

# Justice in Afghanistan

## Rebuilding Judicial Competence After the Generation of War

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This article describes the challenge of rebuilding judicial competence in the courts of Afghanistan after almost thirty years of war. It outlines the principal findings of a national research study undertaken for the Supreme Court in early 2006.<sup>1</sup> In two parts, the article analyses the deficiencies in the quality, competence and professionalism of the judiciary as a direct legacy of the degradation of the institutional and human capacity (A.), and outlines initiatives to develop long-term education and training strategies to rebuild these capacities (B.).

### A. Assessment

The organization and jurisdiction of the courts of Afghanistan is governed by the Afghanistan Constitution adopted on 4 January 2004 and by the subsequent Law of the Organization and Authority of the Courts of Islamic Republic of Afghanistan (Law of the Courts) adopted in April of 2005.<sup>2</sup> Chapter VII of the Constitution sets forth that the judicial branch is an independent organ of the state. Ju-

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<sup>1</sup> The methodology for this research comprised: appraisal of Supreme Court data. (These records, which catalogue the judicial population by name, date of birth, date of appointment, province, court, education [degree/institution], and training [stage and in-service trainings] indicate that at present there are 1,412 judges appointed and serving in either adjudicative or administrative capacities in the courts of Afghanistan); interviews of key stakeholders in the judiciary, Ministry of Justice, legal profession, academia, civil society and international donors; training needs survey of 157 judges, representing 11.3% of the judicial population; observations of court performance at all levels; analysis of prior assessments, and stakeholders' workshop at the Supreme Court.

<sup>2</sup> For an analysis of the Law of the Organization and Authority of the Courts of the Islamic Republic of Afghanistan see Ramin Moschtaghi, *Organisation and Jurisdiction of the Newly Established Afghan Courts – The Compliance of the Formal System of Justice with the Bonn Agreement*, Max Planck Yearbook of United Nations Law, Vol. 10, Leiden 2006, 531-590.

dicial review by the Supreme Court is provided for under Article 121.<sup>3</sup> Article 116 provides that the Supreme Court, as the highest court, is constitutionally charged with the administration and oversight of the lower courts of Afghanistan, the Courts of Appeal and the Primary Courts. According to the current records of the Supreme Court, there are presently 1412 judges nationally who work in the courts, although some hold administrative positions and are not sitting judges.

The Supreme Court consists of the Chief Justice and eight associate justices, appointed by the President with the agreement of the Wolesi Jirga (the “lower” house of the National Assembly).<sup>4</sup> There are four *dewans* (divisions), General Criminal Dewan, Public Security Dewan, Civil and Family Issues Dewan, and the Commercial Dewan. Each *dewan* is headed by a member of the Supreme Court as designated by the Chief Justice. After initial staggered terms of appointment, the term of office for the members of the Supreme Court is ten years without the possibility of reappointment. The Supreme Court has the responsibility to recommend candidates for the other courts to the President for his approval. By statute, the Supreme Court has been specifically given the duty of “taking appropriate measures for enhancing the knowledge and experiences of judges”. There is a General Administrative Office of the Judiciary charged with the responsibility to manage these and other judicial administrative matters.<sup>5</sup>

The Law of the Courts defines the organization, structure, and jurisdiction of the Appeals Courts. There are thirty-four Appeals Courts (sometimes referred to as Provincial Appeals Courts), one in each province of the country. The role of these appellate courts is to review, and if they deem necessary to reconsider *de novo*, the decisions of the Primary Courts. The number of appeals judges in each province is dependent upon the size of the province. Each Appeals Court is headed by a Chief Judge with administrative powers and responsibilities for the operation of the court. The court may have six *dewans*, (General Criminal, Public Security, Civil and Family, Public Rights, Commercial, and Juvenile) each headed by a judge of that court. There are 421 judges in the Appeals Courts throughout the country.<sup>6</sup>

The lowest courts in the hierarchical structure of the Afghan court system are the 403 Primary Courts whose organization, structure, and jurisdiction are set forth in Chapter Four of the Law of the Courts. At the present time, there are 807 judges serving in these courts of “first instance”. In each of the provinces of Afghanistan except Kabul which has its own structure, there is a Central Provincial Primary Court, also known as the Urban Primary Court. These courts are comprised of five *dewans* (General Criminal, Civil, Public Rights, Public Security, and

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<sup>3</sup> As to the problem of the design of the system of judicial review in accordance with Article 121 of the Constitution see Rainer Grote, Separation of Powers in the New Afghan Constitution, HJIL/ZaöRV 64 (2004), 897-915, esp. 906.

<sup>4</sup> Article 117, Constitution of the Islamic Republic of Afghanistan, (Year 1382) 2004.

<sup>5</sup> Ibid., Article 132; see also, Law of the Organisation and Authority of the Courts of Afghanistan, 2005, Article 23.

<sup>6</sup> Supreme Court of Afghanistan records (note 1).

Traffic Criminal), allowing for specialization for the judges in those courts. The Law of the Courts also provides that primary courts may be established for Juvenile, Commercial, and Family Issues, providing additional specialization for some Afghan judges.

In each of the 360 judicial districts of the country, there is a District Primary Court comprised of at least three judges, though not all of the allotted positions are filled. For example, in Kandahar Province, at the time of this study, there is an Urban Primary Court and twelve District Primary Courts. However, only twelve judges are currently serving.

Cases are begun by a filing in the Primary Court or, in civil matters, most often with the Hoqooq, an agency of the Minister of Justice. Either the Primary Court clerks or the staff at the Hoqooq offices help with the filings, since most parties are not represented by attorneys, deal with service issues, and request the defendant's response to the claim filed. Thereafter, a series of judicial sessions may be held until a decision is rendered by the Primary Court. The Hoqooq generally handles the civil file retention and is charged with enforcing judges' decision in civil cases. However, effective enforcement of judgments entered by all courts of Afghanistan is problematic. Afghan Primary Court judges also perform administrative tasks such as issuing marriage licenses and approving real property deed transfers through the courts' Documents Registration Departments.

Criminal matters are begun in the Primary Courts by a filing by the Prosecutor General's office. Proceedings in criminal cases follow the same general pattern as the civil cases through the Primary Courts, with, of course, the right to appeal to the Appeal Courts. Article 31 of the Constitution permits a criminal defendant to be represented by counsel and requires the state to appoint counsel if the defendant is unable to afford one.<sup>7</sup> However, theory and practice diverge. There are no statistics kept on the number of defendants who are actually provided with counsel. Anecdotally, about one half of indigent criminal defendants actually are provided with lawyers in practice.

After the appropriate filing is done, notice will be sent to the opposing party to present a defense, in writing, to the claim, whether it is civil or criminal in nature. There is a procedure for motions thereafter and then one or more "hearings" are held wherein the parties present witnesses. These judicial proceedings are usually held in the small, cramped quarters of the judges rather than in a courtroom since there are few of the latter in Afghanistan. It is rare when a judge, other than the chief judge of an appeals court, has his/her own office. Instead, the judges share a small office with two or three other judges. This lack of space leads to informality in the proceedings, magnified by the infrequency of attorney representation of the parties. It usually falls upon the judge to explain the filing requirements to the litigants, to give them direction for prosecution of their cases, and to question witnesses during the proceedings.

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<sup>7</sup> Constitution (note 4), Article 30.

As a matter of customary practice, most cases decided by the Primary Courts are appealed to the Appeals Courts. Although statistics are not available, most observers estimate that as many as 80% of the decisions of the courts of first instance are appealed. Once the appeal is filed and docketed by hand, the Appeals Court handles the case in a manner similar to the Primary Court. The case is decided *de novo* and the appeals court makes its own decision, in writing, giving its reasons. Since there are no statistics presently available for the rates of appeal to the Supreme Court, it is only possible to estimate that some 70% of Appeals Court decisions are appealed.<sup>8</sup>

In summary, an analysis of available records in the Supreme Court discloses that the judicial population of 1,415 judges is made up as follows: 97.3% are male (3%, or 41 judges, are female); their average age is 47 years (37.4% of judges are between 30-45 years old, 34.9% are between 45-60 years old, and 10.1% are less than 30 years old); judges have on average almost 11 years of experience (39% of judges have between 2-5 years experience, and 36.1% have more than 10 years experience); and they are mainly appointed to the primary courts (58.6% in Urban Primary Court or District Primary Court; 30.5% work in Provincial Appeal Courts, and 10.9% work in the Supreme Court).<sup>9</sup>

It is important to appreciate that appointment of the existing cadre of judges has varied markedly, as outlined in the table below. Some 12% were appointed during the administrations of King Zahir and President Daud at commencement of the past generation of war; 42% were appointed during the communist, mujahideen and taliban administrations; and 48% have been appointed by the current administration of President Karzai.<sup>10</sup> This history creates diversity in appointment practice which has significant implications on the qualifications, competence and ongoing professional development needs of the Afghani judiciary.

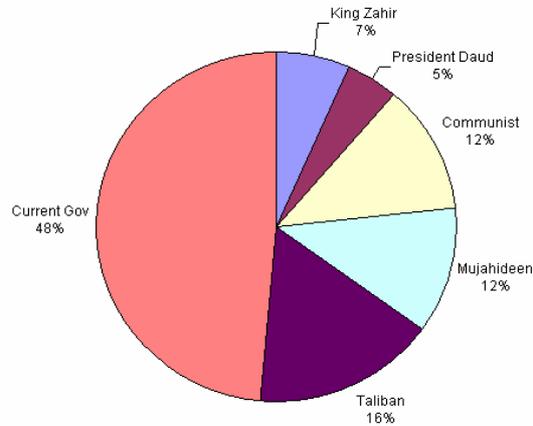
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<sup>8</sup> Best available anecdotal data.

<sup>9</sup> Supreme Court of Afghanistan records (note 1): Judicial Education and Training Matrix, which collates personal and professional information of judges relevant for administrative and professional development purposes.

<sup>10</sup> There is as yet a lack of data and analysis of the respective qualifications and selection criteria of each administration. Suffice to say for purposes of professional development that the composition and qualification of the existing judicial population is extremely eclectic and can be categorized in three major segments in terms of its selection, qualifications and experience: pre, during and post-the generation of war.

## Appointment of Judges under different Governments



In addition to the judicial officers described above, the Supreme Court has numerous personnel to support the administrative responsibilities set forth in the Constitution and the Law of the Courts. In addition to the nine judicial members of the Supreme Court, there are a further 36 “judicial advisers” who assist the judges in various aspects of their analysis, decision-making and disposal of cases, as well as other officers and clerks working in an administrative capacity. These advisors must be judges with at least ten years of experience.<sup>11</sup>

Judges at the Appeals Court and Primary Court levels are supported by court clerks who perform various functions within each of the courts. On the basis of available information, it is difficult to determine exactly what these clerks do or to ascertain their background; both apparently vary greatly from court to court. There are as yet no job descriptions for these court staff, but the observations reveal that they act as triage agents for the judges and perform clerical handwritten data entry work. There are no written standards for their qualifications or training at present. Often, it appears that clerks are appointed by the head judge based upon a personal relationship with the clerk or his family.

There are few research tools available to Afghan judges and there is no concept of library support or access to legal information support as understood in more developed jurisdictions. Recently, sets of Basic Legal Texts – selected most important laws for use in the courts – have been distributed to the provincial courts with assistance of the international community.<sup>12</sup> Bench books, or judicial practice manuals, and legal texts are virtually unheard of in Afghan judicial culture – an artifact of the massive degradation of judicial infrastructure and know-how.

It has already been noted that the qualification of the existing judiciary has varied depending on the period of appointment. The appointment of judges is now

<sup>11</sup> Supreme Court of Afghanistan records (note 1).

<sup>12</sup> USAID’s Afghanistan Rule of Law Project.

governed by law. The Constitution 2004 provides that a member of the Supreme Court should have the following qualifications:

1. The age of the Head of the Supreme Court and its members should not be lower than forty at the time of appointment.
2. Should be citizen of Afghanistan.
3. Should have higher education in law or in Islamic jurisprudence, and should have enough expertise and experience in the judicial system of Afghanistan.
4. Should enjoy high ethics and good reputation.
5. Should not have been convicted of crimes against humanity, crimes, and sentenced of deprivation of his civil rights by a court.
6. Should not be a member of any political party during the term of official duty<sup>13</sup>.

The Law of the Courts 2005 prescribes the general criteria for appointment to judicial office<sup>14</sup> and requires completion of a program of practical judicial induction training – the stage.<sup>15</sup> Qualification to admission to the stage require candidates to be Muslim and hold citizenship, have no criminal record, and “hold diploma from Law and Sharia faculties or higher or hold certificates from any state religious schools or equivalent”.<sup>16</sup>

Analysis of the records of the Supreme Court reveals some significant findings in terms of the qualifications and education of the existing population of judges. The first of these relates to the qualifications or formal education of judges. Most judges have graduated from the Sharia Faculty, comprising 44% of the population. A small minority (11.6%) graduated with a degree from a Law Faculty, or have graduated from other faculties (7.7%). Notably, more than one third of this population has not completed any tertiary studies: 16.1% were educated in non-university settings including Madrassa and private home, and 20.5% are primary, secondary or high school educated.<sup>17</sup>

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<sup>13</sup> Constitution (note 4), Article 118.

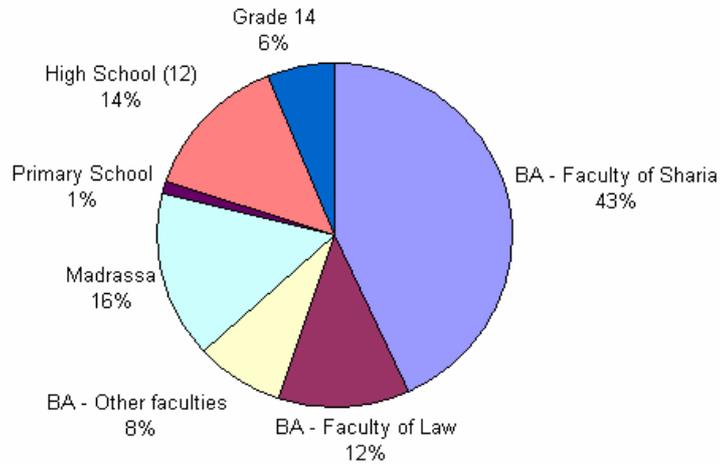
<sup>14</sup> For problematic aspects associated with the criteria see Grote (note 3), 912, and Mosch-taghani (note 2), 565.

<sup>15</sup> Law of the Courts, Article 58.

<sup>16</sup> Stage Regulation see note 23, below, Article 6.

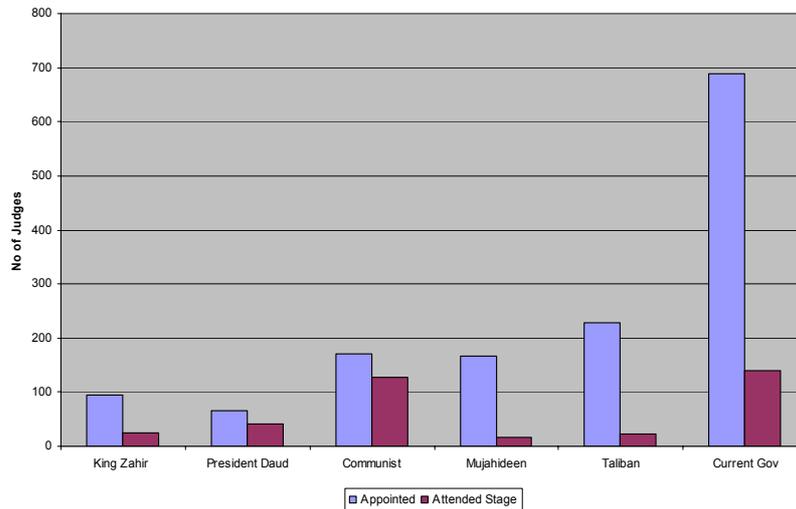
<sup>17</sup> Supreme Court of Afghanistan records: Judicial Education and Training Matrix (note 9); note that the madrassa-educated segment of this population is further divisible into Afghani and Pakistani institutions (with different curricula and standards), the proportions of which are not recorded.

## Education Level (population)



The second significant finding relates to judicial induction training. Less than two-thirds of judges (60%) has completed the stage training.<sup>18</sup> It should be noted that the duration, content and level of this training is not presently known and requires more detailed research and analysis by period of appointment. What is however apparent from the table below is that a significant majority of the numerous judicial appointments that have been made during the current administration of President Karzai (48% of the total existing population) have not undertaken the stage training.<sup>19</sup>

## Judicial appointments – completion of stage



<sup>18</sup> Supreme Court of Afghanistan records: Judicial Education and Training Matrix (note 9).

<sup>19</sup> Notably, under Chief Justice Shinwari, whose term ended in 2006 when not re-appointed by the National Assembly.

University curricula for qualification as judge is twin-tracked in degrees of Sharia and Law. The duration of each is four years. The curriculum of the Faculty of Sharia focuses predominantly on Islamic law.<sup>20</sup> The curriculum of the Faculty of Law & Political Science, Kabul University, is more secular.<sup>21</sup> In years 3-4, this course is streamed into (a) law and judiciary, and (b) political and administrative branches – both of which qualify for admission to the stage.<sup>22</sup> It is generally agreed that these courses are archaic, excessively theoretical, provide a weak and uneven foundation to meet the current community needs for judges, and require substantial modernization and restructuring. The pedagogy is mainly restricted to lecturing students on substantive aspects of Sharia or statutory law, and there are critical shortcomings in the development of core professional skills of legal research, analysis and reasoning. Moreover, the lack of uniformity in curricula creates immense unevenness as entry qualifications for judicial induction training in the stage.<sup>23</sup>

The qualification to admission to the stage require candidates to be Muslim and hold citizenship, have no criminal record, and “hold diploma from Law and Sharia faculties or higher or hold certificates from any state religious schools or equivalent”.<sup>24</sup> It has already been seen that this “equivalency” qualification is problematic<sup>25</sup>, resulting in the recent appointment of many judges without any university-level qualification.<sup>26</sup> The duration of the stage is presently one year, eight months

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<sup>20</sup> Courses comprise: commentary of Islamic perception, history of Islamic law, jurisprudence, introduction to law, Islamic belief, Arabic grammar, logic, introduction to economics, Hadith of Islamic perception, principles of jurisprudence, Prophet’s behaviour, basic law, contemporary history, commentary of Holy Qurans perception, Islamic financial organization, history of religion, comparative jurisprudence, criminology, international private law, criminal procedure, history of Islamic civilization, obligation law, rhetoric, inheritance, Holy Quran, administration law, forensic medicine, labour law, Islamic governmental organization, real estate law, general criminal law, criminal private law, commercial law, international law, general principles of jurisprudence, knowledge of Hadith, international private law, civil and commercial procedure, Tafsir, Hadith, introduction to philosophy, general psychology, history of philosophy, educational psychology, Islamic philosophy, pedagogy, mysticism and methods of legal decision or opinion.

<sup>21</sup> Subjects include: introductions to Islamic law, law, political science, sociology and administrative sciences; contemporary history; international organizations; Islamic Saqafat; foreign language; general constitutional law; principles of economics; computers; history of political thought; current world legal systems; general criminal law; principles of civil law; and Islamic legal culture.

<sup>22</sup> In the law and judiciary branch, law subjects include: family, Islamic criminal, special criminal, commercial, public international, comparative family, finance and tax, labour, inheritance, administrative and management, human rights and civil and criminal procedure; as well as criminology, criminalistic, penology, and foreign legal terminology.

<sup>23</sup> In 2005, pursuant to the Law of the Court, the Supreme Court adopted the Stage and Judicial Training Center Regulation which established the Judicial Training Center in the Supreme Court and allocated responsibility to the Supreme Court to administer and monitor the theoretical and practical stage training program.

<sup>24</sup> Ibid., Article 6.

<sup>25</sup> See also Moschtaghi (note 2), 565.

<sup>26</sup> Some observers estimate that up to 15% of the judiciary are functionally illiterate.

of which is class-based and the balance in practical duties.<sup>27</sup> The curriculum for the stage program is currently under active review and is in a transitional state, with technical assistance being provided by the international community<sup>28</sup>. In 2005, the Supreme Court initiated an additional three-week training program known as Foundation Training for those many recently appointed judges who have not undertaken the stage.<sup>29</sup>

Since 2003, a number of donor-sponsored projects have and are continuing to provide additional continuing education and training for judges in service. This training has been generally appreciated though variable in quality and ad hoc in its coordination.<sup>30</sup>

## Needs

Turning now to the educational and training needs for the Afghani judiciary, the following discussion outlines the principal findings of the assessment conducted for the Supreme Court in 2006. In any training assessment, a measurement is required between the ideal standard of competence – those qualities and levels of knowledge, skills and outlook required of judges by the community for the proper administration of justice – and actual standards. It is then possible to articulate the competence “gap” between the ideal and the actual that training is intended to redress. Unsurprisingly, assessments of needs are sometimes termed “gap analyses”.

Two preliminary observations are offered: firstly, it is not yet possible to define the ideal standard of judicial competence other than through an allusion to the period prior to the Russian invasion in 1979. Neither the Supreme Court nor the community has yet undertaken any formalistic process of defining benchmark judicial competencies. Second, notwithstanding, consultations in this study were characterized by a consensus within and beyond the judiciary that there had been a systemic degradation of judicial capacity and know-how as the consequence of the

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<sup>27</sup> Stage Regulation (note 23), Article 8. The curriculum includes training in the constitution and structure of the courts, civil and penal law and procedures, discovery and investigation of crimes, forensic evidence, criminology, judicial ethics, labour law, commercial law and procedures, juvenile justice and human rights.

<sup>28</sup> Since February 2006, the International Development Law Organisation (Italian funded project) has been lead provider in developing the stage, with assistance from the USAID Project.

<sup>29</sup> The Foundation includes civil law and procedure; criminal law and procedure; commercial law and procedure; public security law; constitutional law; and decision writing.

<sup>30</sup> The courses taught have included topics such as the role and status of the judiciary, management of criminal cases, basic concepts of court administration, review of recently adopted codes of law, discovery and investigation, human rights issues, and decision writing. The main providers of training are the International Development Law Organization, the International Institute of Higher Studies in Criminal Sciences, the Max Planck Institute for Comparative Public Law and International Law, and Checchi (USAID). The Max Planck Institute’s Manual on Fair Trial Standards is of quite outstanding quality and practical usefulness, and is very impressive. ISISC’s criminal training has also been consistently commended.

generation of war. This is uniformly recognizable by stakeholders, however unclear this measure may be.

The now seminal pre-war analysis of Weinbaum in 1980 noted that prior to the communist period in Afghanistan, a judicial training program was initiated to attempt to address some of the problems associated with legal education. It took the top graduates – or elites – of both systems and gave them additional training in law and more practical legal skills; it also included a period of observation of functioning courts.<sup>31</sup>

Both Weinbaum and Etling describe Afghanistan's legal tradition as being influenced by its culture, its multi-ethnic population, and its history which has for many years resulted in a dualised system of religious (sharia) and secular (ruler's) statutory laws which reflects and is characteristic of diverse legal systems in the Muslim world. In each system, and from time to time, there are differing measures and mixtures of sharia and statutory law. Islamic law has always been significant, though has recognized the coexistence of civil and criminal codes law since the late 1970s. The Afghan legal system is characteristic of traditional Islamic legal systems where jurisdiction is divided between the scholars' law and ruler's law. This duality of legal systems has created two almost completely separate legal elites. Jurisdiction of the courts was split between courts that applied the scholars' law and courts that applied statutes and republican decrees. This duality of the legal system naturally also affected the legal education system in Afghanistan, and meant that legal elites gravitated towards either Hanafi *fiqh* or statutes, each tending not to study the other area of law in depth and thus remaining separate from one another.

It is timely and useful to understand that the legal system that is now re-emerging is necessarily the product of Afghanistan's culture, religion, and historical legal reform efforts. One reason the legal system may have enjoyed such wide acceptance is because it allowed for the inclusion of different sources of law in Afghanistan: Islamic law, statutory law, and, at the local level, customary law. It also allowed traditional legal authorities in Afghanistan, the rulers and *'ulama*, to interpret and apply laws over which each traditionally held sway.

The recency of the generation of war and degradation of judicial capacity has provided limited opportunity for yet assessing needs. Indeed, much of the institutional and empirical data contained in this study is now published for the first time reflecting this recency. Despite this recency, there is now an emerging literature and analysis of relevance to this study:

Lau noted in 2002 that Afghanistan is still a fragile state, still in process of reestablishing its authority and key institutions of governance and restoring its core functions, among which fundamental judicial functions are a major component. Destruction and disintegration of the legal system at large remains in legacy. Courts are understaffed and ill equipped. He observes that judges, lawyers and

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<sup>31</sup> Marvin Weinbaum, Legal Elites in Afghan Society, *International Journal of Middle Eastern Studies*, 12 (1980), 51. See also Bruce Etling, Legal Authorities in the Afghan Legal System (1964-1979), at: <<http://www.law.harvard.edu/programs/ilsp/research/etling.pdf>>.

educational institutions lack access to applicable statutes and associated legal materials. In practice, non-state actors such as *jirga* – council of elders – have played significant roles in the legal system and settlement of disputes, and the courts are yet to reestablish their functions and position. Essential institutional manifestations of a legal system including courts, prosecutors, police and jails are yet to be brought fully under the control of the government and equipped, trained and developed to fulfill their respective roles.<sup>32</sup>

In 2005, the Ministry of Justice promulgated its landmark statement: Justice for All, a Comprehensive Needs Analysis for Justice in Afghanistan in which it proposes that after 25 years of war and a complete change in the direction of its government, Afghanistan's legal system needs a complete rebuilding, emphasizing restoration of judicial expertise, independence, honesty and integrity. The ministry asserts that priority be given to training all justice officials and public servants to develop the capacity to work in an honest, professional and efficient manner, comprising emergency (stop-gap) training, continuing legal education and basic legal education.<sup>33</sup>

During the course of this research, consultations were extended with a range of key stakeholders in the justice sector, comprising members of the judicial leadership and judges at all levels across the country, senior government office-holders in the Ministry of Justice and related institutions, sharia scholars and legal academics, lawyers and legal defenders, law students, representatives of civil society and other key informants.

Within the judiciary, a national survey of training needs was conducted of 157 judges in 8 provinces and 31 courts, representing a sampling of 11.34% of the judicial population between 1-13 April 2006.<sup>34</sup> The principal findings of this research reveal a wealth of information, perceptions and expectations on the part of judges.

In relation to the work practices, judges reported that system-wide they hear cases ranked in the following frequency: criminal (42%), civil (37%), public security (14%), and commercial (7%). In relation to allocation of time, they reported that most time (40.1%) was spent trying cases, followed by investigating the facts

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<sup>32</sup> Martin Lau, Afghanistan's Legal System and Its Compatibility with International Human Rights Standards, International Commission of Jurists, 2002. In Afghanistan, where the central government has lost the power to maintain authority and provide security, the informal sector recognizes and applies social principles and customs to eliminate conflicts and problems. See also: The Customary Laws of Afghanistan, A Report by the International Legal Foundation, 2004.

<sup>33</sup> Justice for All, a Comprehensive Needs Analysis for Justice in Afghanistan, Ministry of Justice, 2005.

<sup>34</sup> This research was conducted by random multi-stage cluster survey. The survey asked a range of standardized questions relating to three core themes: judges' backgrounds, work practices, perceptions of needs for training. Responses to this survey provide a wealth of information relevant to the development of a national judicial training strategy and related purposes. The representativeness of survey finding is established by cross-analysis with Supreme Court data on the judicial population and training histories, and confirms validity and reliability. A companion questionnaire was circulated to international donors and training providers working actively with the judiciary to ascertain their training activities; many – though not all – responses were consistent with those provided by the judges.

of cases (12%), administrative tasks (11.4%), consulting colleagues (10.2%), re-researching laws in chambers (10%), among other professional duties.

Among the survey sample, most judges (57%) had undertaken the stage prior to appointment,<sup>35</sup> and 43% had not completed it before appointment.<sup>36</sup> A small number of judges (10%) had reportedly participated in some other training prior to appointment. A further 15% had attended the stage after appointment. Overall, most judges have not participated in any judicial training before appointment and – of that minority which has – they participated mainly during the past two years as donor-supplied activities started to become available, and most judicial training has occurred after appointment.

Most judges reported that they do not have adequate access to professional resources: 83% stated that they do not have access to written decisions of the Supreme Court; 81% stated that they have no access to professional support from experienced mentors; 55% stated that they do not have access to text books on the law, procedure and practice; and 36% stated that they do not have sufficient access to statutes or governmental regulations.

Judges ranked their reasons for participating in training in the following descending order of importance: to acquire practical skills, to acquire knowledge of the law and procedures, to keep updated with new law and development, to find solutions to solve day to day problems in specific cases, to develop a sense of professionalism, responsibility and ethic, and to understand the role of judge. Moreover, they ranked their preferences for the content of training in the following descending order of importance: Sharia law, and civil law and procedure (equally ranked), criminal law and procedure, professional skills, business law and procedure, court administration and case management, and judicial role, ethics and conduct. Judges ranked the importance of the following types of training, as follows pre/post appointment induction (stage) training; in-service continuing update training on recent developments; in-service continuing training through sharing experience; and in-service specialization training. Finally, they ranked their order of preference for presenters in order as: respected judges, experts, and finally, university teachers.

This survey was supported by qualitative consultations among judges which provided a number of quite particular additional insights, summarized below.

Consistent with their survey responses, many judges particularly in non-capital courts report that they lack essential statutes and legal resources to perform their duties, notably the criminal, civil and commercial laws and procedures. While there has been a major distribution of fundamental laws to judges in the past two years, this need remains ongoing. Additionally, while the Supreme Court possesses an

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<sup>35</sup> This is at variance with data recently available and still under ongoing development in Supreme Court records on the judicial population as a whole.

<sup>36</sup> It is noted that this contravenes the current provision of Article 58 of the Law of the Organization and Authority of Courts of the Islamic Republic of Afghanistan which stipulates that one of the conditions to becoming a judge is to have passed the Stage course.

eclectic collection of mainly outdated books from different countries which is of dubious practical value in terms of meeting judges' legal research needs, court libraries remain virtually non-existent in most courts.

Commonly, judges express interest in undergoing training. When asked in what areas, they usually identify substantive law and procedure. While a regular request, this is not however necessarily a ranked priority; where judges they have never experienced any skills or outlook training, it is difficult for them to describe the unknown.

Many judges, again mainly in non-capital courts, describe barriers in the form of distance/cost to access training conducted in Kabul, notably the stage. They call for the regional or local delivery of training. It should be noted that training requiring travel to Kabul is particularly restrictive for female provincial judges. Added to this, judges report that to date there has been virtually no training for the clerks and support staff on whom the judges depend to perform their duties. In terms of building institutional capacity, this is a critical dependency and a notable unmet need.

Judges for the most part recognize a need to modernize their outlook, and seek training and study tours in comparative Islamic judicial systems, nominating UAE, Egypt and Jordan as possible models. They also recognize a need to develop and modernize laws and procedures, which is the subject of a related strategy on which training should then be integrated. Many also call for more training in human rights law.

Many judges offer observations on their training experience which highlight disparities in their educational background which, in term, imposes many challenges for the stage training. Without offering any comment on the relative values of training in sharia and secular law in Afghanistan, many agree that there is a universal interest to standardize and merge these curricula to provide an even foundation for judicial qualification and ongoing professional training.

Any consultation with judges on their training needs, invariably includes their discussion of related problems that impair their performance, notably: (a) inadequate compensation, (b) lack of infrastructure and equipment, (c) inadequate staff support, and (d) the lack of security – both physical and economic. While beyond the direct scope of this study, these related needs are overarching and cast long shadows across the capacity of the judiciary to perform effectively.<sup>37</sup>

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<sup>37</sup> Inadequate compensation and incentives creates a vulnerability and dependence on the largesse of the executive and other "benefactors". Many judges are paid the equivalent of Afgh 3,000 (USD 50) per month. Many courts operate in cramped and degraded conditions – in the Kabul urban primary court, six judges sit in one office, and eight clerks in another – lacking even the most modest equipment such as filing cabinets, electricity or typewriters. Computers and telephones are rarely seen in courts outside key sections of the Supreme Court in Kabul. USAID has committed a major investment supporting the building and renovation of new courthouses across the country. But, clearly, these are major related needs which remain largely unmet and affect training outcomes contributing to improved judicial performance. In this sense, there is a need for training strategies to be coordinated and integrated with other support strategies at a systemic level to build institutional capacity, without which the benefits of training will be constrained and may be wasted.

As part of this research, consultations were extended beyond the judiciary, among senior government officers, lawyers, academics, representatives of civil society, international donors and training providers. These stakeholders confirm many of the judges' perceptions, but identify a range of significant additional needs to restore core judicial competencies and re-professionalise the judiciary.

Of paramount concern, there is a consensus that the integrity and ethical standards of the judiciary are problematic and in decline. Almost invariably, non-judicial informants describe the problem of judicial corruption as their first concern. Many described it as routine and characteristic of dealing with the judiciary. One business informant reported having to pay USD 70,000 to induce a judge to complete his duty in formalising a legitimate title transfer on a single land dealing. Moreover, there is an external perception of a lack of any disciplinary proceedings on the part of the Supreme Court to confront this problem, which is creating a loss of public confidence in the courts administering justice through fair trial according to law. There are major public concerns that the courts are being degraded by corruption and impunity.

Some observers explain the problem of corruption in terms of executive independence, rather than pecuniary gain. They describe the proximity of the judiciary to other executive organs of government, notably the Office of the President, the Ministry of Justice, and the Office of the Attorney General as rendering it difficult – if not impossible – for the judiciary to uphold its constitutional independence in practice. While it goes beyond the scope of this research to assess this need, it is observed that education and training is undoubtedly useful to reinforce and consolidate this precept and its application in practice.

Related to this, there is a widely-held external perception that judicial inspection and disciplinary proceedings are either ineffective or not implemented, and that there is a lack of any accessible and responsive public complaints mechanism. Both perceptions fuel community dissatisfaction and loss of confidence in the courts.

Of equal concern, many informants note widespread judicial ignorance and/or non-observance of the constitution, law and procedure. They commonly describe an ignorance or non-observance of law or legal process in district primary courts, where the application of law and court procedures are described as *ad hoc*.

Many observers also express deep concern at the evident lack of any apparent understanding and appreciation by judges of foundational notions of the judicial role and process. For many – if not most – judges, there has been no opportunity to study and learn the universal precepts of justice: concepts of judicial independence, justice and the rule of law – as much as *sharia*; jurisdictional competence, judicial method, impartiality and fair trial, due process, presumptions of innocence and burdens/standards of proof; transparency and judicial reasoning. More technical issues pertaining to judicial role in inquisitorial and adversarial procedures, the role of defenders, evidence and admissibility, accountability for exercise of judicial discretion, etc., may never have been taught. Such foundational professional deficits are profound and can not be redressed through short-term training alone.

Legally-qualified informants working with or near the courts remark that most judges lack the core skills of legal research, analysis, reasoning and decision-making that are fundamental competencies in well-established jurisdictions around the world. As a consequence of degradation of the legal system and destruction of laws, there is a need not just to restore access to laws but to reinstate the basic judicial method and practice of researching law as the source for judicial decision-making.

At the systemic level, there is a need for the Supreme Court to provide more direction and coordination to training supported by the international community. It would be useful for the Supreme Court – as the apex of the constitutionally independent judiciary – to provide leadership and undertake a strategic planning process to define its highest level goals, directions, priorities and objectives for the administration of justice within the overarching framework of Afghanistan's National Development Strategy (ANDS) and harmonized with the ministry of Justice's Justice for All approach.

At the operational level, there is a lack of case management operating systems to manage and administer cases and court business, as a consequence of degradation of the justice system over the past thirty years. Moreover, there is a lack of any information management strategy, and reporting and recording capability, with the result that the Supreme Court is presently unable to quantify its performance in terms of national caseload, issuances and disposals and, consequently, is unable to set and monitor any meaningful benchmarks for judicial performance, which are essential both for administering judicial performance and designing education and training programs to support institutional development goals. Even the most basic administrative and case filing protocols and operating systems are yet to be established nation-wide.

There is widespread concern both within and beyond the judiciary at the quality of many recent appointments of candidates to judicial office who lack adequate qualifications and capacity to perform these duties, and the associated erosion of standards of judicial qualification. While it is recognized that that standards have varied over recent years, and that there is still a shortage of adequately qualified personnel, such appointments create a weakness in the foundation of the judicial profession which cannot be redressed through the provision of in-service, usually short term, training; rather such deficits can only be redressed through revision of appointment criteria and merit-based selection procedures and practices. As a matter of principle, it should be recognized and acknowledged that continuing judicial training is incapable of curing such foundational deficits.

As part of this problem of eroding standards of appointment, many observers comment on the need to renovate the university curricula and pedagogy for both faculties of sharia and law to meet the current needs of the Afghan community in the Twenty-First Century. This will require both restructuring and extending the duration of these courses and, additionally, strengthening the teaching faculty through re-qualification and faculty development. Similarly, many informants observe that the stage should be evaluated, renovated, restructured and extended to

consolidate the foundational qualifications for admission to the judiciary. The teaching faculty needs to be developed and strengthened. In essence, these needs involve refining the curricula to meet current needs, introducing more skills training and practice development, and introducing a component of work-based supervision and mentoring. At the present time, the curriculum of the stage is confronted with disparate qualifying standards of graduates in sharia and law and others from madrassa and “equivalent” experience, which is an educationally difficult task which should be addressed either by harmonizing the earlier foundational education and qualification standards or streaming or “tailoring” stage training for different categories of entrant.

In relation to the recent provision of in-service training which is attempting to address many of these challenges, observers comment on (a) the need to make this training more accessible – notably through regional delivery rather than conducting most activities in Kabul – and (b) improve the pedagogic standards or educationally effectiveness of instruction by more actively providing trainings of trainers, and monitoring the quality assurance of written materials.

The Supreme Court has recently established a database of judges.<sup>38</sup> This database catalogues all serving judges and provides information on their appointment, qualifications and training which is relevant data of considerable value for this assessment of needs. Endeavour is presently ongoing to develop this database capability to include other information relating to judicial administration, case management and judicial performance. In due course, this may also extend to complaints and disciplinary matters, on an appropriately confidential basis. Such data would considerably further inform this assessment, but is not available at this time.

## Principal Findings

As the result of this research, the following principal findings are made: a significant minority of judges (36.6%) have not completed any university education in Sharia or law. A significant minority of judges (40.0%) have also not completed any systematic practical induction training (stage). There is a system-wide lack of fundamental judicial competencies in legal knowledge, professional skills and judicial outlook. Moreover, there are grave and mounting concerns in both the judicial leadership and the public about judicial corruption, and the lack of judicial standards and disciplinary procedures. These are foundational deficiencies, which have de-professionalized the judiciary, eroded public confidence in the courts, and require radical integrated strategic response which significantly exceeds existing short term training endeavours. These deficiencies in the quality, competence and professionalism of the judiciary are foundational in nature. Shortcomings in the selection, qualification and expertise of judges is a grim, direct legacy of the genera-

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<sup>38</sup> See earlier references to the Supreme Court of Afghanistan records: Education and Training Matrix (note 9).

tion of war and the degradation of the institutional and human capacity of the judiciary.

In summing up this assessment, the needs and priorities for judicial training in Afghanistan are substantial which it may usefully be classified as foundational, professional, institutional and related in nature.

First, the foundational needs to rebuild judicial competence are in essence structural and threefold in nature pertaining to issues of qualification and appointment. There has been a marked erosion of standards of judicial qualification, exemplified by many inappropriate appointments, which requires strengthening and applying the provisions of the Law on the Organisation of the Courts on appointment criteria and merit-based selection procedures and practices. University curricula are out of date, and require modernising, restructuring, and harmonizing; in addition, the curricula for faculties of sharia and law should be extended from four to five years. The stage curriculum is also out of date; and requires modernizing, and extending from one to two years to include supervised judicial internship and development of the practical skills of judging.

The professional needs are as we have seen manifold and relate in essence to improving the legal knowledge, professional skills and judicial outlook of judges, and prompting understanding of the judicial role and due process. These needs require the development of core training modules on the constitution, criminal, civil and commercial laws, and performing the judicial function, for both stage and short-term trainings. Access to fundamental laws and legal information should be addressed in an integrated publication program. Simultaneously, there is a need to consolidate appreciation of the principles and practices of judicial independence and judicial ethics through development of core training modules. Obsolete laws need to be modernized and introduced with supporting training to update judges already in service. Training is required to highlight human rights norms embedded in Afghani, sharia and international law, and barrier of access and biases against women should be addressed through a leadership program of training for judges to promote equality before the law. The training program should be extended from the capital and delivered regionally, and a faculty of respected judges should be developed and supported through provision of Training-of-Trainers development.

There are a range of institutional needs to strengthen the organizational integrity of the courts. These relate to strengthen the capacity and role of the Supreme Court in leading the judiciary and, more particularly, the capacity and role of the Supreme Judicial Council and the Office of the Inspector-General of the Supreme Court to monitor judicial performance and administer discipline. These measures should also develop and consolidate the principles and practices of judicial independence and accountability. There is at present a lack of case management – and associated information management – systems and procedures of judicial administration, which requires that the capacity and role of the Office of the General Administrator of the Judiciary should also be strengthened to manage and administer caseload more efficiently.

Finally, there are a number of related needs to be addressed in parallel with any program of judicial development. These relate to developing a training program for court clerks and support staff, and to integrating strategies for compensation and incentives, physical security, infrastructure and equipment, performance monitoring, ethics and discipline and community legal education.

## B. Education & Training Strategy

The first section of this article identified the needs for judicial education and training. The existing deficiencies in the quality, competence and professionalism of the judiciary are foundational in their nature. Now is the time to recognize and acknowledge the profundity of these needs, and the imperative to adopt a systematic and effective approach to addressing the challenges of renewing judicial competence. Part B of this study provides this vision.

Around the world, the overarching rationale for investing in judicial education and training is three-fold: (a) to consolidate the identity, institutional capacity and independence of the judiciary, (b) to develop the professional competence of the judiciary to perform its duties and, thereby (c) to improve the quality of judicial service delivery and the performance of the courts.

The Afghanistan Compact with the international community of February 2006 provides the macro-level developmental coordination framework for any program of judicial education and training by providing, *inter alia*, that:

By end-2010, functioning institutions of justice will be fully operational in each province of Afghanistan, and the average time to resolve contract disputes will be reduced as much as possible. A review and reform of oversight procedures relating to corruption, lack of due process and miscarriage of justice will be initiated by end-2006 and fully implemented by end-2010; by end-2010, reforms will strengthen the professionalism, credibility and integrity of key institutions of the justice system (the Ministry of Justice, the Judiciary, the Attorney-General's office, the Ministry of Interior and the National Directorate of Security).<sup>39</sup>

In post-war Afghanistan, the goals of judicial education and training are more particularly two-fold: (i) to rebuild and renew the professional capacity of judges to administer justice which has been degraded by the generation of war to its pre-existing levels, and (ii) to modernize judicial know-how and outlook to meet the needs for justice in the Afghan community in the Twenty-First Century. Attaining these goals requires (a) familiarity with and respect for the inheritance of Afghan Sharia and legal jurisprudence that provides the foundation for this renewal, and (b) a forward-looking vision of the justice needs of the post-war Afghan people rather than some romantic and archaic retrospect.

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<sup>39</sup> The Afghanistan Compact, 2006, 9. The Compact, in addition, prescribes improved donor coordination with Afghanistan's National Development Strategy (ANDS).

In 2005, the Supreme Court established a Judicial Education and Training Committee to oversee the development and delivery of a judicial education program. The mission of this training program is to improve the quality of judicial performance by helping judges to acquire and maintain their professional competence. Judicial competence is variously defined but, for practical purposes, involves three distinct components (a) mastery of legal knowledge, (b) development of professional skills, and (c) acquisition of judicial disposition.

This “competency-based” approach to training and development has as its ultimate objective the improvement of institutional performance of the courts as a whole. Improvements in court performance require the support of training programs which do more than just give judges information about the law. These programs need to develop the skills and attitudes of good judging which equip judges to do their jobs effectively.

It is now timely to address the profound challenges identified in the earlier assessment of needs to rebuild judicial competence through a twin-path strategy. The first strategy continues to address the immediate needs of existing judges by providing short-term training to assist perform judicial duties. This training has been provided since 2003 through the active support of the international community. These training and related support activities are primarily concerned with what is described in the MoJ’s Justice for All as “emergency training”. This training is certainly useful and quite indispensable in supporting the existing judiciary to improve their day-to-day performance. This training is however not designed to address the underpinning professional deficiencies which have been identified.

There is now an imperative to complement and coordinate existing training with longer term strategies specifically targeting to renew, rebuild and modernize the judiciary. These strategies should firstly focus on strengthening the pre-qualifying sharia and/or legal education of judicial candidates, admission standards to the stage, the quality of stage training, examination standards, and qualification standards/procedures for admission to the judiciary. Secondly, these strategies should then focus on in-service training, monitoring (and rewarding good) performance, and administering discipline. The objectives of these strategies are to restore professional foundations and standards of judicial competence.

It is now timely for the Supreme Court and the international community to re-focus from emergency response to longer term rebuilding in order to restore professional foundations and standards of judicial competence. During an initial transitional period of, say, 5 years there will be a need for this twin-path strategic approach. Both short and long term strategies will need to co-exist. Current short term “emergency” trainings will need to continue to support existing judges while, at the same time, the longer term strategy to rebuild the foundations of legal education, the stage’s professional induction training, and admission and qualifying procedures are ongoing.

This transition should also be managed to address upcoming evolutions within the judicial population itself. As we know, some 12% of existing judges were appointed prior to 1978. These judges are now the elders and senior members of the

judiciary – arguably the most knowledgeable with experience of judicial standards and culture predating the generation of war. These judges will retire during the next decade, removing this precious know-how as they go. Simultaneously, a new judicial seniority will emerge of those appointed judges during the communist, mujahideen and taliban periods – with qualities and competencies already noted as requiring further analysis. What institutional attitudes and values will emerge and prevail at this point? It is sobering to anticipate that judicial benchmark standards may fall further in future before the process of rebuilding is consolidated. Moreover, a new generation of trained but inexperienced appointees will stream into the junior ranks of the judiciary seeking role-models from their peers.

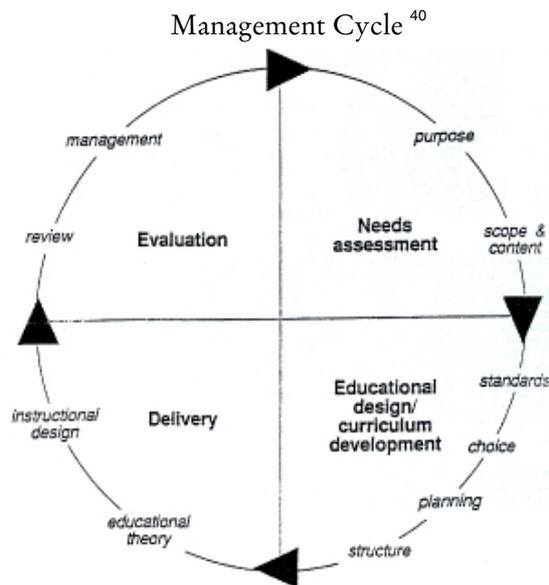
To address this transition, immediate steps are required to accelerate the transfer of know-how from the generation of judicial elders to new appointees. Senior judges should be selected to pair with and mentor junior judges. The Supreme Court will need to support those mid-career existing judges who lack sufficient qualification by providing an opportunity to re-qualify as part of its strategy of renewing the judicial membership. Having close regard to the constitutional and other legal requirements governing the appointment and dismissal of judges, the Supreme Court should then give consideration to whether those judges who are unable or unwilling to re-qualify by examination to the required standard should then be replaced. In addition, a comprehensive approach to addressing the needs to improve judicial competence and performance requires integration of the strategies relating to appointment criteria and procedure; qualification standards supported by university/stage curricula; continuing judicial education and training; strengthening of judicial inspection and monitor performance; review of compensation, incentives and physical security; and more active administration of discipline.

Once the capacity of the judiciary has been rebuilt through the related strategies of strengthening pre-qualifying education and judicial admission standards, it is the role of the program of continuing judicial education to support judges in service to perform their duties by improving their professional competence. The objective of this program is to improve legal knowledge, professional skills and judicial outlook of judges in service. As we have seen, the Supreme Court has recently established its Judicial Education & Training Committee, responsible for directing the program of continuing judicial education. It is proposed that this program will provide the training to judges comprising conferences, courses, seminars, workshops to develop core competences in legal knowledge, judicial skills and professional values. Additionally, it is intended to provide study tours, on-the-job mentoring, and publications and materials including bench books, manuals, digests and journals.

In the long term interests of restoring justice to Afghanistan, there is an overarching need to consolidate the independence of the judiciary, and its program of professional development. The imperative to protect and consolidate the independence of the judiciary is entrenched in Article 116 of the Constitution. This precept must be reflected in the governance of any judicial education strategy – that any program of judicial education and training is unequivocally led and owned

by the judiciary, and not the executive arm of government – as well as being reinforced in the training curriculum itself. The Supreme Court Judicial Stage Regulation affirms this constitutional principle. Judicial leadership will also be critical to the overall success of any program of judicial education and training.

To assist in the development of effective practice, a cycle of model practice for judicial education is outlined below. This cycle builds on principles of adult learning, professional development, and judicial education to integrate managing the education process. This cycle is perpetual, and consists of four quadrants, each comprising additional spokes: (i) *needs assessment* – identification of purpose, scope and content of training required, (ii) *curriculum* – setting of strategies and priorities, application of resources, and design of curriculum approach, (iii) *delivery* – development of capacity through training-of-trainers, presentation of courses, publication of materials, and (iv) *evaluation* – ongoing monitoring, refining and updating in light of feedback and change. Reference to this cycle of practice management should assist the Supreme Court’s Judicial Education & Training Committee to address the planning issues associated with judicial education in a systematic fashion.



Curriculum design provides the framework to help courts to address training needs by planning what is to be taught, to whom, how, when and why. In essence, it offers a plan of the proposed learning outcomes and the means of reaching them. Obviously, programs of judicial education vary around the world according to the specific learning needs, educational objectives and the curriculum of each judiciary.

<sup>40</sup> Armytage (note \*), 222.

In Afghanistan, the design of the curriculum should be directly informed by the major finding and priorities of the needs assessment in Part A of this study.

Programs of continuing judicial education generally comprise two major components: firstly, pre-service or induction training – in Afghanistan, this is provided in the stage which is designed to address the need to train and educate new judges to assume office, to facilitate the transition from jurist to judge, and to bridge the gap between inexperience and experience. Second, in-service or continuing education is designed to meet the further need to facilitate the ongoing professional development of more experienced judges to keep abreast of change and to acquire specialized competences.

A review of curricula in comparable jurisdictions indicates that most programs of continuing judicial education are composed of training and related support that falls into three principal categories: (a) substance – aspects of Sharia/law, (b) professional skills and (c) judicial attitudes and values.<sup>41</sup> The following topic inventory provides examples of these categories of training for the information and consideration of the Judicial Education & Training Committee:

- Sharia, substantive law and court procedure
  - Criminal law and procedure
  - Civil law and procedure
  - Evidence law, documentary evidence and expert evidence
- Judicial skills
  - Conducting a hearing
  - Note-taking
  - Admitting evidence
  - Legal research
  - Statutory interpretation
  - Decision-making
  - Judgment-writing and giving reasons
  - Sentencing
  - Applying principles of fair trial
  - Protecting human rights
  - Resolving disputes and alternative dispute resolution (ADR)
- Judicial management and administration skills
  - Case management
  - Administering courts: filings, fixtures, hearing lists
  - Record management
  - Registry management and practice
  - Team leadership
  - Computer skills and information technology

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<sup>41</sup> This finds its origins in the pervasive educational modeling of Ralph W. Tyler, *Basic Principles of Curriculum and Instruction*, Chicago 1949.

- Judicial disposition – social context – outlook, attitude and values
  - Islamic and Sharia principles
  - Judicial role, powers and responsibilities
  - Judicial independence, impartiality, integrity and outlook
  - Judicial review
  - Judicial conduct and ethics
  - Gender/race equality before the law
- Generic management and administrative skills
  - Communication skills – written and oral
  - Time management
  - Computer skills
  - Coaching and mentoring
- Inter-disciplinary skills
  - Forensic pathology
  - Scientific evidence: psychiatry
  - Medico-legal fundamentals – in injury cases.<sup>42</sup>

Noting the specific findings of need identified in Part A of this study, trainings should be supported by written materials in Dari. There is a need to give much more attention to the creation of written materials, because the reading and writing processes are essential to development of the thinking processes, and the dearth of written materials inhibits the intellectual and professional development of the judges. There is a need for the Supreme Court to develop and consolidate standardized training modules, supported by detailed written materials in Dari, in the following core topics:

- Fundamental laws – Sharia, constitution, criminal, civil and commercial laws
- Principles and practices of judicial independence
- Judicial role and process, principles of fair trial, and role of defenders
- Judicial skills:
  - legal research and analysis
  - assessing credibility and fact-finding
  - decision-making, legal reasoning and judgment-writing
- Judicial conduct and ethics
- Comparative Islamic law.

Noting the significance of barriers for most provincial judges in accessing training conducted in Kabul, there is a need for the Supreme Court to develop capacity to conduct periodic training activities at major regional centres across Afghanistan.

A related concern of fundamental importance in judicial training is the need to balance judicial ownership and authenticity with educational effectiveness. The challenge of ensuring educational effectiveness applies at all levels in the planning, design and delivery of training services, and requires a notion of partnership to be developed between judicial and educational authorities. For the Judicial Education & Training Committee, addressing this challenge will occur most directly in select-

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<sup>42</sup> Livingston Armytage, *Judging: An Occupation and Skills Analysis – Implications for Educators*, NASJE News 11 (Fall 1996), 3.

ing respected judges as instructors and enabling them to perform this role effectively through training-of-trainers support.

Judicial education and training builds on the foundation of educational theory or pedagogy. In broad terms, judges epitomize adult learners and, for this reason, any program of judicial education should build on the broadly endorsed principles of adult education. These principles recognise the distinctive nature of adult learning which Knowles has defined as being characterized by its autonomy, self-direction, preference to build on personal experience, the need to perceive relevance through immediacy of application, its purposive nature, and its problem-orientation.<sup>43</sup> Within the framework of adult and professional education outlined above, judicial learning is recognized as a complex process. Judges, as both adults and professionals, exhibit characteristics, styles and practices as learners which are distinctive, significant and have direct important implications for educators. These arise from the doctrinal imperative to preserve judicial independence, the process and criteria of judicial selection, and the nature of tenure, the formative nature of the judicial role and the environment surrounding office, and judges' learning needs, reasons for participating in continuing education and preferred learning styles and practices<sup>44</sup>.

Addressing these concerns relating to educational quality and effectiveness is part of the oversight role of the Judicial Education and Training Committee, and can be put into by (a) establishing a faculty of respected judges as trainers, and (b) conducting Training-of-Trainer workshops to equip them for this role. The purpose of trainings of trainers is to provide a faculty of judicial trainers with the capacity – the knowledge, skills and understanding – to train other judges effectively. This capacity is required at two levels: (a) directing and managing the education program, and (b) delivering training activities using active learning and related participatory presentation skills. It is a common limitation of practice that what Training-of-Trainers programs may exist usually focus only on presentation skills component, which is dubious in implying that the manifold educational program management aspects will somehow resolve themselves spontaneously.

It was noted in the earlier part of this study that most judges report (a) not having adequate access to statutes and legal resources, and (b) training conducted in Kabul is inaccessible to many. These needs can be addressed effectively – both from educational and financial perspectives – through the establishment of a publications component in any program of continuing judicial education. Developing a distinctive strategy of “distance learning” can overcome the many constraints and challenges of centralized service delivery of group-based learning activities. Distance strategies build on quite conventional notions of educational publishing, and may comprise the production of bench books, or practice manual for judges,

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<sup>43</sup> Malcolm S. Knowles, *The Modern Practice of Adult Education: From Pedagogy to Andragogy*, Chicago 1980, 43-44, and 57-58 (note earlier 1970 edition bi-lined *Andragogy versus Pedagogy*, 39); see also *id.*, *The Adult Learner: A Neglected Species*, 2<sup>nd</sup> ed., Houston 1973, 55-59.

<sup>44</sup> Armytage (note \*), 127 et seq.

which focus on court practice and procedures to provide practical assistance in performing the day-to-day tasks of judging. Additionally, providers can publish regular newsletters or digests on important current issues on law and practice, for example, extracts of selected conference papers for those judges in distant regions who were unable to attend. In due course, more sophisticated consideration can then be given to extending this distance program to other training media, including audio-tapes, video-tapes, computer-based packages and possibly satellite broadcasting.

A system to monitor and evaluate judicial training is required to ensure that it delivers what is intended, and provides mechanisms to review and refine activities in the light of feedback and experience. The design of this system hinges on the specific goals and objectives of the program which, if only for this reason, need to be explicitly defined. Because no single indicator can comprehensively measure professional development with validity and reliability, a range of indicators are required to measure the impact of the training program. These indicators measure specific outputs and then “triangulate” an assessment of their outcomes on the performance of the judiciary. Because qualitative measurements are variable, preference to selection of quantitative indicators will be made wherever possible, in a two-tiered approach to assess the performance of the program in terms of its process and impacts.

“Process Indicators” measure the implementation of the program “outputs” in terms of efficiency and effort. These indicators are “internal” to the program and evaluate whether it is doing what it set out to do. Typically, these indicators should include activity and efficiency, for example, the number of training courses conducted on time and within budget. It is common to find inferential indicators relating to participants’ reaction to the training, specifically, (a) participation, (b) satisfaction and (c) intentions to make improvements in service delivery as a result.

“Impact Indicators” measure the effectiveness of program results or outcomes. They are “external” to the program, and describe objectively visible measurable and how they contribute to enhancing judicial service delivery. Assessment of improvements in the levels of knowledge, understanding, skills and attitudes of individual judges can include, for example, formal examination on completion of the stage course. Ultimately, the lead impact indicator may be community confidence in the performance of the courts to dispose of disputes in a fair, timely and cost-efficient manner. It is not, however, easy to select any single indicator of measurement. Official statistics – as they are developed – may provide relevant data, for example, on appeals and complaints of judicial incompetence, but they will not necessarily describe all relevant considerations or causes. While invariably anecdotal and qualitative, client satisfaction of service may ultimately synthesize all other indicators.<sup>45</sup> As noted earlier in this study, community confidence in the

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<sup>45</sup> Livingston Armytage, *Evaluating the Impact of Judicial Education*, *Journal of Judicial Administration* 4 (1994), 35-63; and, *id.*, *Performance Indicators – Evaluating Judicial Education*, *Internationa-*

courts is low. A significant measure of the success of any program of continuing judicial education and training – arguably its single key performance indicator – will in due course be found in improvements in public confidence.

The current challenge confronting the Supreme Court of Afghanistan is to address the long-term needs to rebuild the competence of judiciary. To do so will require implementing the steps outlined in this study over the half decade, comprising endorsing a long-term strategic approach, developing the program of continuing judicial training, establishing and training a faculty of judge trainers, modernizing and restructuring core curricula in substantive law and procedure, judicial skills and professional values and ethics, developing a publications program, conducting regional training and introducing a system of monitoring and evaluation. At the same time, the international community of donors needs to review its support to short term stand-alone training assistance, extend support to long term rebuilding of Sharia and law curricula, assist the Supreme Court's program of continuing judicial training and support related strategies to develop capacity to monitor performance, review compensation and incentives, and administer discipline.

Together, the Supreme Court and the international community are poised to establish a long term partnership to rebuild the capacity and competence of the judiciary and contribute to improving the quality of justice for the people of Afghanistan.

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tional Bar Association Newsletter (May 1998); IBA Judges' Forum Newsletter 6 (Sept. 1998), 1; and, NASJE News 13 (Spring 1998).