



New Strategic
Security Initiative

Afghanistan Policy Page

A one-page brief from the [Afghanistan Congressional Communications Hub](#) on a major issue concerning U.S. policy and engagement in Afghanistan.

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Justice & the Legal System

Take Aways

- Afghanistan is a nation with **legal pluralism**: along with the **state justice system** and formal written law, informal **community-based dispute resolution** is widely used and is often more popular.
- **An effective system of justice** is critical to overall reconstruction efforts, peace-building and stability in Afghanistan, given the intrinsic relationship between security and the rule of law.
- **State justice institutions are barely functioning** in much of the country and are incapable of meeting many justice and dispute resolution needs of Afghans.

Key Facts

The Formal State Judiciary

- Chief Justice: Abdul Salam Azimi
- The judicial branch consists of the Supreme Court, Appeal Courts, and Primary Courts.
- The Supreme Court is composed of nine members who are appointed by the President for a single term of ten years with the approval of the Wolesi Jirga (Lower House).
- Its administration is centralized in Kabul; provincial representation is extremely low.

International Assistance

- Following the 2002 Bonn Agreement, the G8 designated Italy as the sole lead 'partner nation' in charge of rebuilding the legal sector in Afghanistan.
- The US State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) has started to work with police and prosecutors to develop a computerized case management system for the courts. INL's \$100 million budget is projected to nearly double next year. ([Washington Post](#))
- Experts say that too little attention has been paid by the international community to rule of law in Afghanistan, and fear that the formal legal system is still barely functioning and at risk from collapse.

Questions

- What solutions have been proposed so far for integrating formal and informal legal systems?
- How feasible is the state endorsement of community-based dispute resolution?

Contact:

ACCH@NewStrategicSecurityInitiative.org

State Justice System

Corruption

- Judges and prosecutors whose salaries are around \$200 per month routinely accept bribes.
- The [Asia Foundation](#) found that 51% of people who had contact with the state judiciary and courts in 2009 report having encountered some instance of corruption.

Regional Disparities

- Confidence in state justice is particularly low in the South and West where levels of insecurity are highest.

Accountability

- State justice should be capable of handling complex crimes and conducting proper record keeping that can lead to standardized enforcement – as opposed to CBDR that is often conducted orally and without record.

Women's Rights

- Despite greater female participation in state justice, it can be harder for women to access, for reasons such as restricted mobility and lack of family support.

Key Issues

Lack of Capacity

- 70% national illiteracy remains a fundamental barrier to understanding or engaging in official legal procedures based on written law.
- The system of law that was established in the 1960s was wiped out by three decades of war. Judges and lawyers fled or were killed. Since 2002 judges have been assassinated by criminal elements involved in activities such as counter-narcotics.
- Out of Afghanistan's 400 districts fewer than a hundred of them have an assigned prosecutor, whilst most have no defense lawyers and no courts.
- Only a small fraction of the estimated 8,000 to 10,000 suspects arrested every year receive the assistance of counsel guaranteed them by the constitution. As of May 2007 there were only 250 lawyers registered and licensed to practice in court.

Multiple Legal Codes

- Multiple legal codes complicate attempts to standardize processes. The Afghan Constitution allows for certain matters of law to be judged by the traditional Islamic Hanafi school of legal thought in the absence of constitutional regulations.
- Meanwhile the judiciary is required to apply the Shia school of law in cases dealing with personal matters of individuals who are Shia. This latter issue has caused particular international concern by apparently legalizing rape within marriage.

Impunity and Transitional Justice

- An action plan for transitional justice intended to address past conflict-related crimes such as mass executions and forced migration was superseded in April 2010 by a controversial 'General Amnesty Law' which offers categorical amnesty for past crimes, with the aim of enhancing national reconciliation and stability.
- Experts say that failure to address past crimes and implement justice is contributing to a culture of criminal impunity. Blanket amnesties are also deemed unlawful under international law.

Community-Based Resolution (CBDR)

Corruption

- CBDR decision-makers are usually senior members of the community who participate on a voluntary basis in their role as elders, and are generally less-inclined towards corruption.
- 72% of people told the Asia Foundation they thought CBDR was fair and trusted.

Regional Disparities

- CBDR is less popular than the formal justice in the central, north and west. Most people in the south and east prefer CBDR, though is still not entirely trusted.

Accessibility and Speed

- CBDR is more accessible for people and provides swifter justice, particularly in rural areas of Afghanistan, than the courts system.

Women's Rights

- Many local systems still deprive women of equal protection under the law that can lead to their lack of protection against domestic abuse.

Vulnerability to Co-option

- Insurgents and illegitimate local actors can 'capture' and exploit the CBDR process to the harm of communities and individuals.

Dispute