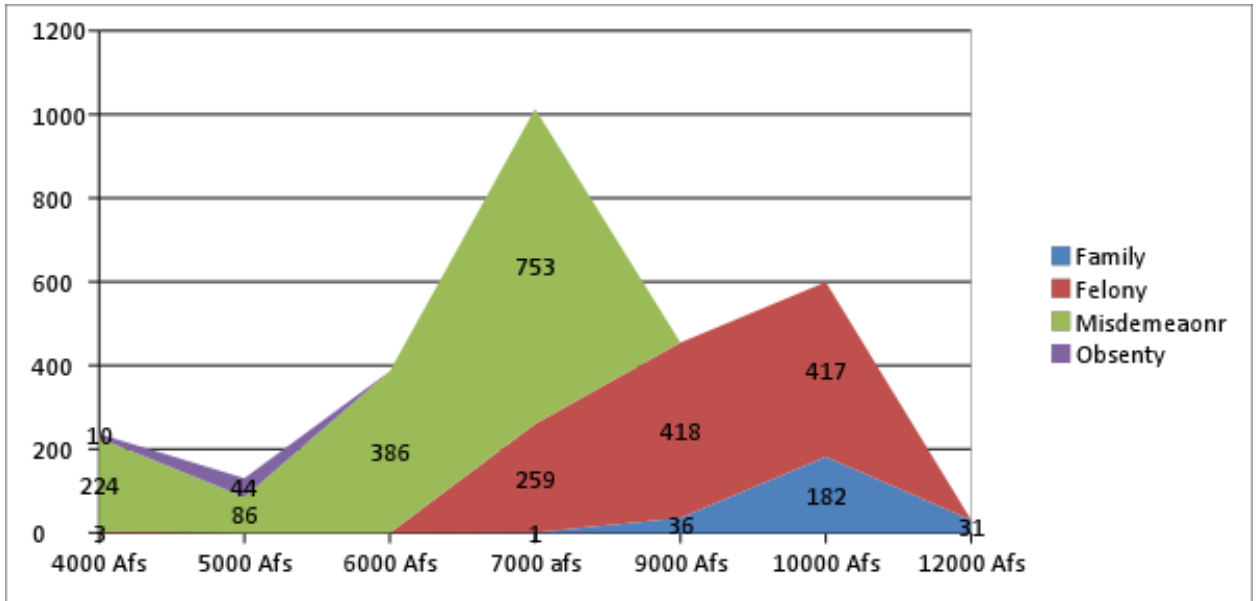


9.3 Male: Female Defense Lawyer ratio in LAGF



10. Prices of the cases and pro-bono cases: only 71 cases were registered as pro bono cases out of 2850 cases during JHRA-2

The following chart shows a distribution of cases as per their prices:



The following is a source of the above chart (for clarification)

Prices	Family	Felony	Misdemeanor	Obscenity
4000 Afs	0	3	224	10
5000 Afs	0	0	86	44
6000 Afs	0	0	386	0
7000 afs	1	259	753	0
9000 Afs	36	418	0	0
10000 Afs	182	417	0	0
12000 Afs	31	0	0	0

11. No way to check how many cases were handled by the assigned lawyers because the current format of the database does not support a relational analysis.

12. Difficult to see if court decisions are being enforced (and their status), as there is no post-decision tracking. Therefore, one cannot assess if the defendants were acquitted, jailed, or executed.

13. No evidence of duplication of cases being charged twice or given to more than one defense lawyer. Nonetheless, there are at least 85 clients who have received legal aid for primary and appellate court procedures. This shows duplication of at least 168 entries on one side of the database (on basic information side, the left side); but the court procedures, and dates of the cases are different on the other side of the database. This duplication is found through phone numbers but, since the majority of

clients do not have a unique number, it is difficult to identify other sorts of duplication in the rest of the database.

14. Not possible to assess the time it took to process cases because the entry of dates is not fixed. Also, the processing time in different stages could not be established.

7.2. The ILF-A Database

These report forms include:

1. The number of primary court outcomes, by local office: This form reports the numbers of court decision in each ILFA office. Court decision includes acquittal, jail terms, life sentence, cash fine, etc. There is at least one judgment of slashing (based on sharia law). The decisions are counted by province and collectively.
2. The number of primary court decisions, by office and defense lawyer; A report from Kandahar shows a court decision relating to 6 defense lawyers. The report is dated 2014-2015. It also shows a case load of 2-16 cases per lawyer. There are also different types of court decisions, among which most are convicted with a prison term..
3. The number of cases by stages, by office: This form shows the number of cases in four different stages (police, prosecution, primary court, appellate court) in 6 provinces. Most of the cases are at the primary court level. They could clarify why they used prosecution as well as attorney office or investigation stage to refer to the prosecution stage of the cases. This forms shows the most cases were in Kabul (151) followed by Balkh (73), and least cases were in Helmand (51) in 2014-2015.
4. The number of cases by office: provides a simple summary of all cases in their respective offices in 2014-2015.
5. Number of cases, by police, defense lawyer, and offense at police stage: This forms reports the number of cases, their types, and category, handled by different defense lawyers in the police custody stage in each province. Charges include a range of issues such as kidnapping and murder, rape and violence, land grabbing, traffic accidents, moral crimes, crimes against internal and external security, robbery, adultery, smuggling of narcotics, and breach of military code of conduct. It also shows the number of types of cases handled by each defense lawyer.
6. Number of cases by gender, adult and juvenile, office and defense lawyer: This form shows the age and gender of clients per defense lawyer. The form is a report from Kabul province, and shows 16 defense lawyers with a 115 cases of male juvenile, 449 male adults, 3 female juveniles, and 11 female adults.
7. Number of cases by gender, adult and juvenile, by office: This form is also like the previous one but shows the total number of cases by gender and juvenile/adult status in 7 provinces.

8. Numbers of cases by defense lawyer: a simple form that shows the number of cases assigned to each defense lawyer in 2014-2015.

9. Number of appeal statements filed by the defense lawyers. It is also a summary of the total number of appeal statements filed by the respective defense lawyers.

10. Client release forms pre and post trial, by office and defense lawyer: The following reasons (as a sample) are counted per defense lawyer per province:

- a. Bail out during investigation
- b. Release after a period in custody
- c. Acquitted by the court
- d. Released by court judgment, with fine
- e. Released after jail term
- f. The prosecutor closed the file

This offers a good indication of defense lawyer performance.

In summary: although the Evaluation Team did not have access to the full database, the above report forms show that ILF-A is using a complex relational database in some kind of professional database software. It is also online, which makes it easy to use by their different field offices. Each form indicates a certain aspect of performance of the lawyers and their respective provincial offices.

8. Human Rights

8.1 Human Rights Support Unit (HRSU)

The Human Rights Support Unit of the Ministry of Justice was founded in 2009 with the help of JHRA to assure input in the legal drafting process so that laws in Afghanistan adhere to human rights obligations within the norms of international law. This includes scrutinizing the drafting of new laws and proposing amendments, as well as reviewing and revising existing laws to assure they are in compliance with international human rights standards enshrined in documents already ratified by the Government.

It also helps to ensure that other Government ministries and agencies conform to human rights standards, as set out in the international conventions, the

Cairo Declaration and other relevant international agreements.⁶³ In addition, the HRSU fulfills reporting to Geneva on Afghanistan's compliance with the seven international conventions it has signed.⁶⁴

The ability to assure the protection of individual human rights and the enforcement of the legal frameworks is outside of their scope of work. However, the Director spoke of an example of new legislation they had challenged that allowed the Government to keep prisoners detained even after completion of their sentence. It was not clear why the Government would want to do this and no answer was offered.⁶⁵ He did concede that others were raising such issues too, but did not say whether their combined objections led to a revision of the law, or the practice.

The HRSU is also providing input related to laws and revision of laws against the human rights standards for the Ministry of Foreign Affairs (MoFA), which seeks information for their reports on the seven conventions for the related Technical Committees⁶⁶. The MoFA compiles the report for initial review to the respective desk of the convention. The Ministry said that the reporting of the HRSU lately was not adequate, and several laws are still pending their review to assess their compatibility with the conventions. The review of some other laws has taken more time than expected.

The HRSU published documents (in Dari) on:

- Regulations of Human Rights Support in State Institutions
- Review of National laws based on a questionnaire from the Committee on the Prevention of Torture.
- Human Rights Indicators 2016. It does not specify the means of verification for each indicator and the sources of data.
- National Action Plan 2013-2016.
- Comparison of the International Declaration of Human Rights with Islamic human rights declaration.
- Monitoring mechanisms of human rights in the UN, and OHCHR.
- Rights of Suspects and the Accused.

⁶³ Afghanistan has signed seven international human rights conventions.

⁶⁴ There is some dispute as to whether the information for these reports was primarily provided by the HRSU, the AICHR or others.

⁶⁵ Perhaps the prisoners were detained on security offenses for which there was not much evidence for conviction and a lengthy sentence.

⁶⁶ A technical committee is established from the relevant line ministries by the President for each convention.

- Concepts of Human Rights.

It is not clear who received copies of these documents.⁶⁷ An annual update report on the legislation they had reviewed and amended would have been useful.

The Unit had 22 staff members at the time of the evaluation, but the former UNDP Advisor felt that three or four of its top staff were sufficient. The funding of HRSU by the SDC had been due to end early in 2017, but the UNDP agreed to continue payment until the end of September.⁶⁸ HRSU insisted the Ministry of Justice would classify it as a Division in 2018 and pay its staff as civil servants, and hoped that the UNDP would continue its funding until the end of 2017. At one point, the Acting Minister of Justice had indicated that the Unit would be converted into a Directorate, with Focal Points placed in all 16 ministries, as part of the enforcement of HRSU regulations.⁶⁹ If this happens, it would indicate that these institutions created by donors will be sustained by the Government.

8.2 Afghan Independent Commission for Human Rights (AICHR)

The Afghan Independent Commission for Human Rights is a non-governmental entity that was established in 2002 with a Constitutional mandate to promote and protect the human rights of all Afghans. It tries to increase human rights awareness amongst Afghan citizens, and leads the discussion of delicate issues relating to traditional society. Like the HRSU, it works to ensure the compatibility of Afghan laws with human rights standards, and also tracks human rights abuses. It acts on behalf of victims of human rights violations, including prisoners, but acknowledges a certain culture of impunity and corruption, reflecting conservative traditions and growing insecurity.

The AIHRC has recently recommended Afghanistan's inclusion in the convention on prevention of racial discrimination, which the government has approved and the Ministry of Foreign Affairs is currently preparing.

JHRA provided some technical support for AIHRC, including study visits to work with peer agencies in South Asia.

⁶⁷ Many had 1300 copies printed, in Dari.

⁶⁸ It was difficult to envision how more than five persons were needed in such a Unit, but the Ministry wanted to keep all of the jobs.

⁶⁹ As quoted in the Minutes of the Steering Committee meeting of 18 March, 2015, p.3.

It also assisted in printing of thousands of copies of their strategic plan in Dari, Pashto, and English.

Among the programme of work AICHR and JHRA agreed was:

- Collection of best practices and localised priorities for advocacy with the judiciary concerning gender-based violence-related (GBV) cases.
- Policy recommendations for judicial and legislative reforms to positively affect the representation of victims of violence and government response to GBV cases.
- Plan for support to government institutions responsible for the protection of victims of violence, particularly women, through improved monitoring of detention facilities.
- A high-level advocacy strategy generated from learning during the regional conference and exchanges with representatives from the NHRC India and Commission on Human Rights of the Philippines (CHR).
- One conference on judicial advocacy, torture and GBV, featuring best practices from regional National Human Rights Institutions and Ombudsman Offices.
- Facilitate one follow up knowledge exchange engagement with NHRC India.
- Facilitate one follow up knowledge exchange engagement with the CHR Philippines in Kabul on high-level advocacy, particularly focused on judicial advocacy and advocacy for issues related to GBV.

In support of this, JHRA provided training in Kabul with regional human rights commissions/ombudsmen, an exchange visit to a peer agency in South Asia, and consultation with representatives from the Center for Human Rights in the Philippines.⁷⁰

There was also some cooperation arranged by JHRA with the Danish Institute for Human Rights in support of work on the UN Convention Against Torture (UNCAT) in 2015.

The JHRA Strategic Plan noted that the lack of state human rights representatives and monitoring mechanisms for the application of human rights at the provincial and district levels was a critical gap. While this is true, it probably reflects the priorities of the Government that is trying to integrate new ideas and processes as it can, according to perceived need and public demand. It is an important indicator for those working in the justice and human rights sectors to see that Government priorities do not necessarily match those of donors.

⁷⁰ According to the LoA and confirmation by AICHR.

9. Street Vendor Rights

As part of a Legal Empowerment of the Poor initiative, the UNDP had consultants working from 2012 on the rights of various disadvantaged groups and legislation in support of their causes. A special effort was made to improve the rights of street vendors, who are the main merchants in the country and sell their wares off of carts by the side of the road or lined up in public markets. Hundreds of such vendors can be seen in cities, and their financial transactions are thought to constitute tens of thousands of Afs. per month in Kabul alone. However, they may be harassed by police and municipal officials, and requested to pay bribes.

Municipal Technical Cooperation Committees for Street Vendors were set up in Kabul, Herat, Mazar-e-Sharif, Kunduz, and Jalalabad, with the JHRA office serving as the secretariat and coordinating their functions. Ultimately, it was handed over to the municipality, which seems to have not maintained the effort. Initial steps included surveys of vendors, analysis of legislation, strategizing, and the formulation of policy options. It was claimed that Street Vendor Associations had been formed, but that was not the case when the CTA arrived in the summer of 2014.

This initiative had a media component which interviewed officials on a popular radio station and tried to resolve issues faced by street vendors.⁷¹ Three thousand brochures were printed for the Kabul Vendor Association, listing vendor rights and responsibilities and to whom they should protest, but it was not clear who received them.⁷²

JHRA held Street Vendor Association meetings in Kabul in April and May 2015, at which eleven markets in Kabul were represented⁷³, and they discussed amendments to existing laws that could protect their rights, the radio show, and dispute resolution. They were meant to meet once a month. A Technical Coordination Committee meeting held in July, 2015.

A Vendor "shura" was held on April 6, 2015 for Kabul vendors. A National Pre-Policy Conference was held on August 18, 2015 attended by 160 people at the Intercontinental hotel in Kabul at which the Deputy Mayor of the Kabul Municipality spoke about the Green Paper on Street Vendors. Other deputies of municipalities were also present, including a representative for disabled street

⁷¹ The CTA said that his questions/script had to be cleared with military officials first.

⁷² 2000 in Dari and 1000 in English. In Herat 1000 were printed in each language.

⁷³ They had been identified in a mapping exercise.

vendors. A Deputy Minister for The Independent Directorate of Local Governance spoke about the Technical Cooperation Committees in Kabul, Herat, Mazar-e-Sharif, and Jalalabad. The topics under consideration were inter-ministerial recognition of vendors' right to work and association, assembling a drafting committee for developing a policy on street vending and the challenges of enforcement, and taxation of vendors.

Unfortunately, the Evaluation Team was not able to meet with Mirwais Fazli, a legal researcher with the Herat MoJ, who spoke about the existing street vendor associations and their members, and how disputes were resolved. The Municipal Officer in Herat did complain that the initiative was never finalized, and that it could have succeeded as a municipal ordinance instead of a law. It may be that UNDP staff responsible for this project left and the effort seems to have been dropped.⁷⁴

Efforts by the Evaluation Team to ascertain the current status of the municipal law or ordinance were unsuccessful. No one at the UNDP or the Kabul Municipality could name the head of the Street Vendor Association. Mr. Ulomi, the Deputy Mayor, who had been present at the conference in 2015, was no longer there. Street vendors randomly asked knew nothing about their rights or any movement working in their favour. Vendors in Herat (near the mosque) had an organized market space for their carts and said they were not harassed.

However, the Evaluation Team did find a list of people invited to a Kabul Street Vendor Association meeting given by the UNDP, and called some of them.⁷⁵

Here were their answers:

Engineer Sayar, Froshga Market

Mr. Sayar is a member of the leadership committee of the Vendor Association and the Shura of the Disabled Vendors. He was more focused on the work of disabled street vendors.

According to Mr. Sayar, they organize regular meetings on a weekly or monthly basis to discuss the challenges facing their members. They also hold high level meetings with Parliament members to propose solutions, and offer recommendations to the Municipality for improving the conditions of disabled street vendors . They recently had a meeting with the Upper House members to propose alternatives to the new Municipality plan aiming at reducing traffic congestion and improving the cleaning of Kabul.

⁷⁴ The CTA relayed the history of the project and wished the initiative had continued.

⁷⁵ Aziz followed up on this.

They are in regular contact with the municipality to discuss new challenges. They do not have a system to register individual complaints of street vendors. However, they discuss collective problems with the municipality. For instance, the street vendors need space and protection for some of their seasonal sales, such as during *Eid*, *Ramadan*, New Year celebrations, etc. Yet, the municipality is not able to resolve that issue.

Based on the new plans of the Municipality, street vendors will be allocated some space. However, street vendors require funds to make a proper and sustainable use of the space. Therefore, they need to have access to interest-free loans. The UNDP assisted the street vendors to organize and establish links with the Municipality- it was a valuable initiative.

Moalim Rabbani, Laisi Maryam Market

Mr. Moalim Rabani is the head of the Kabul People's Shura, and also a member of the leadership committee of the Vendor's Association for district 12, but is not a street vendor.

He says the Vendor's Association is not a formal organization. It is a self-made association of around 500 street vendors who are active in the Laisi Maryam markets. One street vendor represents 50 other street vendors in this area in the leadership committee. All of the street vendors were placed in front of the shops following a tripartite agreement between the district 12 municipality, district 12 police, and the vendor association. Based on the agreement, the street vendors are responsible for cleaning their respective areas, and reporting security threats to the police.

They don't have a mechanism for handling complaints because problems do not arise since the locations of the street vendors was specified. He couldn't think of any major problem the street vendors face.

UNDP's role was limited to a meeting on the Street Vendor's Law, where three books on rights were presented to them.

Sayed Mohammad S/o Mirbaz, Taimany market

Mr. Sayed Mohammad says there is no association of street vendors. He only represented, along with Abdul Mohammad, a group of 40 street vendors in some of the meetings the UNDP organized. For the past year, he and the 40 other street vendors have lost their spots in front of the cloth shops and have no other place where they can set up their business. He and most others he knows are jobless, and he stays home most of the time.

They tried to complain to the district municipality and district police, but to no avail. They also complained to the Parliament's complaint commission but it was not useful. Finally, the district 4 police chief permitted them to keep their carts on the side of the main road. This hasn't worked well, but they have no other option. Sometimes the

district police and municipality staff won't allow them to work because they say they have orders to clear the side of the road.

He said most of them borrowed money to run their businesses but then the municipality didn't allow them to stay in their spots because the municipality favored the shopkeepers in front of whose shops the street vendors were working. Now they have to deal with debt and earn money for their families at the same time.

It is interesting to note how experiences varied in different sections of Kabul and that a fledgling initiative by the UNDP could have benefitted from more input. That raises interesting questions about engagement methods with local owners of the process, who have a vested interest in its success--through profit, a credit system, and tax collection.

This LEP initiative was meant to influence other legislation that also affected Street Vendors, including a Food Law in February 2015, a Traffic Law in January 2015, a Labour Law in November 2014, and a Consumer Protection Law in March 2015. In each effort, JHRA attempted to correct ambiguities in the law. The results of those efforts are not known, along with the status of the Street Vendor Green Paper.

The CTA felt that the lack of legal expertise within the UNDP to guide the legislative process and the absence of a person to continue his efforts would doom the project. That seems to have happened. However, it also appears that he had a realistic assessment of the limited willingness of officials to engage in such efforts and, yet, he expected the outcome to be different.

10. Rule of Law Indicators Survey (RoLIS)

JHRA worked with UNAMA and the NATO Rule of Law Field Service Mission to organize the Rule of Law Indicators Survey (RoLIS). RoLIS was created by the UN Department of Peacekeeping Operations (DPKO) and the Office of the High Commission of Human Rights (OHCHR) between 2008-2011 in collaboration with UNDP and other UN agencies. It appeared to offer a useful methodology for measuring public perceptions and monitoring developments in the Rule of Law sector. However some UN sponsors saw it as more of a baseline monitoring tool, which is why it was designed to be implemented by national partner agencies, as a capacity building effort, instead of by independent outsiders. The aims of RoLIS were quite limited, in seeking to identify gaps that donors could address. It did not look at causes, make attributions, or address Government failings.

The RoLIS process was endorsed by the United Nations Secretary-General, the World Bank and member States as a "UN system-wide tool to be initiated by national governments", and meant to enhance their capacities as they engage in a process of reform. This RoLIS was one of a series conducted by the UN to assess public sentiment and confidence in complex and unstable countries. While it was not deemed as weak in executive decision-making as were similar processes in Liberia, Haiti, and South Sudan, it still suffered from Government bias and efforts to ensure that responses favoured their Administration. Had the process not ensured government ownership, it probably would not have been widely endorsed. Yet, the fact it was under government control means it was not the objective monitoring indicator that some envisaged.

A Steering Committee meeting in November 2013 indicated that the Director of Planning and Policy Department (PPD) at the Ministry of Justice was taking leadership of the Survey and needed to involve the police, Ministry of Interior, and the Huqooq Department of the MoJ in the study.

The PPD's capacity gaps in providing expert advice and informing Ministry policy and law-making initiatives had already been identified by donors. The UNDP was meant to provide technical and financial support to the MoJ in activating the mandate of the PPD, which had only one staff member. Nonetheless, the UNDP and UNAMA supported the PPD in the initiation of RoLIS, which was meant to offer a potential tool to monitor performance, inform future polices, and provide evidence for donor initiatives.

The Minister had expressed a difficulty in coordinating multiple donors in the Sector. RoLIS was meant to provide comprehensive data to help the MoJ play that role. While RoLIS was initiated and facilitated by the PPD, the survey and analysis were conducted by independent civil society organizations.⁷⁶ RoLIS did introduce a means of effective coordination and data collection between NATO, UK, UNODC and the AIHRC.⁷⁷ However, primary Government control compromised the independence of focus and outcome. While public views were sought, much input was given by members of the Government about the system they knew and in which they participated. Their perspective was bound to be colored by their conditions of employment.

Nonetheless, the Survey reflected a lack of confidence in the functionality of the Justice Sector and the Government's ability to provide security. While the

⁷⁶ Such as the Afghan Center for Social and Economic Opinion Research (ACSOR).

⁷⁷ All of these groups shared their secondary data.

Evaluation Team did not meet the head of the PPD, no one in the Ministry mentioned the value of RoLIS in providing new information or in assisting their monitoring of results in a Justice sector reform process. The assumptions behind the Survey should be re-examined.

In terms of process, the JHRA CTA found it a comparative success. Peer agencies had little positive to say. However, the exercise was meant to provide a baseline assessment, and so its utility can only be determined in future, when a later comparison is made. The methodology did aim to be reflective, and adapt to the specificity of the setting and the practical obstacles in accessing some data. However, perhaps too many compromises were made for the sake of securing engagement in the exercise. For instance, relying on focus groups discussions limits range of input and can be a control measure.

The main problem with such efforts to quantify and render more "scientific" what are social interventions, is that the indicators are defined and interpreted in a highly subjective way. In this instance, the indicators for each branch of the Justice sector were: performance; integrity, transparency, and accountability; treatment of vulnerable groups; capacity. Capacity--in all its forms--is probably the primary indicator. Yet, in the methodology there was a focus on recording baseline data without seeking the "why" behind the data. That also limits utility of evidence for informing future interventions.

Specific to the areas of enquiry for this evaluation, information gathered by RoLIS on the Supreme Court, AGO, and AIBA could have been insightful. However, the "expert" view did not match the other information sources the Evaluation Team accessed. While many felt defense lawyers were part of a corrupt process that catered to narrow financial self-interest, no one felt the system could be challenged, even if technically there were a mechanism to do so. Therefore, reading findings that diverged so sharply from apparent reality suggests this was more of an exercise to accommodate the Government than to identify areas of needed reform--for which there is already much evidence.

11. Findings

According to the DAC criteria, which assess relevance, effectiveness, efficiency, sustainability and impact, JHRA II faces some of the shortcomings of Phase I. As the UNDP continues some of the JHRA II efforts, through legal aid and capacity building, this report's findings are highly relevant.

Relevance

The theory of change, as expressed in the Prodoc, is ideological, and could be challenged as an inaccurate description of the dynamics of change. Many development agencies have their own ideas as to why a society is in conflict and how it can change, and most of them are proven wrong. This is why it is recognized that governments must take the lead, based on their knowledge of their own society, and its willingness to adapt its cultural norms.

There was no reason for the UNDP or any other donor to think it could increase public trust in government rule of law institutions to any measurable degree, as that would have meant addressing the personal interests that result in charges of corruption of that sector. The presence of billions of dollars in donor funding actually encourages profiteering by people living in an unstable environment who seek to obtain what they can while it is available, in case they one day need to flee.

Offering a bit of legal training to employees as varied as police, lawyers, and judges did not target the source and components of a systemic problem, or all the links in the chain in the rule of law process. The training programme did not conduct pre-assessments of those invited to attend and design the training course according to their gaps in knowledge. Having mixed groups of people in training sessions could be useful for some subjects, but higher level content should be specialized according to profession. That means this training was basic and not geared to the specific needs of trainees--which was not properly assessed beforehand. Capacity building was too random to improve the performance of the chain of function in the legal sector--from arrest to trial.

The specific problems of lack of evidence at the time of arrest and trial, procedural issues in the court, as well as the lack of integrity of the legal actors in the system mean that the citizens who come into contact with this rule of law system have less confidence in it than people who only have heard of how it is supposed to work. Continuing to promote the formal justice sector without addressing these lapses--many of which outsiders cannot address--is counterproductive.

The UNDP had many ideas but not enough resources to follow through on them, which meant that by the time of this evaluation it was hard to distinguish UNDP efforts from those of other donors. Many meetings, drafting SOPS, consultant studies on prospective laws, etc. left no lasting effects, in part because the commitment to follow through was inadequate.

Effectiveness

JHRA II aimed to build district level rule of law institutions, and this could merit more attention, if the security situation so allowed. Many villagers travel to district centers but it is not clear that legal institutions meet their needs or can lead to solutions applicable and enforceable in their home jurisdictions. A more sophisticated analysis needs to be made of which aspects of law could be most helpful and how those can be integrated with traditional conflict resolution bodies. It does seem that for domestic violence cases, government resources such as the FRU and the EVAW Unit are consulted more frequently and it may be that the new EVAW courts can avoid the corruption that plagues other courts.

AIBA's work in support of legal clinics and public awareness made it a compatible partner in support of UNDP activities under JHRA II. It has been a main implementing partner of the legal aid programme, but its performance is inconsistent and raises questions of conflict of interest. It has provided lawyers who were not experienced enough to be competent, lacked funding to represent a significant number of defendants, and failed to include training and oversight methods to build the quality of lawyers. It should have required lawyers to prove themselves through pro bono cases under the supervision of experienced(perhaps paid) lawyers before they were assigned to paid legal aid cases. If the quality of services was inadequate, increased access does not help. Many of these failings were noted and reported in back-to-office reports, but not acted upon. As the Mid-Term Review reported, there were many management and staffing problems. UNDP projects always are too ambitious and understaffed--and often underfunded--to be more than moderately successful. Those lessons seem never to be learned.

Impact

Public awareness of legal and human rights issues may be increasing, thanks to media efforts, that were funded by a variety of sources, including JHRA. However, that does not correspond to what people experience when they come into contact with the rule of law institutions.

The HRSU was deemed by many to offer some value in terms of assuring the Government incorporated consideration of human rights conventions into the legal framework, but as the UNDP ceased its funding, it is not clear if that work will be sustained. If the Government does not value the Unit enough to pay for it, that is an indicator of the human rights profile at this moment in time.

If one acknowledges that public confidence in the justice system is not increasing, then nothing done by donors is likely to be transformative.

Providing "access to justice" in a system that does not reliably deliver justice serves no purpose. The entire conceptual framework for the UNDP intervention should be reconsidered. One needs to build from the indigenous framework, not the one imposed by the ideology of the West.

Coordination

The UNDP did coordinate with many other agencies, relying on UNODC for training, and teaming up with UNAMA on the ROLIS survey. However, coordination with agencies funded by the U.S., who were heavily invested in the rule of law sector, was minimal. The full extent of their programmes was not tracked, including their training of the same government officials, establishing a database, providing funding to the Ministry of Justice and other NGOs, etc. There were significant gaps in coordination, but not all agencies are necessarily interested in cooperation with the UNDP. It does help, however, to be aware of the details of the work of others, to avoid duplication of efforts.

Not all agencies were capacitated to perform well or serve as leaders in a sector--such as UNWomen on EVAW courts. In such cases, the UNDP takes over roles to fill the gaps, and does the best it can. Limitations in access affect coordination and communication, and turnover in staffing impedes institutional memory and knowledge management.

Sustainability

The capacity building methods of the UNDP need to be revised and targeted to the specific needs of the institutional partners to achieve sustainable results. The training was too general in subject matter and too limited in participation to be able to change the institutions involved. No monitoring or follow-up programme was devised to assess how partner agencies were affected, or how they implemented what knowledge their trained staff may have gained. Capacity building should improve institutional functionality not focus on training of individuals.

LAGF is funding a dysfunctional legal aid programme, that is not sustainable and perhaps alienates Afghans from the formal legal system due to the limited professionalism of the lawyers involved. Providing defense attorneys alone cannot fix the deficits in the court process.

Efforts to build the capacity of partners working in human rights focused on study visits to other countries. The choice of country and comparative institutional framework is critical or else the results are nominal.

The concept of national ownership is not to be linked with convincing Afghans to accept the interventions of donors, but with Afghans having adequate input in the design and priorities of donor programmes. The aim is not to co-opt Afghans, but to learn from them how common aims between donors and Afghans can be addressed. That may be why there is so little progress in this sector, and the financial inputs may actually encourage profiteering.

12. Recommendations

These are combined to make the linkage clearer, and the course of action to be taken:

1. Finding: Capacity building focused too much on central institutions and not enough on the rural areas where most Afghans live, without an indication of the unique value of the training.

Recommendation: Capacity building can be more focused at the local level in observing and then providing correction in legal process and court procedures every step of the way, through local legal affairs officers, who rotate through the provinces and districts.

2. Complaints over the justice sector are more based on corrupted integrity and ineffective process than on lack of knowledge of the law.

An assessment should be conducted of content and focus of training and of the effectiveness of capacity building of Ministry officials to see whether trained professionals actually behave differently and improve the process; professional bodies should hold lawyers and judges to ethical standards.

3. Lawyers graduate with little practical knowledge of court proceedings.

Professional organizations, such as AIBA and a Judges' Association or Judicial Academy, should be assisted to provide ongoing continuing education to lawyers and judges to assure they know both civil and criminal law, the Constitution, and court procedure, and are monitored and censured for misdeeds.

4. Legal Clinics are being supported with professional legal staff so that the next generation of lawyers is equipped with the practical knowledge and experience to handle cases in court.

Part of their training should involve monitoring legal aid cases in court, to compile a record of how those cases are handled, and AIBA legal aid lawyers should be included, due to their lack of experience.

5. Public Awareness of the legal system has improved due to success of messages presented on radio, television, in the mosque, and in street theater.

A more targeted strategy of message and audience (by region, ethnicity) should be made, and include a team of GoA and sharia authorities to discuss practical issues and common constitutional and sharia law remedies, to educate the public about critical legal and moral issues and how much the legal system of the Islamic Republic of Afghanistan agrees with Islamic traditions.

6. Lack of knowledge of the law does not only pertain to the Constitutional framework but also to Islamic jurisprudence, even on basic issues dealt with by informal justice.

More coordination can be devised between traditional religious and community elders as they confer on interpretations of law and how much national laws enshrine Islamic practice.

7. A number of issues plague the legal aid system, including absentee cases clogging the docket and a lack of timely information to enable lawyers to effectively defend cases in Primary Courts.

Changes to the legal aid payment system should remove the incentive towards multiple cases, with superficial legal input.

8. Questions arise as to whether people are making false arrests to profit from the legal aid subsidy.

Police should not be paid for handling legal aid cases. The UNDP needs to revise the LAGF framework to prevent abuses and to phase out its support in favour of a system the Government can fund or sustain through required pro bono services.

9. Many questions exist as to why so many convictions occur in Primary Court and why they are overturned on appeal. The legal aid programmes should be

better tracked, with more complete case data, and compiled in a database by the MoJ with UNDP assistance, so that the net effect can be known.

10. The framework for paying lawyers by the case may be geared for profiteering by all concerned, and inflate the number of court cases.

LAGF should be phased out and AIBA should ensure lawyers handle the three pro bono cases required by the Constitution for legal aid (or more), and link it to recertification for licensing.

11. Legal Clinics exist at the university faculties in Kabul, Jalalabad, and Herat, but it is unclear how many students can participate and for how long.

The UNDP can help to promote strategic alternatives, such as interning in law offices, with judges or the MoJ LAD, in order to understand the process and share the work load and provide witnesses as to the transparency of the process.

12. Lack of confidence in the formal justice sector, lack of access, and enforcement issues mean that informal justice remains the way most disputes are handled by a mostly rural population for decades to come.

A programme that discusses with village leaders how their traditions fit the formal legal framework could be a fruitful initiative that leads to the courts entering as a judgment some rulings of the shura.

13. Conclusion

The unspoken contradiction in the approach to Rule of Law capacity building is the failure to admit that the cultural norms in a traditional Muslim society are not in keeping with modern Western values. They are mostly in keeping with pre-modern Western values, however, and development partners should look through their history to find a comparable stage. Afghanistan is not a modern state. As it modernizes, it will alter its views on social roles, authority, and the role of government. A modern framework cannot be transplanted in the midst of a conflicting traditional context. However, there can be alignment and convergence, over time.

The JHRA proposal document provides a contextual analysis that acknowledges that Afghanistan is one of the poorest countries in the world--fifth behind countries such as Mali and Niger. It states that only 25% of the population is literate and most have fallen victim to injustices or human rights abuses, without specifying whether that means the violence of war, or an

unfair encounter with some level of government. Between the lack of security and lack of trust, it is no wonder that Afghans remain insular and suspicious.

When Afghans were asked about their views of the Government's Justice sector, the first concern was whether it was in keeping with traditional values in an Islamic society. Of less concern was the Western conception of corruption, as people were not surprised to have to pay a judge or lawyer for a favorable decision.

Privately, development workers admit there is a conflict between the values of Afghan society and the values programmes aim to impose--despite promising national ownership. Might that be why they are not sustained? Can one reconcile donor ideals with the stark reality of Afghan preferences? Can development partners meet Afghans where they are, and advance step by step, according to their wishes and abilities?

14. Annexes

A. Interviews

UN Agencies

Fabian Schipper, Programme Officer, Rule of Law, UNDP

Doel Mukerjee, Former JHRA Programme Manager, by skype

Kunal Dhar, Chief, Rule of Law Unit, UNDP

Tuuli Hongisto, Justice and Rule of Law Support Officer, UNDP

Ibrahim Abu Shammalah, Project Manager AA2J, UNDP

Mohammas Zubair Qani, HR and Legislative Drafting Coordinator, UNDP

Najaf Rajai, Legal Aid Programme, UNDP

Vicent Museke, Programme Manager, UNDP

Najibullah Yusufi, Legal Awareness, UNDP

Stan Starygin, former LED Programme Manager, UNDP (by Skype)

Julie Vandassen, Project Management Specialist for HRSU, UNDP

Tarek Mahmud, ROLIS Project, UNDP

Shadi Safavi, Knowledge Management, UNDP

Melanie Dubreuil, Judicial Affairs Officer, UNDP

Augustine Bahemuka, UNAMA Human Rights Officer, ex-JHRA HR Officer

Kioko Kamula, UNAMA Rule of Law Cooperation Unit, Kabul

Said Wahid, Head of RoL programme UNDP Jalalabad

Roy Dimayuga, Programme Management Specialist, UNDP Herat

Muhammad Tahir Sakhi--Former Regional Coordinator JHRA (now AA2J)

Mariam Alawi, National Legal Officer, Criminal Justice Programme, UNODC

Mohammad Jawid Mobasher, National Legal Officer, UNODC

Sohail Gheurrwal, Nat'l Project Coord., Criminal Justice Programme, UNODC

Michael Speir, IOM

Philippe Alexandre Kropf, Public Information Officer, UNOCHA

Government of Afghanistan

Min Hashimi, Dep. Minister, MoJ

Aziza Adalatkah, General Dir. of Legal Aid Department, MoJ

Hares Akhtarzadeh, Legal Aid Department, MoJ Herat

Asadullah Wahdat, Legal Awareness Manager, MoJ

Abdul Mohaimin Mansoori, UNDP Liaison, MoJ

Mr. Rasooli, Consultant, MoJ

Abdul Rahman Azimi, Head of PLAU, MoJ

Mr. Nizamuddin, Legal Aid lawyer, MoJ LAD

Mr. Esmatullah, Legal Aid lawyer, MoJ LAD

Abdel Malik, Legal Aid lawyer, MoJ LAD

Mrs. Farida Kohestani, Legal Aid lawyer, MoJ LAD

Ms. Azeeta, Nooristani, Legal Aid lawyer, MoJ LAD

Mohammad Humayon, Legal Aid lawyer, MoJ LAD

Farida Stankarzai, Legal Aid lawyer, MoJ LAD

Mariam Safi, Legal Aid lawyer, MoJ LAD

Mrs. Moshteray Ayobi, Legal Aid lawyer, MoJ LAD

Mr. Arya, Legal Aid databse, MoJ LAD

Amrullah Rahmati, Legal Aid Dept, MoJ

Ali Ahmad Bahas, Public Legal Advisor

Abdul Wahid Hedayat, Head of HRSU, MoJ

Mr. Delawar, Ministry of Foreign Affairs

M. Sadiq Zhobal, Supreme Court

Abdullah Ibrahim Khil, Planning and External Relations Dir., Att'y Gen. Office

International Agencies

Petra Winiger, Deputy Director of Cooperation, SDC

Natalie Hicks, Royal Danish Embassy

Nazar Ahmad Shah, Royal Danish Embassy, Programme Officer

Atiqullah Ahmadzai, Public Sector Reform Consultant, The World Bank

NGOs and others

Kabul

Qari Mohammad Khalid, Supervisor of LAGF, AIBA

Noor Aqa Shoaib, LAGF Project Manager, AIBA

Husain Ali Moin, Coord. of Monitoring and Investigation; Ombudsman, AICHR

Mohammad Nabi Waqar, Deputy Country Director, ILF-A

Shabeer Ahmad "Hashim" Kamawal, Country Director, ILF-A

Jennifer Smith, Exec. Dir, ILF, by skype

Freshka, Da Qanoon Ghush-tonky

Fiona Gall, Director, ACBAR

Jalalabad

Khaled, AIBA, head of office

AIBA client meetings, five men

Saidwali

Said Habeer Obaideh

Shinwari Ahmad Shah

A.B. Hakim Ataullah Hakimi, AIBA lawyer

Atalullak Momand, Family Response Unit, Police (Shiwar district)

Sarbina Hamidi, Head of Office IHRC, Eastern region

Hijratullah Safi, Law Faculty, Nangarhar University

Prof. Dr. Israrul Hai Muneeb, Sharia faculty, Nangarhar University

Herat

Hares Akhtarzadeh, Director, Lawyers Union of Afghanistan (W. region), Herat

Sajad Jawid Ahmadzar, Defense attorney, AIBA

Mr. Beshir Ahmed, LAGF Committee, AIBA Monitoring Committee

Motiarahman Sharifi, Huqooq Dept, MoJ

Abdul Hakim Akrapur, LAGF Supervisor

Ghulam Shah Adil, Dean of Law and Political Science Faculty, Herat University

Faiqa Turkani, Exec. Officer of the Legal Clinic, Herat University

Rahmatullah Hassani, Director of the Legal Clinic, Herat University

Wazir Ahmad, Member of the Legal Clinic, Heart University

Jamila Naseri, Head of Office, Medica

AIBA clients:

Hura, Huda Bakhsh, Gul Agha, Farzana

AIBA lawyers:

Sayedyasir Ahmadi, Monis Mohammedi

Zalmai Salkhi,

Abdel Tawab Wahabzada

Muzhgan Usmani

Fatana Omaryar

Farahnaz Rahimi

Faiz Ahmad Akbari

Mehdi Tahiri

B. Documents

Abaszadeh, Nigina. Police Acting on Violence Against Women in Afghanistan. UNFPA. 154p. 2011.

Afghan Rule of Law Indications (ROLIS) . Baseline Assessment Report. 2015. UNAMA and UNDP. 117p.

Asia Foundation. Legal Aid Assessment and Roadmap (LAAR). April 2017. 172p.

Asia Foundation. A Survey of the Afghan People: Afghanistan in 2016. 262p.

Echavex, Chona et al. Transitional Justice: Views from the Ground on How Afghanistan Fares. AREU: Octoerb 2016. 52p.

Elliott, Claudia. UNDP/JHRA ERAW Project Phase 2: Completion Report. Oct. 2014. 38 p.

Elliott, Claudia. UNDP/JHRA ERAW Project Phase 2: Protocols for Facilitated Settlement Negotiations Under ERAW Law. July 2014. 16 p.

Fund For Peace. Fragile States Index 2015. 40p

Gang, Rebecca. Seeing like a Law Reformer: A Case Study of the Afghan Independent Bar Association. 2010. Unpublished L.L.M thesis.

Han, Sarah. Legal Aid in Afghanistan: Context, Challenges and the Future. 21p.

Haress, Ghizaal, Judicial Review in Afghanistan: A Flawed Practice. August 2017. AREU. 56p.

Hartmann, Michael, E. and Agnieszka Klonowiecka-Milart. "Lost in Translation: Legal Transplants Without Consensus-Based Adaptation." The Rule of Law in Afghanistan: Missing in Inaction. Whit Mason ed. Cambridge University Press. 2011.

IDLO Annual Report 2015. 2016. 130p.

IOM. Baseline Mobility Assessment. Kabul: March 2017. 18p.

Government of Islamic Republic of Afghanistan. Law on Conciliation in Civil Disputes. 13p.

Kouvo, Sari. "Dismantling Human Rights in Afghanistan: The AIHRC facing a possible downgrading in status." 20 September, 2013. Afghan Analysts Network.

Ministry of Justice. Justice and Human Rights Assessment Balkh-Herat-Kabul-Nangarhar. December 2013. 93p. (JHRA II Public Perception Survey Report).

Rahbari, Slavash. First National Stakeholder Consultation Conference: A report Submitted to Open Society Afghanistan by Emerging Leaders Consulting Services.

Swenson, Geoffrey. "Why U.S. Efforts to Promote Rule of Law in Afghanistan Failed." International Security, vol 42, No.1 (Summer 2017). 38p.

SDC. Review of SDC's Engagement in the Justice Sector in Afghanistan. Kabul: July 2017. 21p.

Tondini, Matteo. Statebuilding and Reform: Post-Conflict Reconstruction in Afghanistan. London: Routledge. 2010.

UNDP. Afghan Human Development Report 2007. Bridging Modernity and Tradition: Rule of Law and the Search for Justice. 198p.

UNODC. JHRA/UNDP/UNODC Training Final Report. Kabul: 2015. 17p.

Wardak, Ali. A Decade and a Half of Rebuilding Afghanistan's Justice System: An Overview. Van Vollenhoven Institute, 2016. 22p.

UNDP JHRA II Project documents:

Afghan Laws Consumer Protection Law, Food Law, Labor Law, Municipalities Law, Traffic Law, Street Vendor Initiative).

Annual Progress Reports 2010- 2015.

Annual Work Plans 2013-2016.

Back to Office Reports 2014-2015.

Implementation Files: EVAW, HRSU, LAGF, Land Rights, NLTC, NTA, ROLIS, Street Vendors, Traditional Justice.

JHRA Prodoc

JHRA II Independent Mid-Term Evaluation, by Phillip Rawkins, December 2014. 85p.

JHRA Phase II, 2013-2016 Final Report 2016. 43p.

HRSU Main concept paper Creation of a Human Rights Support Unit within the Ministry of Justice of the Islamic Republic of Afghanistan. 39p.

LAGF Legal Aid Grant Facility Procedure, 2013. 14p.

Partnership files (AIBA, AIHRC, DIHR, MOFA, MOI, UNODC)

Reporting files: APRs, CDRs, Quarterly Progress Reports(2014-2016), Final Project Report.

C. Field Visits

If we had more time during our field visits, we could have met with Government officials who had attended UNDP training courses--if we had obtained the list of names and location of their offices. We could have visited court houses and police stations to observe conditions and speak with people at random about their work. We could have observed a trial, and visited a prison.

However time and access were limited, and we had a few days on each of two field visits.

Jalalabad Sunday, September 10-Tuesday, September 12, 2018

The Evaluation Team met with an UNAMA official, who spoke about the security situation. Then we met with Said Nabiullah Wahid, the head of the UNDP Regional office, who arranged the rest of our meetings. We visited CSOs working with legal aid and human rights, and Wahid told us of his work with the Legal Clinic at the University.

Monday we went to AIBA and met with defense attorneys and clients, as well as AIBA representatives. In the afternoon, we met with representatives working with human rights and ERAW. After that we met with members of the Law and Sharia faculties of Nagarhar University, who helped to distinguish differences in how they interpret the law in civil and criminal cases.

Herat Thursday September 14- Sunday, September 17, 2018

The Evaluation Team met with Tahir Sakhi, former head of JHRA II and Roy Dimayuga, the UNDP Programme Manager in Herat. We went to meet with the Director of the MoJ regional office, who also knew about the Street Vendor Law and its reception in Herat, and the head of the Lawyer's Union. On Friday, we met with the head of AIBA and member of the local LAGF Committee, Medica, a legal aid NGO, and AIBA lawyers and legal aid clients. On Saturday, we met with the Law Faculty at Herat University and the staff of the Legal Clinic.