

Nation-Building in Afghanistan: A Role for NGOs

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Prepared for a select group
of U.S. government agencies interested in South Asia

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List of Abbreviations

ADB	Asian Development Bank
CDC	Community Development Committee
DAB	Da Afghanistan Bank
DDR	Disarmament, Demobilization, and Reintegration
FEFA	Free and Fair Elections Foundation of Afghanistan
FEMA	Fair Election Monitoring Alliance
GOA	Government of Afghanistan
IMF	International Monetary Fund
IDLO	International Development Law Organization
LED	Legal Execution Department
NGO	Non-Governmental Organization
NSP	National Solidarity Program
PRT	Provincial Reconstruction Team
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Program
USAID	United States Agency for International Development

Foreword

In today's world, global policymaking has become essential. From climate change and avian influenza to currency crises and nuclear proliferation, key policy problems refuse to be confined within the territorial jurisdiction of a single country or region of the world. No longer do policymakers or policy analysts have the luxury of approaching policy design and implementation one nation at a time.

This report addresses one of the most significant policy challenges facing global leaders—the rebuilding of nations in the wake of failed states and civil conflict. The report's focus is on Afghanistan and the potential role for non-governmental organizations in helping extend nation-building beyond government institutions to include a more robust and engaged civil society and a more diversified economy. The project is the result of collaboration between students in the La Follette School and a select group of U.S. government agencies interested in issues of South Asia.

The Master of International Public Affairs program in the Robert M. La Follette School of Public Affairs at the University of Wisconsin–Madison prepares students for careers addressing challenging problems such as this one. Students develop skills in policy analysis, public management, economic and statistical research, and data interpretation and presentation—as well as the knowledge and understanding to apply these skills to emerging transnational and global problems.

The authors of this report are enrolled in Public Affairs 860: Workshop in Public Affairs, International Issues, the capstone course in the international public affairs program. The workshop provides students with practical experience applying the tools of analysis they have acquired in three semesters of coursework to examine real-world problems, to contribute useful knowledge, and (where relevant) to propose feasible solutions to clients in the public, non-governmental, or private sector.

Most of the semester is spent *doing* analysis in the form of projects that culminate in reports such as this one. While acquiring a set of analytical skills is important, it is no substitute for learning by doing. To be sure, the opinions and judgments presented in this report do not represent the views, official or unofficial, of the La Follette School or of the client organization for which the report was prepared.

I am grateful to Wilbur R. Voigt, whose generous gift to the La Follette School supports the school's workshop projects in which reports like this one are produced. With his support, we are able to finance the production of the final reports, plus other expenses associated with the projects.

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Executive Summary

In newly liberated states, establishing an authoritative central government with a monopoly on power often occupies the focal point of nation-building efforts. In emphasizing the settlement of formal political arrangements and constitutional frameworks, however, the danger is those involved in nation-building neglect the broader deepening and strengthening of civil society. Active management of civil society is essential for nation-building to take root. Nation-building requires creating security, establishing justice, fostering an environment conducive to economic development, and building the capacity for a democratic society. The assumption is simply not enough that society will change and adapt to its new government without being incorporated into the nation-building process. The process of national reconstruction must involve citizens in developing its economic, political, and social foundations.

In Afghanistan, a commitment to this broader idea of nation-building is essential. Afghanistan's civil society remains weak, even as its political landscape remains divided. Informal economic and justice systems flourish, helping maintain a strong opium trade and protect terrorist networks. To truly pursue nation-building Afghanistan needs to reweave its social fabric and stabilize its security, judicial system, economy, and democratic institutions. It also needs to engender trust and commitment between the government and its citizens.

In this report, we argue that NGOs can play an important role in this broader vision of nation-building in Afghanistan. NGOs can help contribute to the stability and security by working in partnerships with the military. They can buttress the capacity and credibility of emerging institutions. NGOs have the capability to aid in the development of a diverse economy. These institutions can help train citizens in the rudiments of democracy. NGOs can work as a form of "caulk" or "glue" between government and the people. As a new national political identity is being formed, NGOs have the ability to facilitate the re-framing of governance issues and provide alternative mechanisms for dialogue between parties. Deeply enmeshed in civil society, NGOs are in the position to aid in the process of linking new governments to citizens who may be unaware of their new roles and greater responsibilities. NGOs can appear apolitical, which can promote equitable delivery of services throughout the population. In instances of post-conflict reconstruction, NGOs have been used to overcome the institutional gap between unresponsive states and marginalized citizens.

Yet on occasion, there are potential challenges to expanding the role of NGOs in the nation-building process. NGOs may undermine the authority of the central government if they appear to replace it as the primary provider of services and resources. Weak central governments may view NGOs as a threat to their power

and work to limit the NGOs' reach into society. NGOs may also clash with informal social institutions that have provided services to residents in lieu of an unresponsive state. There are also likely situations where NGOs simply do not have the capacity to carry out the heavy lifting of nation-building. Other times, coordination problems between governments and NGOs may hamper achievement of nation-building goals.

We recommend, therefore, that Afghan and U.S. policy seek to make effective use of NGOs as a part of the nation-building process. The Government of Afghanistan must coordinate and oversee NGO activity, avoiding an over-reliance on NGOs where inappropriate. NGOs must have clearly defined goals and operate under strict rules and time scales to avoid creating inappropriate dependency and inhibiting the emergence of a robust civil society. NGOs should promote organic institutions that can operate independently of extensive funding from outside Afghanistan.

I. Introduction

Nation-building is often considered to be the process of constructing governments. This conceptualization misses the broader picture of nation-building, which involves not only the installation of governments but the deepening of society as a whole. According to Francis Fukuyama (2005), nation-building requires two elements that are somewhat at odds with each other. In one element, a government with a legitimate monopoly on power must be established. The second element builds and nurtures institutions so that this power put in place in the first element is checked and held subject to public accountability. To achieve the nation-building that Fukuyama describes, a consolidated effort must involve governmental and non-governmental actors.

This report examines the role of non-governmental organizations (NGOs) in nation-building. The question of how NGOs can contribute to nation-building is of particular importance for U.S. policy in Afghanistan and throughout the world as the construction of a post-9/11 paradigm places the world's major powers into the delicate position of nation-builder. In Afghanistan, the United States faces an intricate tapestry of challenges to security, economic development, justice, and democracy. At the center of these challenges lies the reconstruction of Afghanistan's government. But nation-building in Afghanistan has proven much more complex. State construction is intertwined with economic progress and security reform. A lack of security undermines democratic progress and hinders economic development. A lack of economic progress undercuts the authority of the central government and threatens the legitimacy of democracy. This web of interdependencies suggests that the creation of a new government is insufficient to address Afghanistan's problems. A comprehensive plan for nation-building, therefore, needs to find ways to link the emerging Afghanistan government with a broader process of social transformation.

NGOs have the potential to be a major ally in establishing this link between government and society as part of the nation-building effort in Afghanistan. NGOs improve the welfare of the country by addressing issues and providing services in areas in which government participation is lacking or insufficient, such as health care, education, and poverty relief. NGOs can be less bureaucratic than the federal government, allowing for quick dispersal of funds or rapid implementation of projects where they are needed most. Their nimbleness also stems from the fact that many NGOs are politically independent and do not have to tailor their actions to election cycles. Last, NGOs tend to be decentralized, reaching parts of the population that have yet to develop a citizen-government nexus.

Because of this decentralization, NGOs can create challenges for political and macroeconomic progress. Governments view NGO activity as encroachment upon

their mandates, particularly as international donors have increasingly supported NGOs rather than funding governments directly. The government of Bangladesh, for example, perceives NGOs to be competing with it for finance and tightly regulates foreign funding. As NGOs provide services, a government can appear ineffective and unnecessary, hardly qualities that add to its legitimacy. Some governments have responded with restrictive legislation on NGOs, often requiring NGOs to register with a government body to gain a legal identity and access to foreign aid and tax exemptions.

Furthermore, the often complicated nature of NGO-donor relations can be problematic for the progress of post-conflict aid projects. Funds may be provided only upon the fulfillment of certain political and economic conditions, resulting in projects that are tailored to the wishes of donors rather than the needs of local communities (Evans-Kent and Bleiker 2003). The constant battle for funding and renewal prohibits NGOs from developing the kind of long-term vision and projects required to tackle the underlying causes of a failed state. What begins as strong donor support in the initial phase of reconstruction may dwindle as attention shifts elsewhere. International attention was diverted away from Bosnia to Kosovo and then to Afghanistan. Now Iraq has the potential to redirect attention and much-needed resources away from Afghanistan (arguably, this is already occurring). If NGOs in Afghanistan are to be afforded full opportunity to participate in building a nation marked by a thriving economy and an established democracy, this must not happen.

The challenge is to strike a balance between the developmental work of NGOs and the legitimacy and authority of the central government. In this paper, we explore different possibilities for reaching this equilibrium such that the nation-building efforts in Afghanistan can advance beyond government-building and so that these efforts are sustainable as foreign funding wanes. We have examined the role of international donors and NGOs in the reconstruction and recovery process in Afghanistan and have reached the following conclusion: The Government of Afghanistan (GOA) is unable to provide a stable political and macroeconomic framework for its nascent democracy. In response to this failure, international donors and NGOs have stepped in to help fill the governance vacuum. This influx of NGOs has had mixed results on the nation-building process and created confusion as to the best strategy to pursue for the reconstruction of Afghanistan. However, eliminating NGOs is unlikely to solve the problem. Rather, we suggest a concerted effort to align NGO activity with nation-building goals.

We examine four pillars of post-conflict nation-building in this analysis: establishing security, reforming the justice system and implementing a fair and effective rule of law, promoting social and economic well-being, and forming democratic governance and citizen participation (Feil 2002).

These are intertwined to the extent that a positive outcome in each area depends upon successful integration and interaction among the actors working toward each goal. We explore in turn the effects NGOs have had on each pillar and how we believe they can facilitate action. We add caution, noting how the use of NGOs presents its own set of challenges. We also consider the potential effects of the GOA and other international donors. Briefly, our recommendations for each pillar are as follows:

Security. Establishing a secure environment is the foundation upon which other components of nation-building can flourish. NGOs can help establish internal security, but this role comes with difficulties. By targeting development projects at the needs of local communities, NGOs can confront the underlying causes of civil tensions and promote long-term security. Conversely, NGOs can destabilize security in ways such as increasing the legitimacy of violent factions, providing aid that allows other funds to be used to purchase war materiel, or by falling victim to manipulation or extortion. That said, NGOs may be able to assist the GOA in establishing security by encouraging doubters to see they have a future under the new government through aid projects.

Judicial Reform. A functioning, independent, and transparent justice system is fundamental to support the rebuilding of democratic institutions, restore the protection of basic rights, and promote urgently needed private sector development and investment. Too visible and active participation by international donors and NGOs in the development of new laws can harm nation-building in Afghanistan. International and local NGOs have the potential to serve as supplemental resources for restructuring the Afghanistan justice system. International NGOs can provide resources and technical assistance to help rebuild physical infrastructure and to train justice system personnel. Local NGOs are well-positioned to facilitate the dissemination and acceptance of new laws, as well as to monitor and report corruption within the justice system.

Macroeconomic Stability. To promote macroeconomic stability, the Da Afghanistan Bank (DAB) needs to continue its structural adjustment in conjunction with the International Monetary Fund (IMF). NGOs can improve the macroeconomic outlook of Afghanistan. They should work on developing a more diverse economy that does not rely solely on the opium industry. NGOs can serve as an alternative for providing financial services throughout the country. On the other hand, NGOs should not impede the development of organic institutions as this is paramount for the development of sustainable economic growth.

Democratic Consolidation. A solid irreversible democracy will take time to establish, and it cannot come through the efforts of the central government alone. NGOs can promote increased awareness and citizen engagement to foster

democratic participation; however, they must be careful not to detract from the authority of the central government by dealing with local warlords or promoting clan issues at the expense of national unity. The government itself needs to demonstrate a credible commitment toward developing democratic institutions, including reforming its civil service. The international community should cautiously support NGOs in their work to facilitate administrative reform, protect electoral freedoms, and build civil society, as some NGO activity that purports to meet these aims actually threatens the status of democracy.

We proceed with our analysis by examining each of the four pillars of reconstruction. Each is defined and examined in terms of its importance for nation-building and how it integrates with the others. We discuss how NGOs may contribute to each pillar as well as how they might complicate reconstruction efforts. **Section II** discusses the mitigation of violent resistance and creation of a secure environment. In **Section III**, we examine judicial reform, involving the establishment of a clear rule of law and effective police and court systems. **Section IV** focuses on macroeconomic stability through economic diversification, a sound currency, and an effective banking system, particularly with regard to Afghanistan's informal *hawala* banking system. **Section V** turns to democratic consolidation, including administrative reform, electoral freedom, and promotion of growth in civil society. Finally, we draw upon each section to highlight common themes that exemplify the NGO conundrum as it applies to nation-building in Afghanistan. We conclude that if NGOs are to contribute effectively, each pillar must not be conceptualized strictly in terms of its traditional construction, but must be re-imagined as part of a broader social transformation that NGOs have the potential to effect.

II. NGOs and Security in Afghanistan

The Concept of Security in Nation-Building and the Problem of NGOs

Re-establishing internal security after a conflict should be the most immediate and important concern for policymakers in the country of concern, in other intervening countries such as the United States, and in the broader international community. Internal security is critical to avert widespread disorder such as that seen immediately after the fall of the Hussein regime in Iraq in 2003. Effectively combating internal security threats such as insurgent groups, criminal organizations, and militias can strengthen the authority of the new central government, facilitate reconstruction in other areas, and ultimately have positive effects for other countries' security, including the United States. The words of George Tanham, associate director for counterinsurgency for the U.S. Agency for International Development (USAID) in South Vietnam in the 1960s, ring true today: "After [the military victory] has been attained, the real challenge begins: the re-establishment of a secure environment opens a new opportunity for nation-building" (Jones et al. 2005). Successful reconstruction begins with establishing internal security, and its efficacy can have profound effects on efforts in other areas. A lack of security hampers the development of civil society and fosters political antagonism. An insecure environment can hinder economic development by creating a bad climate for foreign direct investment and by causing capital to be saved for the eventuality of a return to full-scale hostilities instead of being circulated in the economy.

If "security" represents the foundation upon which progress in other areas such as promoting democracy and economic growth rests, we need to understand the meaning of this rather vague term. Security addresses all aspects of public safety, especially the establishment of a safe environment and the development of legitimate and effective security institutions such as a military, police, and a judicial system (Feil 2002). In a secure country, large-scale violence does not threaten citizens, and sound institutions exist to protect civil liberties and properly handle threats. Clearly, working toward these goals in a post-conflict reconstruction can be a massive challenge. In this section, we focus on security in more general terms of deterring violence and the re-establishment of a safe and secure environment. In Section III, we turn to the reform of the justice system, a key security institution. For an overview of Afghanistan's security environment, see Appendix A.

Many components of establishing security can be addressed only by national governments, international organizations such as the United Nations, and their respective military and police security forces. As typically neutral organizations of concerned domestic and international civilians, NGOs cannot be asked to directly fight an insurgency or hunt down terrorists. The mistake some make,

however, is to assume that because of their nature, NGOs are irrelevant in alleviation of security concerns in post-conflict situations to clear the way for nation-building. This is not the case. NGOs can contribute to reestablishing internal security, but instead of directly combating insecurity, NGOs might be best oriented toward fighting the root causes of the insecurity and offering humanitarian aid for poverty eradication and community empowerment (Monshipouri 2003). Taking advantage of NGO capabilities to alleviate suffering, to serve as monitors, and to address other issues may help improve long-term security as much as or more than a military campaign. Enabling NGOs to work in this manner requires very close cooperation with traditional security agencies due to the new kinds of complex relationships among such actors that have evolved in modern nation-building projects. Conversely, ignoring Afghanistan's poverty only gives ammunition to Islamic fundamentalists who claim that the West does not care about the country.

NGOs are no panacea for solving security issues. The actions of NGOs can be detrimental to security. Organizations can be manipulated by conflicting parties through extortion and other means, inadvertently freeing up resources to purchase weapons, and increasing the legitimacy of violent factions if forced to recognize and negotiate with them. They may even prolong a conflict in spite of their noble intentions. Any discussion of NGOs affecting a country's security would be incomplete without including these concerns.

In this section, we illustrate that while NGOs can be problematic, they are not necessarily useless in addressing security concerns. NGOs can significantly supplement military actions by providing humanitarian and developmental assistance and by tying such aid to disarmament, demobilization, and reintegration (DDR) programs. When possible, NGOs serve as monitors or neutral negotiators to build trust or to facilitate cooperation among security-sector actors. We discuss the fusion of security and development, the importance of close NGO-military cooperation, and potential problems for NGOs and security. Through this analysis we provide recommendations for how NGOs can improve security. In short, if NGOs are to contribute to building secure nations, the concept of security must evolve beyond traditional military operations to a much deeper notion of a secure society, which NGOs may be able to help cultivate.

The Fusion of Security and Development Policy and the Role of NGOs

Establishing a reasonable level of security and stability in a country is the quintessential requirement for implementing effective development policies. Government aid agencies and humanitarian organizations find it impossible to operate in an environment where their safety is at risk. Afghanistan clearly finds itself in this situation. Sixteen of the country's 32 provinces were considered "no-go" areas for foreign aid workers in 2004 (Pandya 2004). Security improvement is

necessary before development can be fully implemented. On the other hand, attacking poverty with full force is necessary before any long-term campaign against terrorists or insurgents can succeed. An Afghan NGO estimates that 60% to 70% of those who fight against the U.S.-led Coalition of armed forces in Afghanistan do so for economic reasons; the militias pay good salaries. Only 10% fight on ideological grounds (Clark 2006). In addition, aggressive military campaigns that do not provide substantive humanitarian aid risk alienating the local population. Both NGOs and militaries have roles to play in disentangling these needs and challenges.

Because many recent major development efforts have taken place in insecure post-conflict situations such as Afghanistan, experts speak of a fusion in development and security policy, which have become inexorably related. However, because NGOs are not armed groups asked to directly enforce security—such a stance would run counter to many groups’ neutral principles—they cannot be asked to help quell an insurgency or combat terrorists. Instead, NGOs must be allowed to identify where they can best contribute, and be afforded every opportunity to do so. Ensuring such opportunities exist entails coordination with the security community, meaning that military-NGO cooperation is vital to an effective combination of development and security policy. We highlight a few examples of how NGOs have promoted long-term security through developmental actions.

During the UN peacekeeping mission in Mozambique from 1992-1995, humanitarian assistance was seen as a necessary tool to promote stabilization and reconciliation, and NGOs were assumed to have the key role in providing such. The general strategy was for donors to provide the goods (usually food), which NGOs were contracted to deliver. After the security situation stabilized, the massive return of displaced people created a demand for NGOs to take on a new task: restoring agricultural production. While it is nearly impossible to measure the effects of NGOs on long-term stability in Mozambique, by 1996 the country was witnessing continued peace and economic growth, and NGOs likely contributed to this “peace momentum” (Barnes 1998). A lesson to be taken from Mozambique is to gradually cut off aid at an appropriate time so that communities are encouraged to become self-sufficient. Aid workers in the field were concerned about the potential social and political effects of continual relief and viewed long-term dependency on food aid as a disincentive to economic recovery. Such a strategy of gradual aid reduction requires careful long-term planning, coordination among NGOs and government agencies, and the ability to adjust to a fluid situation in the field.

The phase of the Liberian civil war marked by competing warlords from 1993 to 1995 provides another example of the link between security and aid. NGOs in that country developed innovative and effective aid responses that were based

on prudent analysis of the war situation and improved coordination among the agencies (Goodhand 2001). Developmental aid complemented diplomatic strategies aimed at resolving the conflict, such as targeted sanctions and disarmament, demobilization, and reintegration rehabilitation programs. NGOs funded initiatives to increase freedom of the press and to guard prisoners' rights and achieved real improvements. Success was the result of genuine coordination among all involved international actors. Improving long-term security in Afghanistan by linking it to development will take no less.

Two examples of specific NGOs effectively performing in post-conflict situations come from Bosnia. First, *Centar za Dramski Odgoj* (Center for Drama in Education) has provided assistance that goes beyond emergency food and shelter. Through the formation of multiethnic theater groups, it has developed drama education that aims to break down stereotypes caused by the war and its aftermath. It has realistic expectations, noting that "in a country steeped in blood, plans must be modest," and effectively coordinates with CARE International to increase its influence (Evans-Kent and Bleiker 2003). Second, Corridor, based in Sarajevo, has provided effective post-conflict psychosocial work, such as tackling alcoholism, counseling demobilized soldiers, and assisting with the return of minorities. Coordination with other agencies and the development of specialized expertise have enabled *Centar za Dramski Odgoj* and Corridor to succeed in difficult circumstances and to promote a lasting security that goes beyond repairing war-damaged buildings and infrastructure (Evans-Kent and Bleiker 2003).

Turning to Afghanistan, which specific issues could NGOs tackle to promote long-term security? Above all, the needs of local communities must be identified and acted upon to bring about a return to some sort of a normal life. While tailoring projects to meet each community's needs is important, NGOs can strive to improve health and education (especially of women), create jobs, and foster agriculture across Afghanistan (Monshipouri 2003). Both local and international NGOs have much to offer, and coordination among them will be necessary to improve performance. While local NGOs may be better at identifying the needs of their communities, international NGOs may be able to bring in much-needed resources. Avoiding the "one-size-fits-all" approach often implemented in large relief projects is essential. International NGOs may be better able to avoid becoming tangled in the politics of local warlords, though they must be on constant guard against this. In the post-9/11 world, the international community sees its own security in part dependent on successful development in Afghanistan. This attitude has created enormous opportunity for local and international NGOs to work together to alleviate the causes of suffering and insecurity in Afghanistan. The United States should support these efforts.

Improving NGO-Military Relations and Provincial Reconstruction Teams in Afghanistan

As part of the fusion of security and development policy, today's complex nation-building projects have forged new kinds of relationships among the international security community and humanitarian actors such as NGOs. As a result, militaries and NGOs cross or overlap duties, such as when militaries help NGOs to provide humanitarian assistance. In post-conflict areas where large numbers of NGOs and military troops are operating simultaneously, a well-planned and coordinated combination of military and civilian efforts is needed to bring about the greatest probability of improving long-term security and stability (Abiew 2003). Allowing NGOs to focus on the humanitarian assistance they can best provide entails cooperation with, and often protection provided by, a willing military. Military-NGO relations are often rocky, however. They can be strained when either the military or NGOs operate outside of their "comfort zone" in peace-building missions; but the interlinked nature of humanitarian, political, and security issues in such situations requires that the military and NGOs understand each other and cooperate (Abiew 2003). In this section we discuss ways in which NGO-military relations might be improved.

Relations between the military and NGOs might be complicated for a variety of reasons. NGOs may feel that working with the military compromises their basic principles. There is a great difference in the two organizational cultures, they often lack a great deal of information about each other, and a general mutual attitude of distrust tends to prevail (Abiew 2003). While the military might often prefer that they consolidate their activities with each other to make protection easier, NGOs may feel that doing so hinders their ability to maintain close contact with local citizens. From the military viewpoint, the presence of a large number of NGOs makes coordination of activities difficult, and one incompetent NGO may make the military believe they are all useless.

The UN peacekeeping process in Mozambique from 1992-1995 provides an example of the potential consequences of ineffective NGO-military relations. NGOs wanted to distance themselves from the UN military mission, but concurrently sought their protection whenever their supplies were threatened or attacked. While the UN military presence was theoretically intended to facilitate secure movement of humanitarian aid by NGOs, shifting military priorities resulted in several areas of Mozambique not receiving aid due to a lack of security (Barnes 1998).

There are many ways by which the U.S. military may improve relations with NGOs in Afghanistan and thus better enable NGOs to address development-related threats to long-term security. Above all, the NGO-military partnership

must be based on mutual respect, and coordination should be arranged by consensus rather than command. An increased amount of flexibility is required on both sides. The military should familiarize itself with the leading NGOs in the country and prepare to work with them—this could be achieved through conferences and joint training exercises. There should be more information sharing, when permissible by military security concerns, between the military and NGOs at all levels, from ground-level troops and NGOs working together in specific Afghan communities to generals and heads of NGOs. The roles and responsibilities of various actors—NGO and military—must be clearly defined to avoid duplication (Abiew 2003).

NGOs can improve their relations with the military in much the same way. If they wish to maintain their independence, they should demonstrate that doing so will not result in the duplication of duties while ignoring others. NGOs could consolidate operations, which would better enable the military to understand their actions, by creating an NGO coordination body to serve as a first point of contact for arriving NGOs, a place to exchange information, and a forum to discuss collective action. They must be more willing to share information with each other and the military (Abiew 2003). NGOs must weigh the benefits of short-term cooperation with the military against any possible detrimental long-term effects. While NGO-military relations should not be expected to be completely harmonious, improving them may go a long way toward addressing Afghan security concerns and applying what both sides learn to future reconstruction projects.

Some success in coordinating military and NGO actions has been achieved in Afghanistan through the implementation of Provincial Reconstruction Teams (PRTs). These are joint civil-military units established by the U.S.-led Coalition and deployed in many of Afghanistan's provinces with the overarching goal of enhancing the authority of the GOA in outlying regions by improving security and facilitating development programs. Of 22 PRTs in Afghanistan, the United States leads 13, though all are guided by the same set of principles. Each PRT's staff includes 60 to 250 people who predominantly come from the military but also include representatives from bilateral donors and aid agencies. Typical PRT activities include establishing good relationships with regional leaders, monitoring key developments, mediating disputes, and implementing assistance projects in areas that NGO aid workers alone would not be able to access (USAID 2005).

During the winter of 2003-2004 the U.S. military led a major effort to establish PRTs in southern Afghanistan where violence levels were highest. This effort to plant "pools of security" across the region dramatically affected the military's ability to reach out in many directions concurrently and extend the authority of the central government in time for the elections in the autumn of 2004 (Barno 2005). The presence of a PRT sends a different message to the local people than

combat troops alone; it lets them know that reconstruction aid will flow to the local government through PRTs and gives them a reason to invest in that government. For the long-term, the major challenge for PRTs is to build local governments' capacities to provide functions independent of aid.

One concern associated with the PRT program is that the GOA accused PRTs of building projects that the government could not afford to operate, and thus the Coalition and GOA now cooperate to align projects with government priorities. There is still a lack of coordination, however, between Coalition and NGO-led development activities, and it is questionable whether military officers make the best development partners for local administrators (Rubin 2006). Their effectiveness could potentially be improved through the inclusion of more political officers and development specialists from donor countries and NGOs.

The Potential Role of NGOs in Disarmament, Demobilization, and Reintegration Programs and Army Reconstruction

The best way for NGOs to contribute to long-term security in Afghanistan is through development projects that address the underlying causes of strife. However, it is pertinent to consider how NGOs may more directly contribute to improving security by participating in the process of disarmament, demobilization, and rehabilitation (DDR) as well as army reconstruction. This is not a traditional role for NGOs, and evidence of their success in doing this is limited. As some NGOs may be able to effectively contribute, though, this option merits discussion.

Perhaps the most effective method for NGOs to assist a disarmament, demobilization, and reintegration program is to provide humanitarian aid required by former soldiers and their dependents. Local NGOs can be funded to provide reintegration assistance and social services such as skills training and trauma counseling, and disarming and reintegrating female and youth combatants back into the community. This was undertaken in Sudan in conjunction with United Nation Children's Fund (Anderlini and Conaway 2005).

During the demobilization process in Mozambique in the mid-1990s, the United Nations recognized the need to extend management of the process beyond the military. The main task of NGOs was to provide medical supplies and equipment as well as health care and education to former soldiers and their dependents. In Angola, the role of NGOs expanded to include food distribution and civic education. While these were positive contributions overall, the missions exposed difficulties. Coordination between NGOs and government agencies proved difficult, and NGOs questioned whether being involved in DDR at all was appropriate. They viewed DDR as a military aspect of a peacekeeping operation (Barnes 1998).

Another way in which NGOs may affect the DDR process is by linking aid resources with its progress. Many international NGOs refused to participate in or link their efforts to the DDR program launched in the aftermath of the Liberian civil war in 1996, as they viewed the program as serving the ambitions of President Charles Taylor. This refusal to participate hampered efforts to connect demobilization with rehabilitation, as many ex-combatants received little or no aid (Goodhand 2001). NGOs were forced to balance providing humanitarian aid in conjunction with the DDR program and attempting to avoid reinforcing the negative aspects of Taylor's reign. Both real humanitarian aid and effective DDR are needed to promote security in the long term, and the possibility of assistance provided by NGOs may inspire a more capable DDR process. As the Liberian example illustrates, however, aid must not serve the needs of a corrupt regime (or warlord, in Afghanistan's case).

NGOs and their representatives working with PRTs may be able to take more active roles in DDR and in army reconstruction. PRTs already provide security support for the DDR process and assist with the formation of the Afghan National Army as well as assess and report its capabilities (USAID 2005). Trusted NGOs with proven experience as negotiators may be able to serve in this role during the DDR process and Afghan National Army reconstruction. NGOs serving as neutral negotiators may be able to help bring together former enemies, build trust, and strengthen commitments to peace—conditions necessary for an effective DDR program and a new Afghan army. Additionally, as there is a great deal of money involved in these processes, it may be appropriate for NGOs such as Transparency International to monitor the distribution of military funds to minimize corruption.

These rather limited ways in which NGOs could contribute to DDR programs highlight some of the difficulties they can have in improving security during reconstruction. These duties are often too closely associated with the military to be compatible with the principles of many NGOs, and may put them at risk for being manipulated by belligerent parties. Below we discuss how NGOs working in post-conflict situations may exacerbate security problems.

Potential Problems for NGOs and Security

Not only can it be difficult for NGOs to contribute to improving security, they also have the potential to foster problems in post-conflict situations or even to prolong conflicts. One mistake made by government agencies directing NGO activities and by NGOs themselves is to idealistically assume that their actions are autonomous from international politics when in reality they can be quite limited by funding sources and the operational environment (Evans-Kent and Bleiker 2003). International NGOs are often dominated by Western values and agendas and as a result may unfairly privilege certain groups. This occurred in

Bosnia, where English-speaking trainers were given preference over qualified indigenous candidates. International NGOs were often reluctant to engage the local population, and local NGOs resented the imposition of international expertise on local participants.

NGOs have the potential to inadvertently prolong conflict, either by diverting attention away from the real causes of conflicts or inadvertently assisting the hostile parties. To get aid to the truly needy, NGOs may be forced to negotiate with those engaged in violence. When doing this, it can be extraordinarily difficult to avoid being manipulated by the belligerents or unwittingly used to further their agendas. In the conflict in Sudan, humanitarian aid has been used for military and strategic ends and, as a result, is criticized for prolonging the conflict, heightening ethnic antagonism, ruining local agricultural production, and turning the local population into beggars (Okumu 2003).

Belligerents—both rebel groups and governments—in African wars have manipulated well-intentioned international NGOs into prolonging conflicts. Belligerents use funds from NGOs to feed people in their territories, which frees up revenues to buy weapons. A similar danger exists in Afghanistan from the poppy fields. NGOs moving people to relatively safe areas can enable warring parties to use them as human shields or conveniently depopulate a potential theater of operations. Groups extort NGOs through bribes or other means and use newly NGO-rebuilt infrastructure to move troops and materiel to combat zones. NGOs forced to negotiate with rebel factions give them increased recognition and legitimacy, as occurred with Charles Taylor's National Patriotic Front of Liberia in the early 1990s (Okumu 2003).

Given these problems, NGOs may find it difficult to avoid being drafted as political players in a conflict or a post-conflict reconstruction effort such as in Afghanistan, where high tensions and violence remain. Any measures by NGOs to improve long-term security must therefore be tempered by these concerns about becoming pawns. NGOs, donors, and government agencies directing them (including the military) must establish clear goals, operate with reasonable expectations, and engage in greater coordination.

Summary of Security Recommendations

Improving security in Afghanistan is regarded by all as the absolute prerequisite for enabling a successful reconstruction and economic growth. While quelling the insurgency, hunting terrorists, and training a new army are duties best left to national governments, militaries, and possibly private contractors, NGOs can contribute to improving Afghanistan's security. By identifying local communities' humanitarian needs and meeting them as best they can, NGOs can contribute to Afghanistan's long-term security by tackling the underlying

causes of civil unrest. They can tie aid to DDR programs and, chiefly as part of Provincial Reconstruction Teams, serve as negotiators, monitors, and consultants for the DDR process and the construction of a new Afghan army. NGOs are potentially problematic when attempting to promote a secure environment, however, and these concerns must be considered when evaluating whether to support their efforts. Fickle funding sources may prohibit the sort of long-term projects necessary to tackling underlying causes of security problems, and NGOs may give increased legitimacy or support to insurgent factions, or their aid may prolong a conflict.

A mix of local and international NGOs can best achieve these goals, though large international NGOs likely have a larger role. Local NGOs may be able to better identify specific community needs and communicate with local groups. For the major tasks of negotiation, coordination, poverty eradication, and related duties, however, the massive resources and credible reputations of big international NGOs are essential. These NGOs—especially if limited in number—may find working with the military easier, particularly by following the above recommendations to improve relations. Improving security in Afghanistan must involve action by all relevant groups. This collaboration may result in the long-term prospects of a secure country with a burgeoning democracy and economic growth.

III. Judicial Reform in Afghanistan

Judicial Reform in the Nation-Building Process

A functioning, independent and transparent justice system is fundamental to support the rebuilding of democratic institutions, to restore the protection of basic rights of which Afghans have been deprived for years, and to promote urgently needed private sector development and investments. Decades of conflict have severely damaged every aspect of the Afghan justice sector (for background information and status quo of the Afghanistan's justice system see Appendix B). There is urgent need for building and strengthening institutional capacity, producing qualified professionals, rehabilitating infrastructure, developing information, and recreating depleted documentary resources. Scores of NGOs have been working in Afghanistan to address these and other problems, and there is definitely a visible improvement; however, much remains to be done.

Similar to security, the justice system is frequently seen as an exercise of state power, serving the interests of the government. Although the role of the GOA in restructuring the justice system is indisputable, an important component of this process is the connection of the new judiciary with the Afghan people and their acceptance of it. NGOs can play the role of a "bridge" to connect Afghans with the new justice system and render it more credible for them. NGOs are well-positioned to play this role as they have the potential to bring a sense of impartiality to the judicial process and may serve as a check on corruption in the justice system.

However, NGOs should not be perceived as a panacea for fixing the justice system in Afghanistan. Caution should be taken when distributing the roles and responsibilities between the GOA and NGOs. External (international) involvement in judicial activity can lead citizens to reject the new judicial system because they resent what they see as interference with national self-determination. The GOA should take ownership of law-making and establishment of the major justice system institutions. International legal NGOs can provide training as well as impartiality and a sense of professionalism. Local NGOs can connect people to the laws through education and advocacy. A fine line must be recognized between the non-intrusive, supplemental efforts of international donors and NGOs, and their supplanting (or perceived supplanting) of the government's role in the rule of law. Care should be taken to not cross this line so as to avoid undermining the government's authority. Ultimately, strengthening and legitimizing this authority is the goal of judicial reform.

The Importance of Judicial Sector Reform

Judicial sector reform is arguably the most important pillar of Security Sector Reform (Jones et al. 2005), and regrettably the one where the least has been achieved. The creation and enforcement of laws provide the framework within which all other nation-building activities need to take place. It is fundamental to ending the current “culture of impunity,” checking against any abuse of power by the government or its opponents. The fact that the Afghan government will conduct security operations against sections of its population during the next several years further demands the creation of a legal structure capable of preventing abuses by emerging security institutions.¹ Basing enforcement activities (counter-narcotics, counter-insurgency, and counter-terrorism) on law provides a basis for action in principle rather than politics, thus countering the history of arbitrary and unaccountable use of force.

The justice system has suffered from weak leadership and lack of attention within the GOA, United Nations Assistance Mission in Afghanistan, and the donor community. A strategy and sequence for judicial and legal reform remains undeveloped, while existing programs are only beginning to scratch the surface of what is required. Early inactivity and severe underfunding still have not been substantively redressed, with the existing process continually impeded by national and international schisms. The GOA has failed to provide leadership or to take steps to integrate judicial reform issues into the Ministry of the Interior and police reform process. The international community has also defined the issue in a limited manner, neglecting the fundamental importance of a holistic and staged approach.

The judicial system in Afghanistan is composed of three national bodies — the Supreme Court, the Ministry of Justice and the Attorney General’s Office — each driven by its ideological and political agendas, hindered by corruption and engaged in turf battles. Problems include untrained judges and other personnel, insufficient professional legal education, low salaries, poor court infrastructure and administrative support, a limited number of courts outside of Kabul and urban provincial capitals, and the lack of support and authority given to the Judicial Reform Commission. Arrests and criminal cases continue to be hampered by a corrupt judiciary (where bribery is often a condition of release regardless of the accused’s guilt or innocence), the use of intimidation and family connections to influence cases, and insufficient incarceration space (Jones et al 2005).

¹ These institutions include Afghanistan’s National Police and National Army. Another tool, the National Development Strategy, is the Government of Afghanistan’s overarching strategy for promoting growth, generating wealth and reducing poverty and vulnerability. It provides the framework for the development of government policies and guides the allocation of resources and programs toward these goals.

In addition to the official bodies, Afghanistan has a developed and well-established informal justice system, called *jirga* or *shura* (depending on the region). *Jirga* and *shura* are made up of prominent male members of the community who convene to resolve community problems, including those related to land, property, the family, and crime. In making decisions, the *jirga* and *shura* apply different sources of law, including *Shari'a* law and Afghan custom.

Judicial reform efforts can be divided into four major categories: establishing a body of laws; training prosecutors, lawyers, law enforcement, and Ministry of Justice officers; building physical infrastructure and improving detention and prison capacity; and promoting awareness and disseminating information about laws, rights, and responsibilities in the population. Our research shows that while the GOA should establish laws, the other three reform categories offer a broad field for NGO efforts. The next section examines the reasons for this distribution of roles, offers examples and provides recommendations for further judicial reform in Afghanistan and the role that NGOs can play.

Establishing a Body of Laws

A lack of clarity regarding Afghanistan laws complicates legal reform. The December 2001 Bonn Agreement called for existing law, with some exceptions, to continue to apply, but this provision ignored significant overlaps and contradictions among laws promulgated during different periods. In addition, all existing significant collections of legal texts were destroyed during the wars. Under the Bonn Agreement, one of the Italian government's (as the main donor for the justice system) most significant goals was to develop a new, streamlined interim code of criminal procedure, which presidential decree established in February 2004 (Jones et al 2005). This collection represented much of the legislation produced during the last century; it was digitalized and saved for the Ministry of Justice and other bodies on CD-ROMs. The interim code was the subject of some controversy. It was prepared by Italian officials with help from U.S. military lawyers but had relatively little input or support from the Afghan justice institutions. The GOA needs to be an intrinsic part of the law-building process in the country as the lack of its presence may lead to distrust of the new laws among the Afghan population. Laws developed by international players may be viewed as "imposed by foreigners" and not endemic to the Afghan and Islamic culture. Consequently, they may not gain popular acceptance, which would create incentives for the local warlords to enforce their rules.

While the GOA is best left by itself to promulgate laws, NGOs and foreign governments can assist by compiling these laws and making them accessible to the public. The International Development Law Organization (IDLO) in October 2003 completed a digital, chronological compilation of more than 2,400 Afghan laws going back to the 1920s, but this has not yet been indexed or distributed.

In 2002, the U.S. Institute of Peace, together with the American Bar Association and International Resources Group, collected authenticated versions of several key legal codes and, with the cooperation of the Ministry of Justice and the U.S. Army, printed and distributed 1,000 copies. The U.S. Army delivered most of the copies to regional governors (Miller and Perito 2004).

During its engagement in Afghanistan, IDLO has carried out activities that include the organization of the Roundtable on the Role of Law in a Modern Afghanistan, the development of a database of Afghan legal professionals, the organization of a distance learning dialogue and seminar and a law books donation project (IDLO 2005). This is a good illustration of how an international NGO can participate in judicial reform without undermining the legitimacy of the local government and significantly contribute to nation-building efforts.

While the lack of clarity regarding existing law is likely to persist, some progress has been made in revising existing laws and writing new ones. According to the Ministry of Justice, 12 amended or new laws had been approved by the government as of November 2003, and several others are in progress. Many of these focus on commercial law and other areas related to regulation of the economy. The real test of law reform, however, will be whether new and improved laws are actually implemented. In that regard, there has been little progress. To create a possibility of implementation, a system will have to be devised for distributing and providing training regarding the new and revised laws to judges, prosecutors, and legal educators.

Training

One of the greatest justice needs in Afghanistan has been to improve the quality of judicial personnel. There is a clear role for NGOs in this process as successful NGO judicial personnel training programs have been implemented throughout the world. Training needs to occur at all levels of the judicial process, from judges and prosecutors to the police.

The Judicial Reform Commission has established two training programs for Ministry of Justice prosecutors and judges and faculty graduates of *Shari'a*, a supranational legal code. In addition, the Italian Ministry of Foreign Affairs contracted the IDLO to train judges in civil and commercial law. It also asked the International Institute of Higher Studies in Criminal Sciences to provide training in criminal justice and human rights. Both organizations coordinated with the Judicial Reform Commission and the Italian government to train 450 judges and prosecutors from Kabul and the provinces (Jones et al. 2005).

Training has long been a traditional domain of assistance where NGOs have an established reputation. For example, IDLO has a proven record in assisting post-

conflict countries with strengthening the rule of law (East Timor, Kosovo). With funding from the U.S. Agency for International Development, IDLO implemented a major Training of the Judiciary Project for East Timor, to educate newly appointed judges, prosecutors, and public defenders on criminal and civil law procedure (IDLO 2005). Another strategy that could involve local NGOs is a train-the-trainer program where local professionals, trained by international experts, conduct the training in rural areas. This would utilize international expertise and introduce a degree of sustainability by developing local capacity to conduct training.

Not only have international actors aided in judicial training, they play a role in educating the police force. Approximately 50,000 men work as police in Afghanistan, but they are generally untrained, ill-equipped, poorly paid, and illiterate, and they owe their allegiance to local warlords and militia commanders rather than to the central government (Miller and Perito 2004). During 2002, the reform effort began with the reconstruction and re-establishment, under German sponsorship, of the Kabul Police Academy, which trains officers and sergeants. In 2003, U.S. officials augmented this program with patrol-officer training programs; these programs started in Kabul and in 2004 were extended to regional training centers (Jones et al. 2005).

While such training programs are beneficial for establishing a professional police force, there are still substantial gaps in police reform. Once trained, police officers generally return to their original police forces with no further monitoring, mentoring, or training in the field. Many local police agencies in Afghanistan are little different from the ethnic-based, factional militias. The Ministry of the Interior must address these reform gaps with programs that permeate all levels, from its Kabul headquarters to the most remote district police agencies, to include an effective screening process for vetting police officers to determine whether they have committed abuses or are tied to militias. Local NGOs could step in and conduct the monitoring of the newly trained police forces to ensure their compliance with the law.

Many international donors finance policing projects in developing countries. The United Kingdom's Department for International Development, for instance, was active in Bangladesh, where it promoted community involvement in policing at the local level and strategic reforms to make the police force more service-orientated. It also supports policing in Indonesia. The Asian Development Bank occasionally supports efforts to reform certain aspects of police work. In Nepal, the bank has introduced some gender-awareness training for the police to be more sensitive to domestic disputes (IDLO 2005).

Legal training and education is fundamental to improving the quality and professionalism of judges and prosecutors, particularly in the current situation where purging unqualified personnel is not politically feasible. Short-term fixes and long-term investments are needed. Some attention is being paid to the former, as several training programs are underway, but no attention is yet being paid to the latter, which requires taking steps to improve the dismal state of university law faculties. Short training programs can provide benefits, but major gains in the quality of administration of justice can only be achieved if investments are made in the preparation of the next generation of legal professionals.

Building Infrastructure

For the justice system to function properly, the country needs to build or renovate courts, prisons, and other justice-related buildings. The long period of wars has resulted in virtual destruction of the physical justice system infrastructure in Afghanistan. Several countries, such as Italy and the United States, and international donors, such as the U.N. Development Program (UNDP), have assisted the Afghan government in reconstructing and refurbishing justice infrastructure. The UNDP has taken a leading role through its project on Rebuilding the Justice Sector of Afghanistan, which rehabilitated provincial justice buildings in various provinces. The UN Office on Drugs and Crime has been involved in rehabilitating prison facilities in Kabul, establishing a Prison Administration Department within the Ministry of Justice, and drafting penitentiary law in accordance with U.N. Standard Minimum Rules of the Treatment of Prisoners. UNICEF and the Afghan Ministry of Justice led a joint assessment of the juvenile justice system, created pilot programs of alternatives to custody and rehabilitation, and undertook capacity-building programs regarding juvenile-justice standards (Jones et al. 2005). However, major challenges persist. One is the absence of prison and detention infrastructure outside of the capital region. Other challenges include substandard prison conditions and the use of torture. As one Amnesty International report concluded:

Prisons, an essential component of [the criminal justice] system, are crumbling after years of neglect and lack trained and qualified staff ... Prisoners are being held for months in overcrowded cells, some of them shackled, with inadequate bedding and food. Staff has received no training and has not been paid for months. Prisoners and detainees are not being held in safety, some are suffering ill-treatment or even torture. (Jones et al. 2005)

Typical for a post-conflict reconstruction situation, the corrections system in Afghanistan has largely been a neglected part of justice sector reform (Miller and Perito 2004). Though corrections facilities nominally fall within Italy's purview, it has paid limited attention to this area, and other donors have paid none. Afghan

authorities have applied few resources to address the huge needs of the prison system. Except for a few limited NGO projects, the U.N. Office of Drugs and Crime is the only organization working on prison and jail improvement projects in Afghanistan. Even the efforts of this office have been very narrow in scope, providing very basic renovation (e.g., water, sanitation, kitchens) of detention centers in and around Kabul (Miller and Perito 2004).

Besides physical building construction, infrastructure building efforts also involve the establishment of key judicial institutions whose goal is to streamline the judicial process and connect it to other systems. Examples for such efforts are found in other developing countries. The Asia Development Bank, for example, improved the relationship between the private sector and the government in Thailand by providing funding for the Legal Execution Department (LED) to provide training in corporate reorganization and insolvency. IDLO implemented this project in association with two law firms, Allens Arthur Robinson and Siam Premier International. The team helped develop a database of self-training materials in Thai, which LED staff can access online. The Asia Development Bank is funding another \$1.6 million “economic law” project in Nepal. Carried out by UniQuest, it includes the establishment of a national judicial academy, the creation of a secure transactions registry and the development of a commercial bench (Center on Democracy, Development, and the Rule of Law 2004).

Infrastructure building is an area of justice reform where international donors can provide financial support and NGOs can assist in implementation. Establishing courts in rural areas will facilitate access to justice for rural residents. Improving detention facilities will enable prison guards and police officers to provide detainees with humane treatment. This will complement judicial and police education efforts by allowing the entire justice cycle to be completed with even-handed application of the law, rather than arbitrary rulings and treatment influenced by clan associations and corruption.

Awareness Promotion

Ultimately, judicial reform and the rebuilding of the justice system are parts of the larger process of nation-building. In a society that has never accommodated strong, centralized institutions, or submitted to centralized law-making, creating a justice system that will respect regional and local sensitivities while protecting civil liberties and promoting a sense of Afghan nationhood is a daunting task. Strengthening the rule of law should be an inseparable part of the nation-building process. This task should be approached carefully, however, to assure the acceptance of the new rules by the people. Therefore, one of the first goals of the justice system reform should be to unfold an awareness campaign that would bring the word of law to all parts of the country. The spread of Afghanistan’s official justice system is rather limited. Rural areas often do not have proper court and

detention mechanisms; local residents are unaware of the new laws and what rights and responsibilities the legal system entails. In a situation like this, high reliance on informal justice mechanisms is likely, as it is the case in Afghanistan.

A strong connection exists between governance, law, and justice on the one hand, and the economic and social development of the country on the other. Field experience, combined with the donor community's recent focus on poverty reduction as its primary goal, has led to the evolution of a new multilayered approach to development. Legal and judicial reform today fits in this new framework. At the U.N. Development Program, for instance, Sanaka Samarasinha, the rule of law/judicial reform advisor for the Pacific, and northeast and southeast Asia, says: "With our mandate of poverty eradication, and poverty being defined as an issue of human development and not only one of income, perhaps the main issue is one of access to justice — both formal and informal means of justice" (Center on Democracy, Development, and the Rule of Law 2004). One of the best ways to empower poor people and to establish public trust to the government is by providing better access to both justice and legal information. This often involves activities at the grassroots level. Local NGOs can play important roles by facilitating the distribution of information among people; explaining new laws, the rights they grant, and responsibilities they entail; and establishing trustworthy institutions that check governmental institutions and serve as a venue for people to report unjust practices.

The short reach of the central authorities contributes to corruption in the rural justice system personnel, which in its turn undermines the legitimacy of the official justice system. This is the area where NGOs have long-standing experience in many developing countries where they serve as corruption "watchdogs," monitoring the administration of justice and acting as an institution, independent of the government, where people can bring their concerns and complaints. NGOs can be a good mechanism for dissemination of information on the formal justice system: to strengthen the formal justice system and to ensure that people are aware of how they can access justice, a comprehensive awareness-raising campaign must be commenced.

Awareness Promotion and Informal Justice Systems

Awareness campaigns are especially needed in rural areas of Afghanistan where there is great reliance on *jirgas/shuras*, the informal justice mechanisms, which impede the establishment of a working and recognized justice system.

The *jirga* is deeply rooted in the culture and history of Afghanistan. It is strongly bound up with the social and economic realities of Afghan society and is closely connected with the social order of the Afghan village, tribe, and the society as a whole. The *jirga*, its norms, techniques, and processes define the indigenous ways

Afghans resolve their conflicts, and is therefore an important aspect of Afghan national identity. It is a time-honored institution that has a proven record of resolving conflicts at different levels in Afghan society (Wardak 2003). The extent to which *jirgas* have resolved conflicts has always depended on the extent to which the people of Afghanistan perceived them as legitimate. The official pre-war Afghan legal system generally reflected a balance between Islamic teachings, Afghan tribal traditions (customary law) and modern legal norms. The administration of this legal system, however, involved long delays, bribery, and corruption. Consequently, many Afghans in rural areas tried to avoid contact with state legal institutions and preferred their conflicts to be resolved privately when possible, or else by *jirgas* outside the courtroom (Wardak 2004). The geographical isolation of many Afghan communities and the absence of courts mean that, at present, the *jirga* and the *shura* are the only accessible justice mechanisms available to certain communities.

The relationship between informal and formal justice systems is also regionally diverse. In some areas, there is a strong relationship between the formal and informal justice systems. For example, in Nangarhar province in eastern Afghanistan, Amnesty International found that primary courts would refuse to deal with some criminal and civil cases that had not been initially referred to the local *jirga* and that they would send such cases to the *jirga* for resolution. However, in other areas, the organization found that no relationship existed between the courts and the *jirga* or the *shura*. At the present time, the relationship between the formal and informal justice systems and the competence of the informal system is largely unregulated. However, the law does grant exclusive jurisdiction to Afghan courts (Amnesty International 2006).

There is a noticeable lack of consensus among the Judicial Reform Commission, Afghan judicial institutions, and the international community about the envisaged role of informal, non-judicial mechanisms. The Judicial Reform Commission has stated that once the formal judicial system is established, there will be no need for the *jirga* and *shura*. However, many senior judges indicated that the *jirga* and *shura* must continue to play a key role in administering justice in Afghanistan (Chesterman 2002). The U.N. Assistance Mission in Afghanistan's position on informal justice systems was far from clear.

Despite some obvious advantages of the informal justice system, such as its accessibility for rural residents, the capacity to deliver justice expeditiously and in cost-effective ways, and its reputation among the people, it has several characteristics that render it unacceptable for a democratic society. The involvement of informal justice mechanisms in criminal matters can lead to serious human rights abuses, including violations of the right to a fair trial. Furthermore, there is a risk that the adjudication of criminal cases by non-judicial mechanisms can lead to violations of the prohibitions against torture and cruel,

inhumane, or degrading treatment or punishment, slavery, and discrimination. Amnesty International reports that in some regions, such as Badakhshan in northeastern Afghanistan, local informal justice mechanisms have been co-opted by members of armed groups who utilize them to ensure that their authority is not undermined. Under such circumstances, there is a serious risk that the rights of persons accused of criminal offences in informal mechanisms are not protected. There is also a large concern that the informal justice system contributes to the discrimination of women in Afghanistan (for more information on abuses of women's rights, see Appendix C).

Simply discarding the *jirga* system as harmful and unusable would be unwise. A comprehensive review of the informal justice systems is necessary to establish the GOA's strategy in regard to this mechanism. Reviewing the informal systems, including the diversity of such mechanisms and the frequency of their use, and determining the services that they provide is an essential component of the criminal justice strategy. NGOs can undertake this task more successfully than local officials due to the NGO reputation of impartiality and independence of the local power holders. It may be likely that in the present situation, where formal justice is virtually nonexistent in many parts of the country, the GOA may have to temporarily accept *jirgas* and *shuras* as a supplemental element of the transitional justice system. The role and extent of informal justice systems must be clearly set out in the law in order to remove any ambiguity regarding the role of Afghan informal justice mechanisms and to ensure that informal systems fully conform to international human rights laws. NGOs might act as human rights watchdogs assigned to local *jirgas*. International NGOs, such as Amnesty International, may not be best suited for this role because the Afghans may perceive their activities as imposing Western values upon their culture. It is the local NGOs who may be well-positioned to serve in this role as they are likely to be more accepted by the local community.

Summary of Judicial Reform Recommendations

The analysis of the judicial reform in Afghanistan indicates that despite the efforts of the GOA, donors, and NGOs, the Afghan justice system still functions poorly. This situation can be partially attributed to the magnitude of the task in front of all parties. There are numerous challenges, such as the lack of security, widespread corruption, and the influence of the informal justice system. A glaring lack of coordination and of a unified "action plan" has led to disconnected and sometimes wasted efforts. The four categories of the judicial sector reform—establishment of laws, training, construction of infrastructure, and awareness promotion—have not been addressed equally, with most of the attention and funding dedicated to police training and renovation of judicial buildings in the Kabul area; little or no attention has been paid to linking the new justice system to the people and to eliminating corruption in courts. Though significant funds are devoted to police training, even a well-trained force will not be able to provide genuine law enforcement without

functioning criminal justice or corrections systems to handle offenders. At best, such a force would provide some public order; at worst, the international community will have enhanced the ability of warlords and regional commanders to control and abuse the population without creating mechanisms to protect the rights of Afghans. Furthermore, the proper functioning of the justice system depends on its legitimacy among the people, and there is a great need in Afghanistan to disseminate information on the rule of law to the population. A substantial investment in one area of rule of law will not have a meaningful pay-off in terms of real democratic governance and stability unless other pieces of the puzzle are put in place. An integrated, unified approach to establishing the rule of law is needed.

Due to the nature of the justice system, our team has concluded that the GOA should have sole authority to promulgate laws. A visible and active participation of NGOs in this process may harm rather than help the nation-building process; however, NGOs can contribute to judicial reform in other important ways:

- Foreign donors and NGOs should continue providing resources and compiling a comprehensive collection of Afghani laws.
- NGOs should continue to train justice system personnel, such as judges, prosecutors, lawyers, law enforcement, and prison personnel.
- International donors should provide funds to building the physical infrastructure—courts, detention centers and prison facilities. NGOs should work with the GOA to implement this construction.
- NGOs should promote awareness among the Afghan people regarding their rights and responsibilities, the responsibilities of the justice system, the meaning of the rule of law, the proper role of the police.
- The formal justice system needs to be extended to rural communities to lessen the reliance and influence of the informal justice system. International donors and NGOs should provide members of the formal criminal justice system, including the police and the judiciary, with necessary resources to enable them to establish a presence in rural areas. Members of rural communities must be provided with information on how to access the formal system. Moreover, male and female members of rural communities must be consulted on judicial reforms. NGOs have the capacity and reach to undertake this task successfully.
- NGOs should work with local governments to conduct comprehensive reviews of the informal justice system, exploring how it could be incorporated into the formal justice system.
- NGOs should establish an anticorruption body, independent of the central government, that would monitor the justice system; serve as an agency where people can submit their complaints against corrupt officials; report the incidents of corruption to the government; and monitor the efforts to address the problems.

IV. Promoting Economic Stability in Afghanistan

Afghanistan's Economy: Background and Complications

Residents of any country have the greatest probability of improving their quality of life through the benefits created by a national economy that is fully integrated into the global marketplace. Integration requires the creation of national economic policies that give individuals, businesses, corporations, and other institutions the ability to interact and trade with the world. Key factors in this endeavor include the establishment of a strong central bank that is able to provide currency and exchange rate stability, formalized banking institutions, and the development of entrepreneurship and economic diversity.

When we turn to Afghanistan, we see a number of key challenges remaining in building a stable economy. The modernization of the Afghanistan economy began shortly after the U.S.-led invasion that removed the Taliban from power in October 2001. Until that point, the Afghan economy was based primarily upon subsistence agriculture and poppy cultivation. The Taliban regime had little interaction with the global community and consequently engaged in extremely limited international trade. Warlords whose primary interests lay in the opium trade dominated Afghanistan during the time between the Taliban and the Soviet occupation. Consequently, the economy never fully developed beyond informal institutions, nor was it able to integrate into the global marketplace.

To build a robust economy, Afghanistan needs to transform from an informal economy that suffers from imperfect information, unknown transaction costs, and general uncertainty to an economy that functions under clearly defined contracts, rules, and regulations. A responsive central government monitors and regulates the national economy to facilitate sustained economic growth that, in turn, breeds credibility for the central government. Through this process the economy will be forced to develop more formal rules of engagement. Over time, mechanisms of grievances will emerge and individuals or groups who feel left out or wronged by the economic process will have avenues of recourse and reconciliation within the framework of the rule of law.

We believe there are important roles for NGOs in the process of creating a stable economy, including fostering economic diversification and integrating the *hawala* system, Afghanistan's informal banking network, into the formal legal economy. Due to NGOs' not-for-profit and apolitical orientation, they may be better suited to address some of the main problems facing the economy of Afghanistan. This could be accomplished by NGOs providing consulting, professional, and training services for both formal and informal banking institutions. NGOs also have the ability to provide avenues that draw out the positive aspects of the informal institutions that could be utilized in the development process. NGOs also

create challenges for the government in establishing economic foundations that must be addressed. They can have destabilizing effects upon the economy by relying upon informal institutions (*hawalas*) that are prevalent throughout the country.

In the following section, we first describe in greater detail the structure of the Afghan economy. Then we explore the role that NGOs might play in helping promote economic growth in currency stability, diversification, and informal banking.

Structure of the Economy

Afghanistan's leading economic sector is agriculture. Also present are modest service and industrial sectors. Agriculture comprises nearly half of the nation's gross domestic product (GDP). Afghan farmers primarily grow cereal products as well as grapes, apricots, and almonds. Although not generally counted in the nation's economic figures, poppy production drives the Afghanistan economy. The Asian Development Bank estimates that in 2004 opium (poppy) production in Afghanistan was valued at \$2.8 billion (Asian Development Bank 2005a). Poppy production is expected to grow because reliable alternative sources of income are yet to materialize for Afghanistan's poor rural population. Experts estimate that Afghanistan controls as much as three-quarters of the world's poppy production (John 2003). The economic benefits of the poppy industry originate in the informal economy that dominates daily life in Afghanistan. In 2003, the service sector and industrial sector each accounted for 24% of GDP. Afghanistan's industry sector relies upon agricultural products such as fertilizer and a limited handicraft industry. The long periods of war and exclusion from the global economy have drastically limited investment in substantial manufacturing enterprises. Additionally, massive out-migration caused by the political turmoil and the lack of educational opportunities have significantly reduced the available workforce.

In 2002, GDP in Afghanistan was about \$4 billion with a population of about 22 million. This equated to a GDP per capita of less than \$200 per year. Since that time, the economy has grown steadily and GDP increased to more than \$5.7 billion and \$228 per capita in 2004 (Asian Development Bank 2005b). In 2002, the economy grew at 28.6%, but growth rates slowed to 15.7% in 2003 and to 7.5% in 2004 (Asian Development Bank 2005a). The slowdown in Afghanistan's economy is attributed to the drought in 2004 that severely curtailed agricultural output.

In 2004, the Da Afghanistan Bank released the new currency for Afghanistan, the New Afghani, which has floated in the range of 45-50 Afghanis to one U.S. dollar since its inception. This currency was seen as a new start for the country. By eliminating the street-level use of multiple national currencies, the central

bank has increased power over the monetary policy of the country. A single, stable currency also raises public confidence; without this, inflation would steadily rise. Individuals would be confident that the currency that they have in their pocket is legitimate and would hence not run out as fast as they could to spend it on various goods (Van Rooden and Dicks-Mireaux 2005). The International Monetary Fund (IMF) reports an inflation rate for Afghanistan of 10.2% in 2004 (IMF 2004). This increased in 2005 to a rate of 16.3% (Asian Development Bank 2005b).

The three main sources of revenue in the Afghan economy are the opium trade, remittances, and overseas development aid. The economic growth fueled by remittances and international aid have been mostly concentrated in urban areas, predominately in Kabul. The absence of alternative sources of income leaves rural farmers little recourse other than the opium trade. However, growth driven by the opium trade is hardly ideal, as it generally incorporates warlords and members of the underground community. The report *Securing Afghanistan's Future* (2004) estimates that the GOA will be reliant upon aid contributions to fulfill its recurrent expenditure for seven years. This supposition is difficult to imagine since revenue generating capabilities are extremely limited. The country faces a significant human resources deficiency as well as telecommunications and infrastructural impediments.

Central Bank and Currency Reform

In the immediate aftermath of the collapse of the Taliban regime, Afghanistan's financial system lay in ruins. The Taliban enforced an Islamic law on banks that prohibited them from charging interest on loans or from dispersing interest to anyone wishing to deposit money. This caused most of the banks in the country to collapse. Additionally, many years of high inflation eroded confidence in the national currency. The fact that the Da Afghanistan Bank was weak and had little control of the nation's monetary policy did not help. To make matters worse, three versions of the national currency circulated in addition to foreign currencies. High inflation, a weak currency in which no one had any confidence, and a crumbling financial sector were all problems facing the new government of Afghanistan.

NGOs have a role to play in Afghanistan's financial stability; however, the presence of a significant number of NGOs can destabilize currency. In receiving donor funds, NGOs create an inflow of money into the country that increases demand for the local currency. This may explain the increase in inflation in Afghanistan from 2004 to 2005. High demand for the local currency causes the exchange rate to appreciate. Pressure on the currency then tends to make prices rise. To combat this, a strong central bank must implement restrictive monetary policies. It is hard to tell whether the central bank of Afghanistan has sufficient credibility and stability to combat these problems.

A key aspect of nation-building therefore must be to strengthen the central bank and its ability to manage the money supply and implement macroeconomic policies such as exchange rate stability. NGOs can provide assistance in this area by serving as consultants and sharing their expertise with the GOA. But, ultimately, to ensure this process continues to run smoothly, the GOA should continue to seek the advice of institutions such as the IMF and the Asian Development Bank. The central government of Afghanistan has participated in the IMF-led Staff Monitoring Program, which sets targets for financial, social, and political reform policies (Government of Islamic State of Afghanistan 2004). Continued participation in the Staff Monitoring Program has provided the DAB with continued financial and technical support from the IMF that has helped to bring macroeconomic stability to the country.

Importance of Economic Diversification, Crop Substitution, and Income Development

Another key issue in nation-building is economic diversification. Here NGOs have a potentially significant role to play because of their effectiveness and expertise in rural development projects. In a recent report entitled *Securing Afghanistan's Future* (2004), the GOA states that it will need annual growth rates of 9% over the next 10 years to effectively double the economy and phase out the prominent opium trade in the country. By doubling the economy, the GOA hopes to significantly reduce the number of people living under extreme poverty. Sustained economic growth at 9% per annum will require the Afghan economy to find mechanisms to advance robust economic growth. The World Bank suggests that the Afghan economy should find sustained robust growth over the medium term “based on private investment and increasingly competitive production, with strong growth of exports” (World Bank 2005).

Relying upon the opium trade and inflow from international aid institutions is not a sustainable method toward achieving this goal. Economies with limited sources of income and little economic diversity are susceptible to succumbing to “Dutch disease,” which occurs when an economy experiences a boom in one industry that raises the prices of goods throughout the economy. Consumers who are left out of the rising economic prosperity are suddenly faced with drastically higher prices throughout the market. Economies that depend upon only a small number of industries have increased risk of falling victim to external shocks. Afghanistan faces the potential of falling victim to “Dutch disease” as the inflow of money from the opium trade, international aid, and remittances increase domestic prices and transaction costs. The terms of trade will deteriorate within the Afghan economy (World Bank 2005). The combination of a stable currency with continued high levels of inflation could be the sign of the beginnings of a “Dutch disease” phenomenon in

Afghanistan. The most effective way to combat “Dutch disease” is through economic diversification, the development of a variety of income streams and revenue generation sources within the economy.

One approach would be to build upon Afghanistan’s comparative advantage in agriculture by using NGOs to support crop substitution projects. NGOs have a long history of supporting rural development through economic diversification. NGO projects could offer farmers economic incentives to move away from opium poppy cultivation and toward the cultivation of other crops. These economic incentives can come through direct subsidies or offers of free seeds, pesticides, and fertilizers. The biggest obstacles that these types of projects face are making the substitute crop economically viable and competitive. NGOs also need to help research the identification of licit crops that are compatible with the harsh climate and difficult geography in rural Afghanistan (Farrell 1998). Two crops that have been used as alternatives to opium poppy have been grapes and pomegranates. These projects have been aided by increasing the infrastructure development of the farms in the region, such as constructing cold-storage facilities to keep the fruit fresh (USAID 2006).

NGO-led crop substitution projects should only be one aspect of a multistrategy approach toward alternative means of earning income for farmers in rural Afghanistan. In addition to offering farmers economic incentives to cultivate licit crops, USAID has funded NGOs to offer new jobs to rural farmers. These jobs include building irrigation systems as well as building and maintaining roads (USAID 2006). This buildup in rural infrastructure can reduce transportation and other overhead costs that would make alternative crops more economically viable. NGOs should also focus on providing the microfinance credit necessary for farmers to implement these new crops. Enhanced infrastructure and credit will make it easier to produce economically viable crops that compete with opium poppy.

Once the greater economic return on opium poppy is eliminated, the cultivation of this illicit crop will fall dramatically. Eliminating opium production could bring significant advantages to Afghanistan’s economy. It should be noted, however, that reducing illicit crop production in one country often simply results in new production elsewhere. Steps should be taken to avoid this outcome.

The Hawala System of Money Exchange and its Effects

Our final two sections discuss the potential contribution of NGOs in the informal banking sector. In this section, we describe the *hawala* system, Afghanistan’s informal banking network. The second section discusses the possibility of eroding the market power of the *hawala* system through microfinance and other means of credit.

Prior to the construction of a formal central banking system, banking was conducted by informal money exchange dealers called *hawaladars*. Five hundred to 2,000 *hawaladars* operate in Afghanistan (Maimbo 2003). Reliance upon the *hawala* system dates back for thousands of years in the Muslim world. The *hawala* system provides many of the same services as a formal local bank, including money transfers, personal savings, microfinance, small business loans, and international transfers.

The system is highly informal, as *hawaladars* can be shopkeepers and entrepreneurs who operate out of storefronts and established businesses. Following transactions within the system is tremendously complicated as it usually involves multileveled agents and transactions. Moreover, the system is based upon trust and morally binding arrangements that are inspired from the *Qur'an* and *Shari'a* (Schramm and Taube 2003). *Shari'a* is a supranational code of law that places a high degree of importance upon reputation. As a result, the reputation of a *hawaladar* is essential. In the simplest transaction, a *hawaladar* receives money from a client with the sum to be transferred to a second client. Typically, the *hawaladar* would then transfer the sum in goods, services, or cash to a second *hawaladar* who would then transfer the sum to the second client. Transactions are usually completed in less than 24 hours and can be conducted over the phone with receipts and notes taken in a cryptic manner. These notes are usually discarded once the transaction is complete (Schramm and Taube 2003). If a *hawaladar* were to act disingenuously and terminate a transaction prematurely, his reputation would be hurt significantly, which would jeopardize his future as a *hawaladar*. *Hawaladars* have made massive investments of time and money into their businesses. They stand to lose more by not fulfilling transactions than they would gain by misleading or cheating their clients or other *hawaladars*.

At the fall of the Taliban regime, the *hawala* system was the only mechanism available to transfer funds into the country. As a result, NGOs and international aid agencies used the *hawala* system to transfer as much as \$200 million into Afghanistan in 2003. Transfer amounts could grow to as much as \$1 million for larger aid agencies, but typically ranged from \$100,000 to \$200,000 due to the limited financial infrastructure in the country at that time (Maimbo 2003). Nevertheless, the *hawala* system is a reliable and relatively low-cost option for transferring money within the country. During the Taliban regime the system was limited, but now it extends throughout the country (John 2003). The system is well-financed and internationally connected. Most of the international transactions flow into banks of the *hawaladars'* choosing in Pakistan or Dubai. Maimbo (2003) reports that all international *hawalas* have formal accounts set up in financial institutions in Peshawar, Islamabad, Dubai, London, or New York.

There is little formal documentation in the *hawala* system, and *hawaladars* often make transactions without knowing the identification of the recipients or the depositors, thus making it a principal transaction pathway for funds solicited from the informal economy. This lends itself to the money-laundering needs of the black market. Unreported flows of such massive amounts of money make setting effective macroeconomic policies difficult, if not impossible² and reduce revenue-generating opportunities for central governments through tax evasion. As a result, the system has been formally banned in countries such as Iran and Pakistan.

Due to the prevalence of the informal economy in Afghanistan and the role it plays in income generation throughout the country, at times rivaling close to 50% of GDP, it would be naïve to believe that the *hawala* system was not involved in the opium trade. Aid workers have reported that transactions made on behalf of international aid agencies and NGOs were in effect laundering drug revenue. When aid workers first arrived in the country, they were forced to use the *hawala* system to transfer funds. The *hawaladars* would provide the aid workers with soft loans of domestic and international currency, which entered the country through the opium trade (John 2003). Some of the larger aid agencies, such as the USAID and the United Nations, have the financial resources to work independently of the *hawala* system, but the *hawala* system is so widespread that any agency simply operating in Afghanistan could not avoid engaging with it on at least a very basic level. Experts report that *hawala* system is the primary mechanism of laundering the country's drug revenue, a process that has only become easier with an increase of funds in the country from international aid agencies and NGOs.

Hawalas and Microfinance Institutions for Building the Economy

The *hawala* system is an example of a complex, organic economic institution that is deeply entrenched in the Afghan marketplace. Because *hawaladars* operate outside the scope of formal banking practices, their system diminishes the effectiveness of Da Afghanistan Bank's monetary policies, and the lack of regulation means the *hawala* system has low operational costs. Profit margins are high, and *hawaladars* have the cultural capital needed to defeat any exogenous competitors. The system's religious and cultural relevance provides cultural credibility that is difficult to compete against as formalized banking practices often appear as something "alien and even impure" (Schramm and Taube 2003). These two characteristics ensure fast and reliable service without the need for formal contracts and agreements.

² Pakistan's finance minister, Shaukat Aziz, estimates that of an estimated 6 billion U.S. dollars being transferred within Pakistan in 2000, \$1.2 billion had been moved through the conventional banking system, according to Schramm and Taube (2003), who cite a November 24, 2001, article in *The Economist*.

It would be foolish to believe that sufficient incentives could be created to motivate the *hawaladars* to change their ways and adopt more formal business practices. Regulation is not the answer either—the *hawala* system has been around for hundreds of years though nations throughout the world have banned it. Ultimately, the widespread nature of the *hawala* system, along with the benefits of efficiency, increased competition, and reliability, make it an institutional framework that should be incorporated into the further development of Afghanistan's economy.

Competition may prompt the *hawaladars* to integrate their system further into Afghanistan's changing economy. Competition would provide an alternative for international aid agencies and NGOs to transfer funds that is not counterproductive to their missions. Any microfinance institution should offer a competitive alternative to the *hawala* system. Creating a competitive alternative to the *hawala* system is a sizable task because the new system must provide the same level of service while fitting into the cultural norms of the Afghan people. The use of existing microfinance NGOs and banks is probably the best method of entering the market, since these enterprises already have some amount of cultural capital and recognition within the market. It would be difficult to navigate around the cultural aversions toward formalized banking, but this task could be accomplished by established microfinance institutions such as the Aga Khan Development Network. Even the use of established Islamic organizations, such as the Aga Khan Development Network, may not be the most appropriate solution for the entire country. His Highness the Aga Khan is Iman of the Shiia Imani Ismaili Muslims and principal benefactor of the Aga Khan Development Network (Aga Khan Development Network 2006). Only 19% of the Afghan population is Shi-a Muslim, which may limit the reach of the Aga Khan Development Network in Afghanistan. Ethnic and cultural ties are of high importance in this part of the world and should not be overlooked while developing sustainable institutions.

Organizations such as PARWAZ, a microfinance institution devoted to empowering Afghan women, may also provide additional alternatives to the *hawala* system. PARWAZ was started by Afghans with funding from U.S. sources. It will undoubtedly face stiff competition from the *hawala* system, and its international sources of funding may be met with suspicion. Afghans may discredit organizations such as this because foreign funding is often connected to strategic aims that are independent of the goals of the recipients. Ultimately, PARWAZ offers relatively limited services compared to the average *hawaladar* as its total financial capital is at best equal to transfers made on a daily basis by some of the more established *hawala* systems. More progressive cities such as Kabul or Khandahār may provide an originating point for some microfinance institutions to begin to erode the market power of the *hawaladars*. This will take a considerable amount of time and money as the *hawaladars* are well-financed and deeply embedded throughout the country.

Summary of Economic Recommendations

NGOs have an important role to fill in the stabilization of Afghanistan's economy by developing formal institutions and diminishing the magnitude the informal actors play in the national economy. NGOs can work as consultants for financial institutions and share the knowledge that they have obtained throughout the world, although international institutions like the IMF are likely to be more important sources of advice on issues of currency stability. NGOs must recognize the impact of their presence in the economy and ensure that their use of informal banking institutions does not inadvertently undermine the emergence of competitors to the *hawala* system. For nation-building to succeed, the GOA must consistently work to limit the dependence upon overseas development aid and become financially independent.

One area in which NGOs can have a direct effect is in Afghanistan's overdependence on opium production. NGOs can create programs that focus on the increased economic diversification of the country. Crop substitution programs have the potential to succeed if they are able to raise farmer's profits from growing crops, such as grapes or pomegranates. If these programs focus on economic diversification instead of drug eradication as their ultimate goal, success will be more likely.

In addition, the benefits for the GOA to eliminate the *hawala* system are clear: increasing effectiveness in implementing macroeconomic policy, downsizing the black market economy, limiting means to finance terror networks, and promoting transparent accountable financial institutions all directly benefit the central government. But the ability of endogenous actors, even through domestic organizations, to effectively erode the market power of deeply embedded economic institutions such as *hawalas* is extremely limited. Providing funding to NGOs with the specific intent of competing against the *hawalas* has a high probability of failure. Ultimately, NGOs have the capacity to facilitate change in market institutions but are unable to induce change or even force change in the marketplace (Bromley 2006).

V. Democratic Consolidation in Afghanistan

Democracy as a Part of Nation-Building

Promoting democracy as a part of nation-building deserves to be a central element in U.S. foreign policy. Brutal dictatorships tend to emerge from failed nation-building attempts (Pei et al. 2006). These authoritarian states pose a threat to U.S. security, disregard human rights, lack accountability, and hamper international investment and trade. Unfortunately, U.S. experience with building democracies in the twentieth century has seen limited lasting consequences: Germany and Japan stand alone as unequivocal success stories, and Grenada and Panama may also be considered successes. Pei et al. (2006) characterize 17 U.S. military interventions in the 20th century as nation-building attempts, including these successful cases and the ongoing cases of Afghanistan and Iraq. Of the remaining 11 instances, democracy was considered to be functioning in only five countries three years after the withdrawal of U.S. troops.

In nation-building efforts that attempt to transfer democracy, a delineated set of characteristics common to democratic regimes is helpful. Dahl has made a significant contribution to the discourse on democracy as a political system, which Sørensen (1993) summarizes as competition, participation, and civil and political liberties. Competition must be meaningful and extensive for nearly all positions of governmental power, and it must occur regularly without the use of force. Political participation, through regular and fair elections, must include all major adult social groups. Civil and political liberties, such as freedom of expression, freedom of the press, and freedom to form and join organizations, are necessary to ensure the integrity of political competitions and participation. Hay (2006) identifies real democracy by emphasizing the role of institutions. As Hay defines it, democracy is a “liberal representative government under law, sustained by a political culture that accepts open disagreement and demands accountability.” Majority rule marks a true democracy, although minority rights must be protected, and the power of the executive must be checked to avoid lapsing into authoritarianism. Hay argues that forcing democracy on a nation, rather than allowing organic development, threatens to unleash conflict based on economic inequalities and ethnic differences. Faguet (2004) suggests that instead of a grand proposal to spread democracy, foreign donors and NGOs can contribute to political stability through building civil society and reforming institutions to secure balance among competing groups.

In simplifying democracy to the basic conditions of competition, participation, and civil and political liberties, we can assess Afghanistan’s progress toward democratic consolidation. Laws can provide the foundation for each of these by establishing the rules for elections, defining voter eligibility, and guaranteeing

civil and political liberties. Laws alone are not sufficient for a liberal democracy. These laws require internal support so they are fairly and appropriately applied and enforced. They also require grassroots actions to exercise the very practices and freedoms the laws grant. In the context of Afghanistan, legal reform as outlined in Section III will build the governance structures that provide for a democratic government. Extending democracy to a societal level will involve institution-strengthening actions beyond the law, some of which have already started to take shape within the National Solidarity Program. In this section, we elaborate on the outlook for this program, and we examine how democracy can be sustained through reforming public administration, securing electoral freedoms, and growing political empowerment via civil society.

In contrast to the roles outlined in other sections of this report, NGOs are more likely to have a direct and hands-on approach to democratic consolidation. By their very nature, NGOs seek to fill the gap between citizen-level demands and government capacity to meet these demands. Citizens have defined a good society as one that functions on several levels: it meets the basic needs of its citizens, provides for association that promotes a sense of belonging and identity, and includes citizens through participation (Knight et al. 2002). Democratic societies by definition work toward citizen-defined goals, and NGOs can contribute at each level. They provide for basic needs through development projects, such as bringing water and sanitation services to a community. In providing outlets of association such as clubs for athletes or hobbyists, NGOs build a sense of belonging. NGOs also emphasize participation by placing locals into active positions of leadership and engagement with the state.

Using NGOs to promote a grassroots democracy can be problematic. The NGOs' role of filling the gap between the population and the state may prompt the people to see the state as incompetent. In turn the state may come to consider NGO activity as a threat to its legitimacy. Furthermore, NGOs themselves are not a paragon of democratic activity, as they are rarely run by elected representatives and they are not held accountable to their constituents. NGOs themselves are not sufficient for building democracy; when too much faith rests in NGOs, their performance becomes a disappointment. Last, focusing on international NGOs as a main vehicle for democratization may overlook traditional forms of government such as *shura* and *jirga*, thus hampering local acceptance and program efficacy.

Building State-Society Relations in Afghanistan

In Afghanistan, democratic consolidation cannot progress until there is a legitimate central government. The presence of warlords and commanders detracts from this legitimacy and creates a dangerous longing for the Taliban regime (Goodson 2005). Early intervention in Afghanistan focused more on sovereignty than legitimacy. Establishing sovereignty was deemed important

to avoid the breakup of Afghanistan into smaller warlord-controlled units, and the policymakers from Europe, the United States, and the United Nations agreed on this objective. These external actors ignored Afghani perspectives, which never felt that its territorial boundaries were at risk. Although Afghanistan is rife with ethnic conflict, a sense of national unity exists, and there is little likelihood that these ethnic conflicts would disintegrate the country (Simonsen 2004). While the international community approached sovereignty and legitimacy as sequential objectives, politically active Afghans worried that the population would be willing to accept sovereignty from the center only after the government was viewed as legitimate. This has implications for whether people obey laws, pay taxes, and respect the police and judiciary (Starr 2006). The early efforts at nation-building, in their failure to bring an immediate solution to the problem of legitimacy, laid the groundwork for problems in all these aforementioned areas.

The security strategies detailed in Section II of this analysis will work to solidify the central government's legitimacy, and these strategies demand priority. To sustain a legitimate and democratic government, however, there must be a deepening of democracy. There is no clear consensus on the process of democratic consolidation, and this phase will theoretically always be a work in progress. Despite this, indicators mark movement toward democratic consolidation. Intermediate goals toward political stability include elections and the establishment of political parties. Attaining these intermediate goals is not tantamount to establishing a sustainable democracy. Such a democracy requires a complex network of civic organizations that take time to build from scratch.

Afghanistan has had a shaky start with democratic consolidation, particularly since this objective is being pursued in parallel with, rather than following, the establishment of a legitimate central regime. Goodson (2005) argues that international intervention has impeded reconstruction in Afghanistan. Especially in 2002, implementation was through contracting with the intricate bureaucracies of the United Nations Development Program and USAID. This allowed for many international NGOs to implement reconstruction projects, but the costs were long lead times, duplications of effort, and incredible waste at a time when quick results would have resonated widely throughout Afghan society. Moreover, by contracting out to NGOs and other institutions, the interim government did not build its own capacity for policy implementation. As a result, in 2002, only 9% of aid was given directly through the government, with the rest channeled through NGOs, the United Nations, and international financial institutions. This meant that locals were able to use international NGOs to implement programs somewhat independently of the central government (Marsden 2003). While progress in policy implementation is welcomed, it can be harmful when it comes at the expense of government legitimacy.

This trend started to change in 2003, when the transitional authority of Afghanistan, with initial support from the World Bank and various national governments, implemented a novel idea in development planning—the National Solidarity Program. This project empowers local governments to identify, plan, and manage development projects. Elected via secret ballot, community development committees form the basic unit of governance. They propose development projects that the central government evaluates. After the central government disperses block grants, community development committees partner with NGOs for planning and implementation. Although the National Solidarity Program is implemented “from above,” it develops local capacity for reconstruction. The program was slow to gain popularity, and communities expressed frustration with holding elections for the committees, but the frustration turned to anticipation as community development committees developed their proposals and the committees secured grant funds. Many Afghans now welcome the National Solidarity Program (Boesen 2004).

Through the National Solidarity Program, the central government extends assistance to the local level in a way that is meaningful to community members; thus this program—including NGO implementation support—can do much to booster the legitimacy and authority of the central government. This program offers a fresh approach to reconstruction that allows community members to take part in all stages of development and solves some of the coordination problems that plagued initial reconstruction efforts in Afghanistan. Furthermore, this use of NGOs is less threatening to the central government: instead of competing with the government for providing services, NGOs act as contractors to the government. Such a coordination success should be lauded, and the GOA should secure long-term commitments from the World Bank and other international donors to sustain the National Solidarity Program.

Ultimately, external funding for the program likely will end. The GOA should develop a plan for providing its own funding for this program and work with the international community to establish a timeline for this transfer of financial responsibility. While the sunset of demand for international support is likely to be far into the future, the existence of a plan in itself will bolster the central government’s authority as community members receive tangible evidence of concern for local livelihood. Furthermore, a plan will help the GOA develop its capacity to operate this program and will encourage international support in the interim. The National Solidarity Program is an important part of promoting a democratic society in Afghanistan. When combined with other efforts to reform the bureaucracy, ensure electoral freedoms, and build civil society, the GOA, with NGO support, will likely establish a powerful and lasting democratic momentum.

Administrative Reform

States require bureaucracies to carry out their actions, and there should be some provision aligning the personal interests of the civil service with the good of the state. Overly developed bureaucracies may have oversight powers within certain sectors that lead to bribe-seeking and extortion. In Afghanistan, ministries have been growing in ranks; this ballooning has resulted in clan-, ethnic-, or region-based appointments that distort the patron-client relationship of a government. The result is the erosion of government legitimacy and the failure to build democratic principles (Simonsen 2004).

The GOA can shape its own path for democratic consolidation through administrative reform. For example, Afghanistan can build a professional civil service by paying higher wages and streamlining salary delivery. Salaries are low, which encourages participation in corrupt practices with regional warlords and weakens the authority of the central government. To compound the problem, government employees have received their salaries up to five months late. Centralization of payroll management requires provincial leaders to travel to Kabul to collect salaries, who then require district employees to travel to the provincial capital for payment (Lister and Wilder 2005). This central distribution scheme is not only inefficient, it creates resentment of the center.

Reforms that raise salaries and alter salary distribution are a monumental undertaking for a government suffering from a lack of funds and infrastructure. They require the financial support of the World Bank and other donors. This is not an area in which NGOs can participate directly, as bureaucrats are by definition government employees; however, by looking differently at administrative reform, a number of roles for NGOs become apparent. For example, international NGOs can provide training to bureaucrats or function as government consultants providing advice for improving the civil service. NGOs can work with the GOA to set up forums to get feedback on the effectiveness of the civil service. It is important that the GOA does not view NGO-initiated criticism as an attack on its legitimacy, but rather as an opportunity to strengthen accountability to citizens and thus deepen democracy.

The reliance on foreign donors to address administrative reform highlights the issue of sustainability. Presumably, the World Bank and others cannot be expected to finance the civil service in Afghanistan in perpetuity. An initiative from within Afghanistan must sustain these reforms after donors step away. Likewise, the GOA needs to develop a plan for funding its civil service, including an arrangement for the sunset of international financial support.

Electoral Freedoms

Political participation requires voter awareness in addition to free and fair elections. The people need access to information to form opinions, and they then need to be free to express these opinions through their votes. Elections are considered free when there are low legal barriers to entry into the political arena, when candidates and supporters of different political parties are free to campaign and solicit votes, and when voters experience little or no coercion in the balloting process (Diamond 2002).

Electoral freedoms require government initiatives with respect to the creation and implementation of election laws. As a part of democratic consolidation, NGOs can provide election monitors and initiate voter education projects. For example, in 1995, the Fair Election Monitoring Alliance formed in Bangladesh to promote free and fair elections (Nevitte and Canton 1997). The alliance's main activity is parliamentary, local, and municipal election monitoring. Consisting of more than 180 domestic NGOs, the Fair Election Monitoring Alliance deploys thousands of monitors in polling booths on election days and organizes longer-term activities such as voter registration and post-election dispute resolution (World Bank 2005). This example shows how NGOs can insert themselves as a bridge between local activities and national results, and could be particularly relevant in the context of Afghanistan, where tensions between the local and national level threaten democratic progress.

Afghanistan has already followed the lead of the Fair Election Monitoring Alliance with the 2004 establishment of the Free and Fair Elections Foundation of Afghanistan. This U.S.-backed NGO aims to "provide the citizens of Afghanistan a vehicle for participation in the process of re-building the nation." The elections themselves present opportunities for Afghans in all parts of the country to become involved in democratic processes by becoming election observers and officers of Free and Fair Elections Foundation of Afghanistan (Free and Fair Elections Foundation of Afghanistan 2004).

Appropriately instituted elections are an important part of a consolidated democracy; an example from the Kyrgyz Republic illustrates what happens when the promises of elections become superficial. The Kyrgyz Republic had an initial push for democracy under President Askar Akayev; he introduced a constitution, pushed for legal reforms to institutionalize democracy, and called for civil society to be the basis of democratic culture. This semi-liberal democracy, marked by free and fair elections and in which there were no outbreaks of angry ethno-nationalism, unraveled into a hollow electoral democracy due to clan-based voting. According to election monitors' reports, local elders determined the voting patterns of those in their networks. This undermined the strength of political parties, and as Akayev became more reliant on his own clan network, his regime

lost legitimacy (Collins 2002). Accusations of clan cronyism eventually led to the 2005 revolution in which Akayev fled the country. The democratic status of the new regime, while more hopeful than that of other central Asian states, is still unstable.

Election monitors are a start toward protecting electoral freedoms, but the Kyrgyz example shows how clan-based voting in otherwise free elections can unravel the fabric of democracy. Afghanistan is fortunate that President Hamid Karzai has largely ignored demands to prioritize the Pashtun ethnic group he represents, but Karzai's administration eventually will end. To avoid a reversion that mirrors the Kyrgyz experience in the late 1990s, democratic institutions must be secured to prevent clan cronyism regardless of who is elected to serve in Kabul. International and local NGOs can push for such institutions by encouraging legislation to guarantee truly free elections and by promoting awareness of such legislation.

Additionally, mediation-oriented NGOs can provide support in the time of a political transition. The Carter Center provided support to the Government of Nicaragua during a tense election in 1990, in which the incumbent peacefully transferred power to its rival. This required delicate public diplomacy in which The Carter Center advised potential losers before the tallying of official results; its public announcements allowed for a calm reaction to the election at a time when violence was feared (Taulbee and Creekmore 2003). The Carter Center provides a valuable model for NGOs working beyond the realm of election observers. For election results to be met with peace, particularly in Afghanistan, support from such NGOs as the Carter Center can be invaluable.

Growth of Civil Society

Civil society is a sphere of social relations, including private business, non-state institutions, family, and personal life. A strong civil society strengthens democracy and makes authoritarian reversion more difficult (Sørensen 1993). In a post-conflict country such as Afghanistan, there tends not to be an intricate network connecting the governors to the governed—this is a key area in which NGOs claim to contribute to building democracy, but also risks the alienation of the state. Guy Gran (cited in Sørensen 1993) has developed a three-part strategy for strengthening popular participation and people's control of their lives. First, non-elites must have outlets for changing social conditions. This can be achieved through education and citizen activity that is organized horizontally (as opposed to hierarchically) with a high degree of influence from the base membership, Gran's second tenet. Third, members of the local society must have access to decision-making.

Many NGOs have a primary goal of political empowerment and education, and ideally their leadership can carry out Gran's strategy. For example, the Afghani

NGO Aina started the first community radio programming for women, and this organization supports a bi-monthly children's magazine, hoping to disseminate knowledge through youth, who are most often the only literate family members. An international NGO, the Institute for War and Peace Reporting, has trained reporters at *Pashwak*, the first Afghan news service. Local NGOs then disseminate *Pashwak* reports to newspapers and radio stations throughout the country (USAID 2004).

Local initiative for policy has advantages and disadvantages for democratic consolidation. As the Kyrgyz example shows, local empowerment can be an opportunity for clan politics to dominate, which limits the central government's legitimacy. Additionally locals might not be aware of the range of options available to them. On the other hand, centrally directed policies might not reflect knowledge of local preferences and concerns. In examining some of the hardships of democratic consolidation, Fukuyama (2005) concludes that local preferences need to drive efforts. He argues for community-driven development that empowers local individuals who understand the needs and constraints and have an incentive to devise a program that will be sustainable in the long run.

Furthermore, there is a risk in equating NGO support with local development. Often NGOs are an imported organizational form, and they may lack broad-based local support or strong community roots. This can be the case for international NGOs as well as local NGOs, which can be little more than an office with a couple of staff members. In giving preferential treatment to NGOs, other organizations with more solid roots in the community may be overlooked (Stanton 1999). Rather than turning immediately to the NGO community, the international community should first look to the existing forms of associative life in a country.

Summary of Democratic Consolidation Recommendations

Democratic consolidation is an ongoing process in any democratic state, and its initiation is vital in establishing a democracy. This process will be inhibited if there is a lack of security reform, and thus security ought to be a primary priority. Deepening democracy in Afghanistan is not a foregone conclusion, nor is it an impossible undertaking, and it will require cooperation between local and national government, as well as the support of local and international NGOs.

The U.S. government has an interest in a stable Afghanistan, and democratic consolidation is the process through which political stability is maintained. Before it can be developed, there must be a secure and legitimate government. Following this primary responsibility of establishing security, the international community can work with the government directly and with NGOs on the process of democratic deepening. Our analysis team recommends the following actions:

- The U.S. Government should pledge a long-term commitment to the National Solidarity Program to ensure the continuation of this program while the GOA is unable to finance it.
- As a corollary, the GOA should establish a timeline for “easing into” financial responsibility of the National Solidarity Program so it will be sustainable beyond the timeframe of international commitments.
- The international donor community should continue to provide funds for administrative reform in the short term.
- The GOA should work with donors to establish a timeline for assistance for administrative reform. Through cooperation, these reforms can be maintained when donors step back and the Afghani government is left to finance its civil service.
- Local NGOs know community concerns and have a responsibility for these concerns to be addressed in democratic processes. Afghani NGOs such as Free and Fair Elections Foundation of Afghanistan should continue training local election monitors and promoting civic engagement.
- The GOA needs to establish a set of laws that provide for free elections and criticism of the incumbent governments. As this is not likely to be politically feasible, international donors and local associations need to push for such reforms.
- The international community should lend diplomatic support to Afghanistan at the time of elections to promote peaceful handovers of governments, both at the level of elites and the reaction among the population.
- NGOs that develop civil society can perform an important function in democratic consolidation; and they should be supported, although instances in which NGOs can interfere with democracy include those NGOs that supplant existing local associations and those that promote warlord authority.

VI. Conclusion

Afghanistan faces many challenges. To address these challenges, the international community has been offering large amounts of both capital and expertise. To better understand the possible effects these actions may have, we have analyzed four pillars of nation-building: establishing security, reforming the justice system, promoting social and economic well-being, and forming democratic governance and citizen participation. We have examined how NGOs interact with these pillars. Each section highlights potential roles for NGOs, and we recommend that the United States Government cautiously continue to support NGOs as part of the nation-building effort in Afghanistan.

By drawing upon key points of the previous four sections, it is now possible to derive common themes that show ways in which NGOs may be able to contribute to nation-building in Afghanistan. The international community must go beyond conventional conceptions of nation-building to see how NGOs can fit into the broad social transformation necessary to bring Afghanistan into the modern community of nations.

Sections II, III, and IV illustrate that to understand how NGOs can contribute to nation-building, understanding what they are not is vital. They are not armies that quell insurgency; they are not courts that administer a fair and effective justice system; they are not banks that finance the country into prosperity or control the currency. However, while NGOs do not play these traditional institutional roles, this does not mean that they are ill-equipped to assist nation-building. By taking advantage of NGO strengths of providing aid to local communities and serving as monitors and advisors, the international community can find a proper niche for NGOs in the broad conception of nation-building in Afghanistan. Section V shows that NGOs have worked well in democratic consolidation, an area that they openly claim to promote, although their contributions in this sphere also come with challenges.

Evidence from each pillar shows that to be effective, NGOs must set clear goals that are based on realistic expectations. They will not, by themselves, solve all of Afghanistan's ills, and they must identify areas where they can effect change and monitor progress toward achieving viable goals. Coordination is also vital, both between NGOs and other actors such as the GOA, military forces, and donor countries, as well as among NGOs themselves, both domestic and international. Lack of coordination with donors can doom NGO efforts no matter what the objective. NGOs constantly battling for more funding or facing the threat of being cut off completely are unable to formulate the kinds of long-term projects necessary to contribute to nation-building. As the international donor community has shifted attention to Iraq and elsewhere, the international community must not

forget that Afghanistan still requires a great deal of assistance. Conversely, as the situation improves in Afghanistan, NGOs and donors must develop strategies to gradually pull out so that domestic institutions become self-sufficient.

Last, the central government of Afghanistan needs to be viewed as the legitimate source of power throughout the country, if hopes for a stable democracy and economy are to be realized. NGO activities must not prop up illegitimate regional powers at the expense of the central government, nor must they undermine local government actions. Local NGOs, when interacting with regional communities, need to be aware of how this involvement may weaken the central authority. International NGOs should be cognizant of their secondary, advisory role. By following these guidelines, NGOs may be able to help create a sustainable future for Afghanistan and its people.

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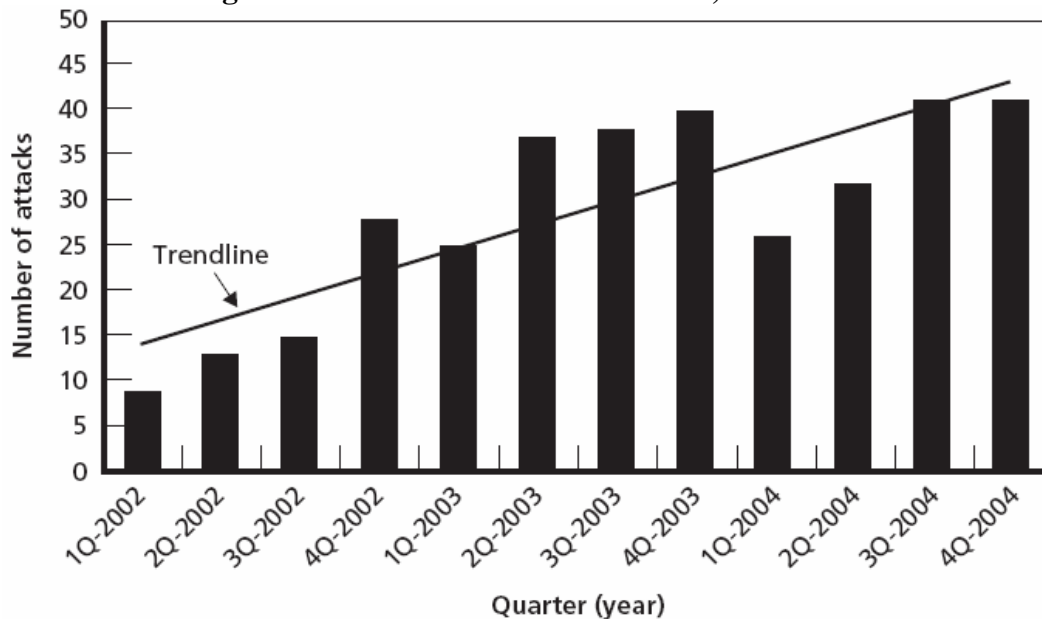
Appendix A

Overview of Afghanistan's Security Environment

Afghanistan has long lacked a central government that possessed the Weberian monopoly on the legitimate use of violence throughout the entire country. This certainly continued during the Soviet invasion, civil war, and Taliban regime. Since the fall of the Taliban in 2001, the new Afghan government under Hamid Karzai, supported by Coalition forces, has struggled to extend its control beyond Kabul and improve security and stability throughout Afghanistan. Demobilizing the formerly warring parties and integrating them into the new, wider Afghan society will be critical to establishing a lasting peace. The government's disarmament, demobilization and reintegration program has been the key instrument for working toward this goal.

Neither the Karzai government nor Coalition forces have dramatically improved security since 2001. U.S. General John Abizaid has described combat against terrorists in Afghanistan to be as difficult as that in Iraq (Pandya 2004). The number of terrorist attacks and deaths has increased significantly, especially as the terrorists have switched to softer targets (see Figure 1). Poppy cultivation has increased tremendously. Opinion polls show that Afghans feel security is the most serious problem facing the country. The United States, in supporting some regional warlords as part of its strategy to capture and kill al-Qaida terrorists and Taliban fighters, has exacerbated the warlords' power at the expense of the central government. Their militias, in total between 60,000 and 200,000 strong, still roam the country and enforce a self-serving rule of law, and as many as 2,000 people have died in factional fighting among warlord groups (Pandya 2004).

Figure 1 Number of Terrorist Attacks, 2002-2004



Source: Jones et al. 2005

Security improvement has been hampered by a lack of coordination and conflicting priorities of the two military commands present in Afghanistan. The U.S.-led Coalition aims to secure Americans from al-Qaida first and to secure the Afghan government from insurgents second, while the NATO-led International Security Assistance Force provides security for the Afghan government in accordance with international resolutions and agreements. As noted above, the Coalition has funded numerous Afghan commanders, some of whom have engaged in drug production, land grabs, and ethnic cleansing. Commanders allied with the Coalition refused to withdraw from areas delegated to the International Security Assistance Force for security, and the Coalition has not pressed them to do so (Rubin 2006).

Security Sector Reform is an umbrella term describing the five areas in which the international community is supporting the GOA to create effective and accountable security institutions. Lead responsibility for each sector has been assigned to specific donor states (United States – military reform; Germany – police reform; Italy – justice sector reform; United Kingdom – counternarcotics; Japan – disarmament, demobilization and reintegration of former combatants into civil society). Difficulties in coordination occur at all levels. Some donors have displayed limited leadership in the design of their programs and their attempts to solicit and shape the involvement of other states. All five Security Sector Reform areas have fallen far behind their original schedules (Bhatia et al. 2004). This diagnosis, however, understates the scope of the problem. In critical and sweeping respects, Security Sector Reform is fundamentally broken. If a secure country is defined as politically stable, maintains territorial integrity, and has an entrenched rule of law, Afghanistan fails in all three aspects.

Afghanistan's disarmament, demobilization and reintegration program, the Afghan New Beginnings Program, was launched in April 2003 under the leadership of Japan, the largest donor to the program's \$83 million budget. Thus far it has successfully disarmed most of the officially recognized militia units, but it has failed to effectively handle unofficial militias and to disarm powerful Tajik units in and around Kabul. While a large number of militia members have entered reintegration programs with an overall low dropout rate, high travel costs and the lure of the opium economy hinder the success of these programs. Perhaps the most successful component of the Afghan New Beginnings Program has been heavy weapons collecting, but this likely reflects warlords shifting their tactics to more lightly-armed militias (International Crisis Group 2005).

Progress has also been slow in developing a new Afghan National Army. The United States has been the lead country in this effort, and in 2004 it donated \$549 million to the Afghan National Army. The United States had trained 16,000 Afghan National Army soldiers by the end of 2004, far short of the initial target of

70,000. While Afghan soldiers are generally regarded as effective fighters, this force is not large enough to subdue terrorists and renegade militias, not even outnumbering the size of some warlord militias (Jones et al. 2005). Power struggles among officers and in the Defense Ministry also hinder development of the Afghan National Army.

The security situation in Afghanistan must improve dramatically if it is to achieve any other goal vital to entering the modern community of nations, such as economic growth, deeper democracy, and effectively provided public services. NGOs could have a role to play in improving security, but this may not necessarily come in a very direct way, such as leading the disarmament, demobilization and reintegration program or building the Afghan National Army. A major underlying cause of the continued violence and strife outlined above is the hopelessness many would-be fighters feel in their current situation as well as the lure of a relatively well-paying job in a militia or as an opium farmer. If long-term security in Afghanistan is to be improved, the underlying causes of violence must be addressed, and NGOs may be able to contribute toward this end.

Appendix B

Afghanistan's Justice System

Afghanistan had no functioning justice system when the United States and allied forces overthrew the Taliban in December 2001 (Jones et al. 2005). As a U.N. Nations Development Program (UNDP) assessment mission concluded: "The physical infrastructure of [the justice] institutions has been destroyed during the past decades of war and political upheaval and requires rehabilitation" (UNDP 2003 cited in Jones et al. 2005). Italy has assisted the government of Afghanistan as lead nation for justice sector reform, with the aid of the United Nations and the United States. The United States provided approximately \$10 million to justice sector reform in 2004, out of a total of \$2.1 billion in assistance. In addition, international donors supplied a substantial amount of equipment. Examples include replenishing and refurbishing libraries in 20 law and *Shari'a* schools, as well as providing computers, communications equipment, and other basic equipment to the Supreme Court, Attorney General's offices, and the Ministry of Justice.

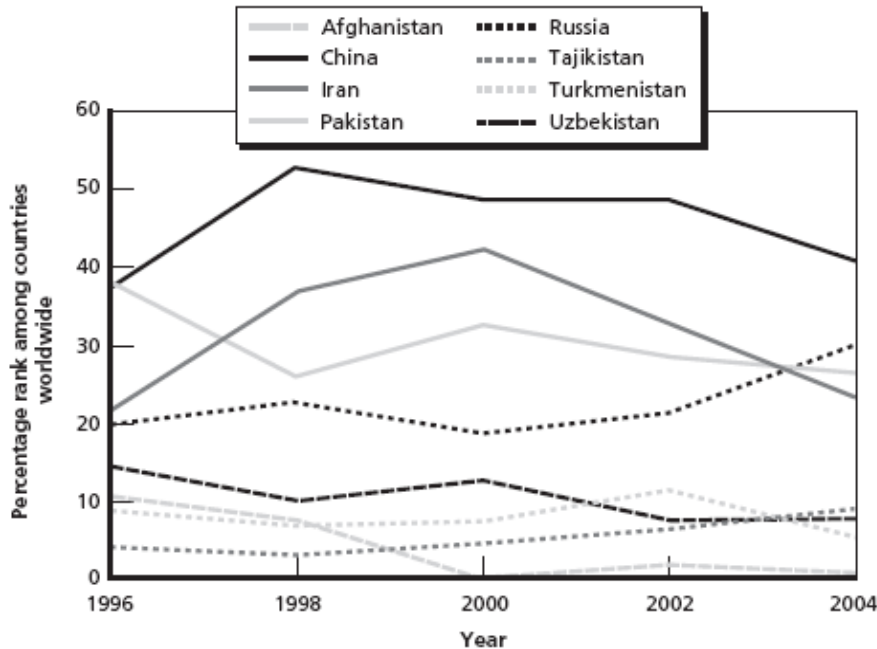
In May 2002, President Hamid Karzai appointed a 16-member judicial commission, but it was dissolved after only four months due to political tensions. Finally, in November 2002, the president appointed a second commission, this time renamed the Judicial Reform Commission, which initially consisted of nine members, although later was expanded to 11.

Despite its name, the Judicial Reform Commission's mandate extends beyond the judiciary, to the justice system as a whole. Its mission includes reviewing the state of legal education in the country, developing an independent bar, reviewing and rewriting laws, rehabilitating and constructing buildings, and selecting and training courthouse and correctional facilities' professional and administrative staffs. Governments, international donors and international NGOs have been assisting the Judicial Reform Commission in its efforts to rebuild the justice system.

Afghanistan's justice sector continues to face severe problems. Measuring the effectiveness of Afghanistan's judicial system is problematic in the absence of reliable data. However, World Bank data suggest that Afghanistan's rule of law is viewed as one of the least effective in the world. This measures the extent to which populations have confidence in, and abide by, the rules of society. It includes perceptions of the incidence of crime, the effectiveness and predictability of the judiciary, and the enforceability of contracts. Figure 2 illustrates Afghanistan's rule of law from 1996 to 2004 in comparison to other countries in the region (Jones et al. 2005).

The data allow us to make two tentative conclusions. First, Afghanistan’s justice system started from a low base. When the United States helped overthrow the Taliban regime in 2001, Afghanistan had the lowest ranking justice system in the world. Furthermore, in comparison to other countries in the region—such as Iran, Pakistan, Russia, Tajikistan, Turkmenistan, and Uzbekistan —Afghanistan’s justice system has been viewed as one of the least effective. Second, perceptions of the justice system improved following the overthrow of the Taliban regime but deteriorated slightly between 2002 and 2004. Today, Afghanistan still has one of the most ineffective justice systems in the world.

Figure 2: Perceptions of the Rule of Law Across Countries



Source: Jones et al. 2005

There have been several challenges to improving justice sector outcomes. First, the central government’s inability to decrease the power of warlords and exert control over the country has affected justice sector reform. Warlord commanders, who have been allowed to maintain de facto control over areas seized following the overthrow of the Taliban regime, have established authority over local courts. The factional control of courts has led to intimidation of centrally appointed judges. Second, the Afghan government’s inability and unwillingness to address widespread and deep-rooted corruption has decreased the effectiveness of the justice system. Corruption is endemic in the justice system, partly because unqualified personnel loyal to various factions are sometimes installed as court officials. The Supreme Court and Attorney General’s Office have been accused of significant corruption. A corrupt judiciary is a serious impediment to the success of Afghanistan’s ability to establish a viable rule of law, since it cripples the legal and institutional mechanism designed to curb corruption.

Appendix C

Abuses of Women's Rights

(adapted from Amnesty International USA 2006)

Amnesty International is concerned that those who are most in need of protection of the formal court system, especially women and children, are being subjected to human rights abuses as a result of decisions made by non-judicial mechanisms in the absence of clearly recognized procedures which conform with international human rights law. Amnesty International has documented a number of cases that demonstrate that women and girls are being subjected to serious human rights abuses as a result of informal justice mechanisms.

In particular, the organization is concerned about reported human rights abuses that have occurred as a result of the involvement of informal justice mechanisms in the adjudication of murder cases.

In Mazar-e Sharif, Jalalabad, and Herat, judicial officials, detainees and members of local *jirgas* reported that when the *jirga* resolved murder cases, they ordered that the alleged perpetrator provide the family of the alleged victim with a young girl or girls, usually below the legal marriage age, to compensate for the alleged crime. It was reported that the girl was forcibly married to a member of the victim's family. In one case documented by Amnesty International, a family member of a murder suspect stated that she had been coerced into providing the family of the alleged victim with two young girls as a means of providing redress for the alleged offense. Amnesty International is concerned that this customary Afghan practice, known as "*Bad*," violates the prohibitions against slavery and discrimination and constitutes torture or cruel, inhuman, or degrading treatment.

Amnesty International is also concerned that some members of the international community legitimize the work of *jirgas* that practice *Bad*. For example, Amnesty International spoke to a U.N. Assistance Mission in Afghanistan (UNAMA) political affairs officer in Mazar-e Sharif who had been working closely with members of a local *jirga* that had ordered the exchange of girls. When Amnesty International asked the UNAMA political affairs officer whether he was concerned and whether UNAMA was taking any steps to oppose it, the officer said, "I don't deal with women." This highlights not only the lack of gender sensitivity displayed by some UNAMA officials, it demonstrates UNAMA's lack of concern about human rights abuses resulting from non-judicial mechanisms.

Amnesty International is also concerned that Afghanistan's informal justice mechanisms do not represent society and that certain groups cannot bring their community problems to them. The *jirga* and the *shura* throughout Afghanistan are exclusively made up of men. As a consequence, women cannot approach these bodies without assistance from a male family member. There are also indications that women suffer discrimination when they do bring cases relating to inheritance, property, and marriage. The inaccessibility of the *jirga* and *shura* to women also indicates a problem of impunity in relation to crimes against women.