Event summary: Justice for all and Afghanistan’s future

October 6th 2020

Overview

In October, an online panel discussion, focused on justice for all and Afghanistan’s future was organised by Cordaid, Overseas Development Institute (ODI) and the World Justice Project (WJP). It provided a space for consultation and policy discussion on the role of access to justice in securing a peaceful and stable future in Afghanistan, and how the Government of the Islamic Republic of Afghanistan (GoIRA) and international stakeholders can incorporate justice commitments in the lead-up to and during a major donor pledging conference in Geneva in November. Given the recent peace agreement between the United States and the Taliban and the commencement of the intra-Afghan dialogue in Doha in September, the outcomes of the pledging conference will be decisive in determining whether Afghanistan grasps the present prospect of a peaceful and stable future.

The panel comprised Neginah Khalili, Head of the General Directorate of the Prosecutor’s Office for Combating Violence Against Women; Caecilia Wijgers, Ambassador of The Netherlands to Afghanistan; Amy Gryskiewicz, Director for Criminal Justice Research at the World Justice Project (WJP); Masood Karokhail, the Director and Co-Founder of The Liaison Office in Kabul; and Titta Maja, Director for the South Asia Unit at the Ministry for Foreign Affairs of Finland.

The event focused on three areas.

Firstly, challenges and opportunities in the current context for improving access to justice. Secondly, what donors should be prioritising in the November pledging conference. Thirdly, the role of justice and the rule of law in securing peace and security in the mid to long term.

1. Access to justice in present-day Afghanistan: challenges and opportunities

The discussion began with a summary of the findings of a recent major survey on justice and rule of law in Afghanistan produced by the WJP. According to the survey data, only 38% of Afghans who experience an everyday justice problem are able to access help. Among key state institutions, the courts are the least-trusted by ordinary citizens. Despite a small improvement over the last year, judges were viewed as the most corrupt authority for the sixth year in a row.

The WJP report also highlighted the particular challenges that women face in accessing justice in Afghanistan. More women than men who were consulted for the study reported being unsure of where to access advice on justice, and being uncertain they would receive a fair outcome. It was noted that the Afghan constitution entitles men and women to have equal rights and access to justice, and that the Afghan government is a signatory to key international treaties on women’s rights. However, other panellists spoke about the need to address the systematic discrimination that women faced in practice in accessing justice, and to respond to their particular vulnerabilities. In this context, one panellist spoke about the importance of a victim-centred approach to justice provision and institutional reform, in which the human rights of the victims are centred and protected. Another speaker emphasised the critical role of female judges, lawyers and prosecutors in improving the
confidence of female victims to come forward, and hoped Afghanistan would see a woman appointed to the Supreme Court in the near future.

The discussion moved on to focus in more detail on the role of non-statutory justice providers in Afghanistan. It was pointed out that, as trust between the state and many rural communities in Afghanistan has either worsened or remained consistently poor in recent years, people have increasingly turned to customary, religious, or tribal authorities. Given the high level of mistrust in state courts and law enforcement, as well as a range of geographic, financial, and cultural factors, it was seen as unsurprising that a great many citizens resolve their disputes outside the statutory courts. One speaker remarked that, for many people, and particularly women living in rural areas and those areas outside of government control, non-statutory justice pathways provided the only accessible venue.

Building on these observations, an argument was made that non-statutory courts have an important role to play in improving access to justice in the future in Afghanistan, both in terms of making up for capacity-gaps in the statutory system, but also by responding to the specific challenges of access and fair treatment experienced by women. It was acknowledged that issues such as nepotism and corruption were prevalent amongst both non-statutory and statutory justice providers. It was also acknowledged that women and other vulnerable groups were often treated unfairly in non-statutory justice systems. But engaging with these systems, rather than ignoring them in favour of the statutory sector, was seen as the most appropriate response. For example, one speaker recommended building connections with women in rural communities who are themselves decision-makers within customary justice fora.

2. What donors should be prioritising in the November pledging conference

The second main area of discussion centred on the Geneva pledging conference and how donors should be prioritising their support with respect to the justice sector. One member of the panel underscored the importance of improving coordination amongst development partners, bringing development and humanitarian activities into closer alignment, and better practices for sharing programming lessons amongst international actors and local partners.

It was recognised that the Covid-19 pandemic had introduced new pressures on the justice system in Afghanistan, with surges in cases of domestic violence being amongst the most troubling issues. It was argued that this called for the government and donors to support creative strategies such as online case-processing.

Other panellists recommended programmes for raising awareness of legal rights and procedures using traditional local media, social media, and radio shows. Responding to aforementioned issues of trust in formal institutions, donors were urged to consider strategies for bridging, or creating closer links between, the statutory and non-statutory systems.

It was noted that, across different provinces in Afghanistan, there is considerable variation with respect to key variables that should shape strategies for improving justice. For example, the levels of violence and insecurity, the degree of government control, and the prevalence of customary justice pathways all vary considerably across different provinces and districts. This underscored the need for locally-tailored approaches to justice interventions.

One panellist reported a perception amongst some Afghans that donor programming had been primarily focused on capacity-building programmes for individuals in the justice sector (e.g. training sessions for judges and lawyers), with relatively little investment in institutional capacity-building, including in the statutory justice sector. To account for this, it was suggested that the statutory system
was highly politicised and fragmented across competing interests. That being the case, it was said that international partners could only support domestic reform actors in this space, rather than lead such efforts themselves. In connection with this point, it was argued that international diplomacy, as well as donor programming and other direct interventions, was an important tool for justice sector reform. Panellists drew attention to the role of civil society in feeding into the conference and linking the high-level donor pledges and commitments to the needs of ordinary Afghan citizens. One speaker spoke of the importance in the longer-term of building civil society capacity for monitoring the statutory system.

Another panellist remarked that, whilst much of the global discussion on access to justice focused on civil justice, it was also important not to overlook the criminal justice sector. They spoke about a WJP pilot survey of male inmates in the criminal justice system in Afghanistan, which found that whilst due process remained weak, certain procedural improvements had been achieved in recent years, such as a greater number of inmates being given an opportunity to speak at their trial. It was seen as important that future support to the sector should build on these improvements.

3. The role of justice and the rule of law in the peace and reconciliation process

The final part of the discussion focused on the role of justice and the rule of law in the broader intra-Afghan peace process.

One speaker asserted that ensuring justice for all, in line with Afghan and international commitments to achieving SDG16+, is an essential prerequisite for a durable peace. But it was also argued that reducing violence and insecurity is itself a precondition for improving the rule of law. One panellist observed that many actors in the formal justice chain fear for their personal safety, and that without a reduction in violence, it would be extremely hard to invest in strengthening these institutions.

When considering how the Taliban, statutory, and customary justice systems might co-exist in a post-peace negotiation era, one speaker observed that formal Afghan legislation is based on sharia, and so the legal regime under any future political settlement would have to be consistent with it. However, it was pointed out that GoIRA and the Taliban have different interpretations of sharia, and the possibility of reconciling different legal and rule of law regimes in future would largely depend on how these different interpretations were negotiated as part of a new political settlement.

Finally given the length of the Afghan conflict and the profound social and legal divisions it has created and exacerbated, the restorative (in contrast to retributive) philosophy behind customary justice was seen as critical for the reconciliation process, particularly in areas with mixed-populations.