

THE ENABLING ENVIRONMENT CONFERENCE

Effective Private Sector Contribution to Development in Afghanistan

OVERVIEW PAPER

Prepared for the Enabling Environment Conference

“Our experience ... is that sustainable development is only possible when the community is engaged at the grassroots level and is given the ways and the means to take responsibility for its own future. This means building the capacity of civil society institutions as well as tapping into the wellspring of individual initiative that has been part of the vigorous Afghan spirit for centuries. It is therefore critical that the Government of Afghanistan creates the appropriate legal and fiscal framework, the regulatory conditions and the stable democratic institutions – in other words, the enabling environment – that encourages and supports the confidence and growth of private initiative, and also facilitates the development of public-private partnerships....It is my firm belief that if the enabling conditions are in place, private initiative and the organisations of civil society can work successfully, with governments, toward achievement of our common vision for Afghanistan.”

Excerpt from a speech of
His Highness The Aga Khan
at the Conference on Afghanistan,
London, United Kingdom, 31 January 2006

“In Tokyo, I offered you our vision of development. The key elements of that vision are the creation of institutions of good governance, that would both guarantee the national unity and well-being of our people and create the enabling environment for the private sector, NGOs and communities to thrive and cooperate with each other in the common endeavour of building a prosperous Afghanistan.”

Excerpt from a statement made by
His Excellency President Karzai
at the Implementation Group Meeting,
Kabul, Afghanistan, 11 April 2002

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I. INTRODUCTION

Emerging from decades of conflict, Afghanistan has made substantial progress towards its political, social, and economic development: public sector reforms are underway; national programmes are building roads, schools, clinics and other infrastructure, as well as fostering innovative community-based development projects; and economic policies have drawn investment into the country. Further, the *Afghanistan Compact* and the *Afghanistan National Development Strategy* demonstrate the Government's resolve to overcome the challenges that remain, namely widespread poverty, the necessity to reconstruct substantial physical infrastructure, a fragile security context, and an overwhelming illegal narcotics industry.

Tackling these challenges will require the resources of the entire country. While the Government is central to this effort, public efforts alone are insufficient to build a peaceful, pluralist and prosperous Afghanistan. Rather, realising Afghanistan's vision as a modern Islamic state will necessitate resources from both within and outside of Government.

Encouraging the private sector – both for-profit business and not-for-profit civil society – is critical to Afghanistan's progress. While improving Afghanistan's state apparatus is essential for the country's development, experience from elsewhere demonstrates that contributions from private initiative are equally needed to make effective use of the country's human potential, generate material resources, and develop a vibrant and robust socio-economic base.

The private sector brings important qualities: an ability to channel global financial, intellectual and human resources, as well as to engage Afghan citizens and diaspora as investors, volunteers, managers, employees and entrepreneurs, thus creating a strong constituency for growth and development. In the form of both business and a diverse and engaged civil society, the private sector brings entrepreneurial energy and problem-solving capabilities; and the capacity to reach marginal and under-served populations quickly and effectively. In this way, contributions from the private sector can complement and help actualise the Government's development agenda, spur economic and social development and strengthen governance.

The Constitution of the Islamic Republic of Afghanistan and the *Afghanistan Compact* both express the Government's commitment to involve the private sector in the country's development. Yet, the barriers to unleashing the private sector's potential are significant. One central barrier is a

lack of consensus about the private sector's role. Many key players – whether international donors, senior Afghan Government leaders or mid-level civil servants – adopt the perspective that the Government must bear the full responsibility for the reconstruction effort, despite overwhelming evidence to the contrary. Partly as a result of this lack of consensus, a range of barriers to ensuring the fulfilment of the role of the private sector emerge.

The Enabling Environment Conference

The Enabling Environment Conference has been convened by the Government of the Islamic Republic of Afghanistan and the Aga Khan Development Network, in partnership with The World Bank, the United Nations Development Programme and the Asian Development Bank to foster significantly greater private sector participation in Afghanistan's development.

Definitions

*The **private sector** encompasses the spectrum of private activity that contributes to all aspects of development. It includes private, domestic and international, for-profit activity (e.g. multi-nationals, formally organised companies, small businesses, and household-level income-generating activities), as well as private, domestic and international, non-profit activity – civil society.*

***Civil society** is committed to the public good and is powered by private voluntary energies. It includes institutions of education, health, science and research which conduct activities and/or provide services on a charitable or non-commercial (but fee-paying) basis. It embraces professional, commercial, labour, ethnic and arts organisations, and others devoted to religion, communication (including media), the environment, and the community (e.g. village organisations).*

*An **enabling environment** is characterised by political stability; confidence in the future; mutual trust, understanding, dialogue and collaboration amongst stakeholders; rule of law; protection of the rights of citizens; a diversity of stable, democratic institutions; and a streamlined legal, fiscal, regulatory, and administrative framework governing all spheres of private initiative, which is predictably, consistently and impartially applied.*

The Conference brings together leaders, decision-makers and creative thinkers from the Afghan Government and National Assembly, domestic and international businesses and civil society organisations, the international community and development agencies to examine how best to encourage private initiative in the country: discussing, confronting and resolving some of the most important barriers to private initiative.

The Conference intends to:

- ◆ Analyse the factors that either impede or encourage the participation of the private sector in Afghanistan's development.
- ◆ Take stock of how the Government has been able to address these factors thus far and what challenges remain.
- ◆ Identify approaches and reach consensus on a Road Map comprising specific recommendations and actions to catalyse the participation of private initiative, along with responsibilities and a time frame for its implementation.

In preparing for the Conference, a year-long preparatory process was undertaken to frame the issues outlined in this paper on the basis of: (a) analyses already done by a wide range of institutions; (b) extensive interviews with specialists; (c) commissioned background papers and case studies; and (d) a series of roundtable discussions in Afghanistan and abroad.¹ The framing of issues is not intended to be exhaustive; rather, it seeks to focus on the areas of greatest concern and where urgent action is required and can be undertaken.

While acknowledging the importance of addressing the longer-term and inter-related issues of insecurity, the opium economy and corruption, the Conference is concerned with and focused on what can and must be done immediately to catalyse significantly greater participation of the private sector in the country's development.

The creation of an enabling environment is expected to move Afghanistan from a climate of fragility to one of confidence in the future, leading to economic development and job creation, social progress and improved quality of life of the Afghan people and a vibrant and engaged civil society.

This **Overview Paper** presents the issues and the findings of the Conference preparatory process. It draws on the background papers, case studies and the summary of the roundtable discussions, bound separately, which participants should consult for a deeper treatment of particular issues. It poses questions for discussion in the breakout sessions of the Conference and proposes preliminary recommendations (which are designated as *X.0* throughout the text) and actions (designated as *X.1*, *.2*, *.3*, etc. through the text) based on these findings, for the deliberation of participants.

Participants are encouraged to read this Overview Paper prior to the Conference, as it is the principal resource document for discussion to take place at the Conference. The success of the Conference will, in the end, be determined by the participants' willingness and preparedness to engage fully in its deliberations and to commit to following through on the recommendations which emerge.

II. MEETING THE CHALLENGES OF STRENGTHENING THE ENABLING ENVIRONMENT FOR THE PRIVATE SECTOR

The following sections lay out clusters of issues around which discussions and debates are to take place during the Conference. These issues, specific to the enabling environment, were raised repeatedly, consistently and vocally during the consultations leading up to the Conference. Each cluster comprises: (a) a set of issues derived from the Conference preparatory process, (b) questions for discussion during the breakout sessions of the Conference and (c) proposed recommendations and actions for consideration.

A. Government and the private sector working together: economic development

While Afghanistan has maintained steady economic growth over the past five years, the living conditions of many Afghans remain poor. The engagement of the private sector is needed to accelerate more actively and effectively economic growth and development through job creation, investments and increased production and delivery of services. This section addresses the issues businesses face in fulfilling and expanding their important role in the country's development.

1. Establishing and implementing the legal and regulatory framework governing the private for-profit sector

The enactment of all essential commercial legislation for the establishment and operation of businesses is urgently needed to attract and protect investment, encourage entrepreneurship and promote the development of private enterprises. Without the requisite commercial laws in place, the risk of doing business in Afghanistan remains high and the complications involved in establishing and conducting business are discouraging. At the same time, commercial laws are meaningful only to the extent that there is the capacity and the political will to enforce their application, and to do so in a systematic and consistent fashion.

The Issues

Formulation and Enactment of Laws

The legal framework is not yet complete, creating uncertainty for business (as well as civil society). Laws that have been passed meet international standards, but are complex in relation to the ability of Government to implement and to enforce them systematically and consistently.²

The Government has made a positive step in updating the 2002 Private Investment Law. Currently, focus is being placed on the enactment of high-priority commercial and financial sector laws. (See Annex 1 for a list of the most recently signed laws and priority laws in the pipeline.) The enactment of this legislation will constitute considerable progress. Nevertheless, challenges remain:

- ◆ Businesses feel that there has not been adequate stakeholder consultation during the drafting and passage of the laws.
- ◆ Some laws have been in preparation for up to two years. The drafting and approval process by line ministries and the Ministry of Justice (*Taqnin*) and the subsequent enactment of laws by the National Assembly have been subject to significant delays.
- ◆ Uncertainty has arisen inside and outside of Government from inconsistencies in translation of laws between English, Dari and Pashtu.
- ◆ Some laws have been approved by decree, and await passage by the National Assembly. Although they are in force, modifications are still being made. This has led to uncertainty on the final provisions of several of the laws.
- ◆ There is a time lag between when a law is in effect and when a law is disseminated to the public; commonly, laws are not readily available to the public and frequently not fully understood either in their implication or in their application.

Implementation of Laws, Regulations and Administrative Procedures

Above and beyond the actual content of laws, many obstacles facing businesses in Afghanistan lie in the actual implementation of laws and regulations. A recurrent topic of the background papers, case studies and consultations is the lack of accountability, impartiality, predictability, consistency and transparency in the application of regulations. The sections below highlight the key challenges in this regard.

Many transactions, such as obtaining trade and investment licenses, paying taxes, or clearing exports and imports, are subject to procedures that are onerous, duplicative, often vaguely defined and not uniformly applied. This generates unpredictability and increases the scope for discretionary decision-making and corruption. Transactions such as licensing and paying taxes may require interaction with multiple agencies, including repeated dealings with the same agency. This adds to the cost of doing business and creates uncertainty in an already challenging context. It is also a strong disincentive to new and incremental investment. Small and medium-sized enterprises (SMEs), which typically lack connections and the resources to hire professional support, are especially affected by administrative barriers.³ And, it is precisely these businesses which have the greatest ability to create jobs and thereby improve the quality of life of citizens.

Employee of an international organisation involved in enterprise development

“It is nearly impossible to do business in a professional way. The rules are always changing, staff are changing and everybody wants extra fees... You want to throw up your hands and walk away. If you don’t have deep pockets and a lot of time, then forget it.”

These conditions engender the corruption which is consistently perceived in both the private and public sectors in Afghanistan. In the 2005 Transparency International Corruption Index, Afghanistan ranked 117th, placing it among the world's most corrupt countries.⁴ Corruption adds uncertainty, leads to distortions in economic outcomes and undermines trust and confidence in the public sector and in markets; the more it has become a “way of life”, the harder it is to combat.

Business leader in Kabul

“Corruption has always existed in Afghanistan. However, in the past corruption was not widespread and people were ashamed to take bribes and tried to conceal it. Those who were involved in corruption were considered to be people with ‘low morals’ and were so judged by the community. However, currently corruption has become a profitable ‘industry’. Most papers with the Government cannot be completed without bribery. Every stamp and every signature obtained from a Government official requires money.”

With regard to the implementation of the legislative framework, three specific areas are elaborated here: (i) business registration and licensing; (ii) tax administration; and (iii) customs.

(i) Business Registration and Licensing

With the introduction of an investment registration process through the Afghanistan Investment Support Agency (AISA), the Government has partially addressed investment registration and licensing as a one-step operation, a significant barrier in other countries.⁵ The creation of the AISA registration process in a “one-stop shop” puts Afghanistan in 17th place worldwide on the ease of registering a business in The World Bank’s *Doing Business Survey*.⁶

Although businesses benefit from AISA registration, many are still encumbered by requirements from other ministries. The Investor Roadmap prepared by the Ministry of Commerce and Industries observes that: “Investors in twenty-two sectors have to not only be registered with the Ministry of Justice Commercial Court to be a legal entity and obtain an AISA license, they also have to obtain sectoral licenses. [...] While licenses in some of these sectors have the potential for creating economic value, in many others there would not seem to be any economic rationale for mandating them.”⁷ Even where there is a rationale for additional licensing (health, safety, environmental protection, land use, and use of natural resources), the procedures are unnecessarily onerous.⁸

Two foreign investors

The experiences of two foreign investors who have recently begun pharmaceuticals production illustrate the bureaucratic hurdles investors must overcome to be able to start operations. The start date for production suffered two years of delay due to the complicated bureaucratic process of obtaining all the necessary paperwork and permissions.⁹

The cost of obtaining an AISA license is high: between US \$240 to US \$1,290, effectively discouraging small domestic businesses. Reducing these fees (or creating a tiered fee structure with levels affordable to SMEs) would place Afghanistan in line with lower-cost countries such as Sri Lanka, the Maldives and Pakistan, and should encourage more SMEs to register formally.¹⁰

(ii) Tax Administration

Overall, as a result of recent reforms, Afghanistan enjoys a tax system with reasonable tax rates that, on paper, are less cumbersome than in many other countries. Afghanistan ranks 30th out of 175 countries in the 2007 *Doing Business* rankings for ease of paying taxes.¹¹ However, enforcement of existing tax legislation is inconsistent and taxpayers are faced with an often unpredictable and inconsistent tax environment, diluting many of the benefits of a simplified system.

Key points that have been raised include:

- ◆ Some investors have expressed that agreements and contracts with Government have not been respected. The reversal of the Government's 2002 position of offering tax holidays to investors is a case in point: while the Government justified this abrogation of agreements on the basis of improper procedures at the time,¹² many investors lured to Afghanistan are not clear on the "process" undertaken nor on who was authorised to grant them a tax holiday in the first place.¹³
- ◆ An array of "sukooks"¹⁴ and "nuisance taxes" are imposed, often by the *Mustufiats* (revenue collection offices) and other authorities (e.g. line ministries, municipal authorities). The *National Business Agenda 2006* describes the problem as follows: "Our business community is plagued by a large number of nuisance taxes. These are taxes that provide very little revenue, but discourage business development, investments and employment growth, due to their complicated procedures, lack of transparency and often corrupt implementation. The World Bank estimates that Afghanistan has about 90 taxes, half of which raise less than US \$21,000 a year. This clearly undermines the central Government's legitimate tax-collecting efforts."¹⁵
- ◆ Business owners frequently report that the calculation of the amount of taxes they pay to the *Mustufiats* and to Customs is unclear. For example, the implementation of fixed taxes seems to be largely arbitrary, with unregistered businesses and those without reliable records (for whom the regime of fixed taxes was adopted) facing highly unpredictable tax assessments.¹⁶

SME

An SME reported that it took an employee more than two weeks to complete the tax paying process at the "Mustufiat," because he did not want to pay any money that he could not account for with a receipt. Even from the Large Taxpayer Office (LTO), known for its professionalism, information was conflicting with regard to how much tax would be charged on local product sales. "It is definitely a big problem for a fledgling company not to know how much tax we'll pay on our past and present sales."

In response to the problem of "sukooks" and nuisance taxes, the Ministry of Finance is working to clarify which taxes are legal and which are not, and to suppress illegal taxes.

(iii) Customs

Afghanistan sees itself as a hub for cross-border trade in the region, but, according to The World Bank's 2007 *Doing Business* Report, Afghanistan ranked 152nd in cross-border trading; 11 different documents are required to import goods and eight others are needed to export. While the amount of documentation is similar to the practice in other countries of the South Asia region, the time required to process documentation in Afghanistan is the highest in the region.¹⁷

Key issues:

- ◆ Some current customs tax structures effectively discriminate against domestic production. Manufacturers complain that the tariff structure is such that they often pay more duty on imported inputs for domestic production than traders do on imports of finished goods.¹⁸ One company interviewed reported that the import tax on raw materials was 10 percent, whereas on finished goods it was only 2.5 percent; the specific problem was subsequently solved for the industry in question, but the case-specific resolution of the problem leaves the question outstanding for other industries.
- ◆ The complexity of customs duties creates confusion, increases costs and enhances opportunities for corruption. In spite of the streamlining of customs taxes under the new customs code, businesses still have to pay a bewildering array of customs and other taxes and fees, which are collected in a variety of ways, as well as bearing other costs (including time). There is ample anecdotal evidence that unofficial

“charges” levied by Government employees and others are common.¹⁹

Fruit and nuts exporters

Fruit and nuts exporters report three separate export controls between Kabul and the Pakistan border: Kabul, Jalalabad and Torkham. Each of the two additional controls obliges the exporter to go through the same procedures as in Kabul and each requires a stamp. This entails additional time and expense (three times the cost), when one control of exports should and would be sufficient. (Conference case study)

The World Bank concludes on this issue:

“Afghanistan can boost trade and reduce smuggling and corruption in customs by cutting red tape in the import and export process. Large gains can be made with simple reforms, such as standardising paperwork and eliminating unnecessary documentation.”²⁰

Discussion Questions

- ◆ What are the legislative priorities? How can the enactment of legislation be expedited without compromising the principle of meaningful stakeholder consultation and respect for legislative procedures?
- ◆ To what extent have Afghan and foreign investors and businesses been able to access newly passed legislation? How can the flow of information be improved? What specific steps can be taken?
- ◆ What changes in registration and licensing procedures would streamline existing procedures? What lessons can be derived from the AISA experience, particularly for smaller businesses? To what extent can industry-specific licensing be eliminated? In which cases is licensing justified?
- ◆ What other regulations and procedures can be streamlined?
- ◆ Would a “one-stop shop” approach be effective in areas such as taxation and customs in cutting through onerous procedures and removing opportunities for corruption? If so, how could it be set-up?
- ◆ How could transparency and understanding be built around registration procedures, taxation and customs? What forms of communication and outreach would be the most effective?

- ◆ Is tax-dodging endemic? Are certain segments of the economy taxed unfairly? Does the resolution of tax disputes lead entrepreneurs into costly legal proceedings?

Proposed Recommendation and Actions

1.0 Enact and implement key laws and amendments to establish the basic legal and regulatory framework that encourages private sector activity in social and economic development in Afghanistan. The laws and regulations should: (a) be clearly specified and transparent; (b) be further streamlined, involving the minimum necessary steps, bureaucratic processes and institutions; (c) reduce discretionary decision-making; and (d) be predictably, consistently, competently, and impartially applied.

1.1 Enact the required laws to complete and update the basic legal and regulatory framework governing private sector activity in social and economic development.

1.2 Establish the principle and processes of engaging the private sector in a meaningful and timely manner during the process of drafting laws and regulations.

1.3 Establish the principle that no law can be implemented unless it has been gazetted, published in the newspapers and had electronic and hard copies made available at no cost in an agreed place and manner.

1.4 Consolidate the registration of private sector entities into a single platform – extending the service to smaller businesses and including the issuance of tax identification numbers. Eliminate additional licensing requirements except for reasons of health, safety, environmental protection, land use and access to natural resources.

1.5 Establish and enforce “one-stop collection points” for tax payment and other Government revenue collection in individual jurisdictions.

1.6 Apply customs regulations consistently across the country and commit to achieving an average time for importing and exporting goods in line with best practice in the region (reduced by at least half of current levels).

2. Establishing alternative dispute resolution mechanisms in the context of a nascent judicial system

The Afghan judicial system does not yet have the capacity to efficiently handle the quantum of legal disputes involving Afghan businesses, organisations and individuals.²¹ There is a lack of qualified lawyers and judges in the country. Credible institutions or alternatives for dispute resolution in Afghanistan would encourage investment.

The Issues

The *Doing Business 2007* report ranks Afghanistan low on the likelihood of contract enforcement (165th out of 175), reporting an average time frame of four and a half years and a cost of 25 percent of the debt in question to enforce a contract.²² As a consequence, businesses prefer informal arbitration mechanisms such as the *Shura* system²³ or rely, when they can, on other institutions such as the Chambers of Commerce, AISA or the Ministry of Commerce. Dispute resolution issues are not limited to private-private disputes; means to resolve public-private disputes are equally important.

Primary Commercial Court in Kabul

The Primary Commercial Court in Kabul hears only about ten cases per month; it reportedly suffers from a lack of transparency and from long delays and lacks qualified legal professionals. The enforcement capacity of the Court is reputed to be very limited. The majority of interviewees in the Informal Sector Survey conducted in May-September 2006 by Altai Consulting²⁴ were indeed pessimistic about recovering debt, enforcing contracts or protecting trademarks through the Commercial Court.

Concerns have been expressed that SMEs are particularly vulnerable to deficiencies in the judicial system, as they find themselves impotent against the discretionary power of Government officials in the resolution of issues such as titling and zoning matters.

While existing legislation foresees special tribunals, these have either not yet been formed or are not yet functional. The tribunals include an appellate body under the Telecommunications Law to which telecommunications operators may appeal decisions from the Afghanistan Telecommunications Regulatory Authority, a financial tribunal under the

Banking Law and a tribunal to resolve disputes under the NGO Law.²⁵

New Legislation

The Commercial Arbitration Law and the Commercial Mediation Law, signed by the President in January 2007 but not yet passed by the National Assembly, establishes the bases for effective alternative dispute resolution systems. These laws establish procedures, in conformity with international best practices, to facilitate binding arbitration of voluntary settlements of commercial disputes in Afghanistan. These procedures will be available to Afghan and foreign businesses (and individuals) alike. They could in principle serve as a basis for application beyond commercial disputes.

The key issue is how these laws can be expeditiously and effectively implemented:

- ◆ Structures and standards for their functioning need to be created.
- ◆ Capacity for arbitration and mediation needs to be built; this is particularly critical for arbitration, as it is legally binding.
- ◆ Information and public awareness as to the potential and functioning of arbitration and mediation systems do not yet exist.

Discussion Questions

- ◆ What forms of alternative dispute resolution are most commonly applied in Afghanistan today? To what extent are they effective? How can they be further developed? How will they coexist with the mechanisms envisaged under the new legislation?
- ◆ How broad a range of disputes should the new arbitration and mediation laws cover? Could the legislation cover non-commercial disputes? Would they cover public-private disputes as well as private-private disputes?
- ◆ What are the main challenges anticipated in the implementation of the new arbitration and mediation laws? What steps need to be taken to ensure the effective and speedy implementation of these laws?
- ◆ How would the Afghan judiciary and court system acknowledge the existence, authority and jurisdiction of the new dispute resolution mechanisms?

- ◆ How can capacity be built to ensure high standards and increase the credibility of the tribunals established under the laws?

Proposed Recommendation and Actions

2.0 Establish and enhance the capacity of existing mediation and arbitration tribunals to ensure efficient, effective and impartial resolution of disputes.

2.1 Establish and recognise the authority of mediation and arbitration tribunals to resolve private-private and private-public disputes – including land issues.

2.2 Ensure the competency and transparency of tribunals by establishing standards and building the capacity of arbitrators, mediators and lawyers.

3. Implementing measures to facilitate access to land

Access to land with clear titles is critical to private sector development. Uncertain land tenure not only discourages new private investment and the upgrading and expansion of existing businesses but, as property rights are undefined, existing landholders are prevented from using land as collateral to access credit.

The Issues

Overlapping, inconsistent and ambiguous legal systems govern private land ownership in Afghanistan. Many land titles, records and registries have been destroyed and evidence of land ownership, where it exists, is often unregistered or is subject to competing land ownership claims. Many land parcels, particularly in urban areas, are held informally. At the same time, formal structures to transfer land and resolve land disputes are inefficient, and too frequently and easily prone to corruption.

Afghanistan ranks 169th out of 175 countries for registering property in the 2007 World Bank *Doing Business*, with 11 procedures taking an average of 252 days, and costing 9.5 percent of the property value – considerably more time consuming and expensive than the regional average and than in most developing countries.

Foreign investors, domestic enterprises and civil society all face challenges with regard to access to land:

- ◆ Foreign investors: Uncertainty in land tenure prevents many international corporate investors from entering the Afghan market altogether. Foreign entities are not allowed to purchase land and even Afghan registered companies with foreign entities as minority shareholders have been blocked from obtaining land titles, in apparent contradiction with the Constitution. Leases offered have been of too short a duration in relation to the level of investments required. The Private Investment Law now allows for 30 year lease terms between private entities in Afghanistan, although the Government is limited to a maximum land lease of three years.
- ◆ Domestic SMEs report a set of specific concerns: “... *the issue is not that Government has blocked processing titles, but the problem stems from the following issues: (a) corruption makes the process too difficult and too costly; (b) ownership claims do not match those on the books; and (c) falsification of documents and of claims on property is widely observed.*” (Conference case study)

- ◆ In securing land upon which to base their activities, civil society organisations (CSOs) must contend with powerful interests. One CSO was able to purchase land in Kabul from the Government in early 2006. Despite the issuance of a land title, the land was leased to a large investor as part of a larger plot. Only with the support of media and other officials, was the issue resolved to the satisfaction of the CSO.

Discussion Questions

- ◆ Given the timeframe required to accomplish systematic land titling, what short-term measures would be acceptable and workable in order to increase formal access to land?
- ◆ How can registration procedures be simplified and shortened? How can the cost be brought down?
- ◆ What specific measure for international investors would improve their access to land for investment in Afghanistan? Can clear rules be established for the case of an Afghan corporation with partial foreign ownership? If foreign ownership is not allowed, can the timeframe of leases be lengthened?
- ◆ What dispute resolution mechanisms can be put into place to resolve land disputes rapidly and effectively?
- ◆ How can special economic zones and industrial parks contribute to increasing access to land? What more needs to be done in this area?

Proposed Recommendation and Actions

3.0 Implement measures to facilitate access to land – clarification of and transfer of titles as well as permitting longer-term leases.

3.1 Devise a land policy that comprises: legal frameworks for land registration; land adjudication, including community-based systems; and the formalisation of informal land holdings, including legislation for adverse possession.

3.2 Simplify the procedures associated with the transfer of publicly-owned and privately-owned land.

3.3 Permit foreign investors to obtain access to land through long-term leases and permit the Government to enter into long-term leases with foreign and domestic investors.

4. Scaling up the generation and distribution of power

Insufficient capacity in electricity generation, transmission and distribution continues to be a major constraint to significant socio-economic development in Afghanistan and directly affects quality of life. The power supplied is generally of poor quality, meaning that voltage levels fluctuate (which damages machines and appliances), power surges occur and black-outs are common. Only 7 percent of the population has access to the power grid. Extreme supply-side constraints continue to endure for existing consumers (power from the public grid is available only a few hours daily in most places), to say nothing of the supply that would be required to respond to the needs of rural populations and to fuel economic growth. Industrial load is virtually non-existent. This is generally agreed to be one of the major inhibitors to adequate economic and social development in the country.

The Issues

The challenges to increasing access to power throughout Afghanistan are numerous:

- ◆ Power generation is grossly inadequate in relation to the demand for power; while generation facilities were destroyed in many areas, there are also areas of the country that have never had access to power.
- ◆ The time frame for the planned implementation of the *Power Sector Master Plan* is too long in relation to the pressing needs.
- ◆ The high cost of private (diesel-fuelled) power generation, is prohibitive for most of the population (five times the cost of power from the grid), allowing for only limited generation where the public supply is not available.
- ◆ There is inadequate technical capacity (e.g. to run larger-scale electrical systems in remote rural locations).
- ◆ Local distribution networks are expected to become a major constraint to delivering power to the end-consumers, once supply increases.²⁶
- ◆ There is a lack of clarity around the roles of the Government (Ministry of Energy and Water), the DABM (Afghanistan Electricity Authority) and private for-profit and not-for-profit entities potentially interested in power generation and distribution, in particular related to the statement in the DABM's Charter designating it as the sole provider of power.

Afghanistan's various options for increasing generation capacity and supply were analysed for the 2003 *Power Sector Master Plan*, which features the import of low-cost electricity from Central Asia (on-going), the development of domestic generation capacity using the natural gas at Sheberghan (delayed), and the rehabilitation and expansion of existing hydropower plants to serve Kabul and some other locations (on-going).

The means of increasing the supply of power will be found partly in continued public investments and partly in unleashing the potential of the domestic (and, potentially, foreign) private sector to generate and distribute power. The policy actions called for are not complex, generally falling under the heading of creating the enabling environment and "doing no harm." While there are no known legal obstacles to the private provision of power, there is a policy and legal vacuum and there are potential practical obstacles such as interference from local officials and the public utility company. In addition, there are issues regarding safety regulation and technical standards, guarantees around tariffs and certainty and reliability in terms of payments.

There is potential for small- and medium-scale providers in smaller cities and towns (including those that are not located close to transmission lines) to contribute to efforts to more rapidly expand access to a reliable supply of quality electricity.

The rural electrification on offer (with a level of subsidisation that is probably unsustainable) does not cover basic demand. It is also taking place in a policy vacuum, without a clear institutional framework for Government oversight. The economic development of rural Afghanistan would be enhanced through the promotion of rural electrification with a greater emphasis on producing the electricity required for income-generating activities. For the overwhelming majority of villages, connection to the grid will not be a viable option in the foreseeable future; the focus must be on identifying appropriate supply solutions for each location. SMEs and community or civil society structures would be important in this regard.²⁷

The demonstrated high demand for electricity and growth potential of the power sector suggest that there are opportunities for private sector involvement in the power sector in Afghanistan at all levels: for foreign as well as domestic capital; for private equity projects as well as other forms of private sector participation; and for large-scale, multi-country projects as well as small-scale projects.

Discussion Questions

- ◆ What are the main constraints to developing a greater role for private generation and distribution in both urban and rural areas? What forms could this role take?
- ◆ What specific responses for increased power generation and distribution are needed for large urban areas? Small towns? Rural areas?
- ◆ What reforms in the Ministry of Energy and Water and the DABM are required to facilitate private sector involvement in power generation and distribution? What framework would lead to this?
- ◆ What could be the content of a small town and rural areas electrification policy? How could the development of such a policy be moved forward in the near future?
- ◆ Would the creation of public-private partnerships (PPPs) for generation and distribution be appropriate? How can the concerns of private investors be addressed, including establishment and adherence to reasonable tariff structures, assurance of payment, etc?

Proposed Recommendation and Actions

4.0 Expedite the involvement of the private sector in the generation and distribution of electrical power in major urban centres as well as rural areas.

4.1 Enact and implement the legal framework to permit and encourage private (for-profit and non-profit) power generation and distribution, including through the establishment of PPPs.

4.2 Pursue the execution of priority power generation initiatives: (a) Sheberghan natural gas generation project; (b) the high voltage transmission line from Tajikistan.

4.3 Launch specific initiatives in non-grid small and medium-scale provision in smaller cities and in community based rural power, including micro-hydro power.

5. Increasing access to financial services

Despite substantial progress made since 2002 (basic legislation in place, central bank reform, introduction of a new currency, the licensing of 15 commercial banks and the development of microfinance), the accessibility, delivery, and range of financial services available in Afghanistan are not meeting the demand. Businesses have almost no access to bank credit and only limited access to bank services. In the most recent *Doing Business* (2007) rankings for getting credit, Afghanistan ranks 174th out of 175 countries.²⁸

The Issues

Constraints stem not only from the yet-to-be completed regulatory framework, but also from a lack of institutional capacity and experience at all levels:

- ◆ The legal framework for financial services is not yet complete. The Da Afghanistan Bank (DAB) is in the process of enacting further legislation to facilitate the expansion of lending to the private sector in the form of a Secured Transaction / Mortgage Law; and a Negotiable Instruments Law, for both of which enforcement issues will be a challenge.
- ◆ The DAB is not seen by the commercial banking community as consistently striking the right balance between facilitating sector development and enforcing prudential regulations. Supervision capacity of the DAB is in its formative stages.
- ◆ The restructuring of the re-licensed state banks is yet to be completed and the unlicensed banks are yet to be liquidated. Until this occurs, credit culture would remain weak, and the financial sector would not become fully competitive.
- ◆ Banks in Afghanistan are risk averse and not willing to extend loans to new borrowers, even to reputable investors, without secured collateral. SME lending programmes are beginning to respond to demand, but have not yet scaled up.
- ◆ Financial institutions generally lack institutional capacity to deliver financial services. Skills and experiences in the financial sector are lacking at every level, from loan officers to supervisors.
- ◆ Lending is limited by the poor credit worthiness of enterprises themselves and/or the inability to demonstrate credit-worthiness (lacking documentation and financial histories, as well as collateral).
- ◆ Microfinance institutions have not yet been able to access commercial funding and are still largely dependent on concessional funding.
- ◆ Afghan firms are faced with an almost complete absence of insurance services, a significant impediment for many businesses; this is the most obvious gap in the limited range of financial products offered to date.

Other programmes for reform of the private and financial sector are also underway and are to be completed by 2008. These include: (a) establishing a facilitative legal framework for private sector development; (b) strengthening the supervisory framework for financial institutions, including microfinance regulations approved in 2006; (c) building capacity of financial institutions; and (d) adopting and implementing national accounting and auditing standards.

Discussion Questions

- ◆ Even large investors in Kabul find it difficult to obtain financing or do not even approach the banks. What are the main reasons for this and what would be required to increase access?
- ◆ Why do commercial banks not view small businesses as a potential market source for sustainable investment and commercial banking? What are the constraints to SME lending? What steps could be taken to increase SME finance?
- ◆ What are the specific constraints to the expansion of microfinance services across Afghanistan? How could microfinance institutions be more fully integrated into the financial sector (accessing funds from commercial banks)?
- ◆ How serious is the lack of capacity in banking human resources? What are the efficient ways to develop this capacity?
- ◆ In what areas could the DAB and the commercial banks work together more constructively?

Proposed Recommendation and Actions

5.0 Strengthen the financial sector in Afghanistan to increase access to credit and other financial services, paying special attention to alleviating capacity constraints.

5.1 Conduct an efficient consultative process among the DAB, Government and the range of financial institutions in Afghanistan to determine and implement a set of time-bound actions to significantly increase the provision of credit, insurance and other financial services throughout Afghanistan, with a particular emphasis on SMEs.

5.2 Establish an independent bankers' training institute as a joint commercial bank - DAB initiative.

B. Government and the private sector working together: social development

Two critical dimensions of Afghanistan's efforts to meet its political, economic and social objectives are: (a) the development of a strong and pluralistic civil society and (b) the education and training of Afghan citizens. This section addresses these two dimensions, investigating issues around the enabling environment for civil society, human capacity constraints and the respective roles of state and private actors.

6. Promoting a diverse, sustainable and engaged civil society: Legal and regulatory reforms

Afghans have opportunities to group together in a variety of ways – in communities, in interest groups, and in organisations committed to improving their own and others' lives. These groups include institutions of education, health, science and research which conduct activities and/or provide services on a charitable or non-commercial (but fee-paying) basis. It embraces professional, commercial, labour, ethnic and arts organisations, and others devoted to religion, communication (including media), the environment, and the community (e.g. village organisations).

Strong and active civil society organisations channel the energy and aspirations of the people, so that they can undertake reconstruction work themselves and so that the Government has structures through which it can work. They play a role in fostering a pluralistic, democratic and responsive Government. In summary, they are the major actors in economic and social development.

Yet, there is a lack of understanding about the potential and value of civil society in Afghanistan. Indeed, civil society organisations (CSOs) have many positive aspects, including the following:

- ◆ They provide needed and valued services in health and education, from community schools and clinics to large educational institutions and hospitals.
- ◆ They mobilise citizens in programmes across a wide range of development activities.
- ◆ They provide support to economic activity by bringing together entrepreneurs and professionals in associations.
- ◆ They remain close to the population and maintain local roots.

- ◆ They are innovative and pioneering, trying out ideas that are often taken up by the Government later.
- ◆ They represent disadvantaged groups and help them organise their communities to achieve a more powerful voice in making decisions.
- ◆ Administrative rules and regulations applied to CSOs are burdensome, weighing unnecessarily on their limited capacity and financial resources.
- ◆ Government officials often mistrust the motives of CSOs, due in part to the questionable legitimacy of a few organisations.

The breadth of civil society in Afghanistan

Civil society organisations (CSOs) are referred to in Dari as Jame'a Madani, sozman-e khair-e dawlati, or sozman-e-itjima. Civil society organisations are not, by definition, Government bodies, political parties or businesses. They are local, independent, non-profit and non-governmental, and are very varied.

Civil society organisations are groups formed to help their own members and can be:

- Tribes, ethnic groups, clans, "qawm"
- Religious organisations
- Shuras, mirab, haqaba, "komites"
- "New shuras", community development councils
- Professional or trade organisations
- Cultural or recreational organisations

They are also organisations formed to help society at large such as:

- Foundations that make grants
- Organisations that provide services and local infrastructure (e.g., education, health, microfinance, technical assistance for agriculture)
- Research organisations
- Groupings of civil society organisations
- Democracy and human rights organisations

The Issues

The environment in which civil society operates in Afghanistan constrains it from flourishing:

- ◆ There is ambiguity about the nature and extent of the contribution of civil society to stability and development; it is perceived as a competitor rather than a partner of Government.
- ◆ There is confusion about which organisations truly belong to civil society, as some have functioned as businesses and others have played political roles, neither of which are the roles of civil society.
- ◆ The notion of civil society is often limited to NGOs and advocacy groups. This perspective disregards the much broader range of institutions that comprise civil society.
- ◆ There is a perception of high overheads and a lack of effectiveness and productivity.
- ◆ CSOs face many of the same constraints as businesses (poor infrastructure, limited and costly access to power, limited access to land, onerous customs regulations, and weak human capacity).

While the current framework contains many enabling attributes, the civil code (umbrella law for civil activity) is in need of updating; it is inconsistent with the newer 2002 Social Organisations Law (SO Law) and the 2005 NGO Law and does not allow for a broader range of CSOs. In addition, the application of the laws is inconsistent, and how the civil code and the new laws relate to each other has caused considerable confusion among civil society, the Government and funding organisations.

Encouraging the development of civil society first requires broadening the understanding of the types of organisations that constitute civil society. At the present time, only two forms of civil society organisations are envisaged under the law – social organisations and NGOs (under the SO Law and the NGO Law). It is often unclear under which law an organisation must register. Registration and oversight responsibilities are split between two ministries: if an organisation registers as a social organisation (SO), it does so with the Ministry of Justice (MoJ); if it registers as an NGO, it does so with the Ministry of the Economy. Considerable confusion exists within civil society, since a number of issues are not settled under either one or both of these laws.

Specific Issues:

- ◆ The registration process raises issues about the uneven application of rules for NGOs and SOs. As a result, some organisations choose to register twice to obtain legal status as an SO and to obtain the right to engage in development activities under the NGO Law.
- ◆ Once an organisation is registered, the reporting requirements can be onerous. Multiple reports, with different formats and coverage, are required, to different line ministries depending on the programme focus.

- ◆ There is a lack of clarity about governance requirements for domestic CSOs (e.g. the constitution of the board of directors).
- ◆ The question of whether an organisation is permitted to access foreign funding is unresolved.
- ◆ The extent to which organisations receive tax benefits (including exemption from income taxes and customs duties) is not clear.

A more fundamental concern is that many organisations that are part of civil society do not fall under either of these categories and therefore do not benefit from formalisation. For example, there is a lack of clarity around the legal provisions for foundations and *auqaf*, as to whether these organisations can function as private foundations that make grants, as publicly supported foundations without operational responsibilities, or as operating foundations carrying out their own projects.

In this context, legal reforms should look holistically at what further efforts are needed to make it easier for the Afghan people to establish and finance CSOs. Legal reforms should reinforce Afghan efforts in social development by providing the legal underpinnings for a more stable and indigenous civil society, and ensure that the laws on the books are comprehensive and straightforward in their provisions and transparent and consistent in their application.

Overall, there is a need for greater understanding of the value of civil society, what it can do to help the country, and how it can complement the work of both business and Government.

Discussion Questions

- ◆ How can greater public understanding of the roles and responsibilities of civil society be built? How can the public and the country's leaders be educated about the role of civil society?
- ◆ How can a broader range of civil society organisations be nurtured?
- ◆ What reforms in the legal framework are still required? Do the legal reforms under consideration allow civil society organisations to maximise their contribution to reconstruction and development efforts?

- ◆ Would a “one stop shop” arrangement facilitate ease of registration and licensing? In what ways? How would the respective roles of the Ministry of Economy, the Ministry of Justice and other Government entities that interface with civil society be defined?
- ◆ What measures are required to strengthen governance, to increase transparency, and therefore trust, of civil society organisations? How could standardised reporting be developed?
- ◆ Aside from compliance to laws and regulations, how can civil society organisations themselves develop standards with a view to improving their own quality and accountability (and therefore credibility)?

Proposed Recommendation and Actions

6.0 Broaden and deepen the understanding of the role and contribution of civil society in development. Provide a framework to strengthen the governance and operations of civil society organisations (CSOs).

6.1 Revise, clarify, and update the legal framework governing civil society organisations – including the NGO Law and Social Organisations Law – to cover civil society more comprehensively, easing establishment / registration and ensuring adequate (but not burdensome) oversight.

6.2 Develop effective self regulatory mechanisms for CSOs, with clearly defined quality standards or a “code of conduct” – to ensure that civil society is well managed, accountable, and their activities are well conceived, effective and attuned to the needs of Afghans.

6.3 Establish independent certification bodies for civil society organisations that are recognised by the Government, the private sector, donor agencies and civil society; and introduce the associated capacity building services required to achieve certification.

7. Establishing and enhancing programmes to build human capacity

The lack of human capacity is a major constraint for Afghanistan's long-term development. Individuals have had few opportunities for education and vocational and professional training; education infrastructure and services have been devastated and qualified people have migrated to other countries. As a result, there are serious gaps in management and skills across both the public and private sectors. The low skill levels reduces the absolute quality and quantity of goods produced and services delivered, the ability of civil servants to handle the tasks they are assigned and the ability of businesses to grow and take advantage of market opportunities.

Long-term efforts to improve the skills and competencies of Afghans need to focus on building a quality education system, from primary through to secondary and tertiary levels, including vocational training and adult education.²⁹ Many initiatives are already underway in these fields. However, it is clear that this task will take decades, while Afghanistan's needs are immediate. Concerted efforts are therefore required on two fronts: mobilising resources for high-quality short-term training and immediately increasing efforts to build the education system to yield results over the short-, medium- and long-terms.

It is generally recognised that capacity within the Government is weak. The Government has launched a number of initiatives to strengthen its capacity under the Public Administration Reform Programme, which is mandated to oversee all areas of reform in the civil service, including capacity building.

The Issues

Skill Development: Management and Vocational Skills

The current situation in the vocational education and training sector has been described as “one of chaos, with a myriad of unregulated, unqualified and inexperienced organisations providing what is often an arbitrary range of vocational education and training activities which ignore the needs of the labour market and waste resources, and leading to disillusionment of the trainees” (quote from an international expert). Both employers and employees express dissatisfaction with the usefulness of training on offer.

- ◆ According to a World Bank survey, only just over 5 percent of Afghan firms currently offer training.³⁰ In some cases, training by firms has been successful, particularly when training has been closely linked to job requirements and follow-up has been provided. In a country with such uncertainty in the job market, on-the-job training is the safest and most effective way of training, thus engaging business in the development process.
- ◆ The Government provision of vocational education and training is divided between three ministries. The Ministry of Education runs technical and vocational education institutions that offer two to five year programmes but suffer from poor infrastructure and a lack of qualified teachers. The Ministry of Labour and Social Affairs runs 18 short-term vocational training centres, and registers NGOs running their own programmes; curricula are not consistent across programmes and are not aligned with the competencies required for successful job placement. The Ministry of Higher Education handles tertiary education.
- ◆ Many NGOs have taken on training as a new activity but most do not have specialised skills in this area.³¹ While there are exceptions, in general, the standard of training is poor, and in many cases untrained instructors are being drawn to deliver low quality, unsystematic and undocumented training courses.
- ◆ Private sector training provision as a business is developing, but is confined primarily to information and communications technology and English language training.
- ◆ To date, the training of civil servants has been ad-hoc and uncoordinated (IARSCS, donor initiatives, Afghanistan Stabilisation Programme, UNAMA and various NGOs).
- ◆ While the policy framework for vocational education and training has been put into place, there is currently no accreditation body that can set and monitor quality and register quality demand-driven providers.
- ◆ Consistency and coordination within and among the various training providers are also poor and there is little information regarding the kind and impact of training being delivered, and which organisations are delivering it.
- ◆ There is a dearth of professional management training programmes, and no formal degree programmes in modern management techniques.

The Government's primary role would be to establish the overall policy framework, as well as regulate and accredit skills training. Realistically, the majority of skills development activities will come from the private sector – either for-profit or non-profit organisations.

Leveraging private sector support for the education system

Despite dramatic progress in increasing enrolment over the past five years, drop-out rates are high in the early grades of school, particularly among girls. Apart from the measures needed to increase access to education, physical infrastructure needs to be rehabilitated / repaired and the quality of education needs to be improved (teacher training being a critical element).

The investments needed to ensure that every child benefits from quality education will require a massive level of funds, human resources, and expertise. It is unlikely that the Government will be able to raise the necessary resources or access the required expertise, even with the assistance of the international community, without the assistance of private enterprise and civil society. CSOs will also have a crucial role in supporting the effective utilisation of these resources.

Afghanistan was heavily dependent on NGOs for the provision of education during the Taliban time and during the transitional period. With the establishment of a new government, the Ministry of Education understandably felt the need to consolidate the provision of education across the country. However, as experiences in other countries have shown, this does not need to exclude non-state actors from contributing to the education system:

- ◆ Collaboration between the Government and the private sector in the provision of education is well established in other countries, evidenced by the rapid increase in both the delivery by non-state actors and in public-private partnerships.³²
- ◆ A comparison of access, completion and learning achievement between non-state provision and Government schools (including in Afghanistan) showed that the non-state provision had a significant impact on all three outcomes.³³

A key issue is the need to establish clear roles within a system in which Government sets policy and provides oversight and which benefits from contributions of both public and private players.

The recent passage of a new by-law for private education establishes the framework for the entry of private actors, offers opportunities for the development of a more flexible system and begins the process of addressing issues around the roles and responsibilities of public and private entities.

Discussion Questions

- ◆ In what specific areas are human capacity constraints felt most acutely by businesses and by civil society? Do these differ amongst businesses and civil society organisations?
- ◆ Raising the overall education level will take a generation. While this is in progress, what measures can be taken to raise the skills of Afghans to engage more effectively in the economic and social development of their country?
- ◆ What management, administration and skills training could come from the private sector? What existing programmes could be scaled up? What lessons have been learned from current experience?
- ◆ What opportunities exist under the new by-law for private education to mobilise the resources of private initiative to expand educational services? What criteria should be applied to help determine the most effective deployment of state and non-state resources?
- ◆ What could effective partnerships in education look like in Afghanistan? How could non-state provision and public-private partnerships contribute to a rapid increase in education services in Afghanistan?

Proposed Recommendation and Actions

7.0 Establish programmes (both private and public-led) to build capacity to alleviate the binding capacity constraints facing the private and public sectors.

7.1 Develop institutions (especially public-private partnerships) that offer short-cycle (two to three month), certificate-level education for school leavers to rapidly develop the skills of young people and adults that are crucial to economic development.

7.2 Actively support the achievement of national education goals through both private provision and public-private partnerships (basic through to tertiary levels).

C. Business and civil society working together

Business contributes to economic and social development through for-profit activities and through a range of other contributions. Through the practice of “social responsibility” businesses may offer donations as well as engage in voluntary efforts, such as lending of facilities, knowledge transfer and the modification of their own business practices for social benefit. This section discusses the environment needed to encourage social responsibility among businesses in Afghanistan.

8. Encouraging social responsibility of business: Business and civil society working together to accelerate development

Social development cannot be achieved by Government alone; it also requires contributions from the private sector. The potential for a private philanthropy is great, especially in Muslim societies.

For example, in Afghanistan, most people deem it part of their religious obligation to give to those in need, based on the belief in the redistribution of wealth for social equity (manifested by *zakat*, *sadakas*, *fitranas* and *waqfs*). In this respect, there is scope for philanthropy in Afghanistan to be a driver of citizen-led initiatives for social development. Similar endeavours are well developed in India and Pakistan, where corporations, for example, are involved in community development.

The Issues

While giving by businesses in Afghanistan is already occurring,³⁴ social responsibility can be further developed across the business community. Giving by businesses is not yet based on a systematic and professional assessment of social problems and needs, or from the careful analysis of potential beneficiaries.

In many cases, businesses are unaware and inexperienced in the ways that valuable and useful contributions to the public good can best be managed. At the same time, civil society organisations are not used to working with businesses, and are actually sometimes distrustful of them.

The fact that philanthropy has so far been under-recognised and efforts by businesses in social development have not reached their full potential is due to a number of factors:

- ◆ A lack of mutual trust and accountability among civil society, business and Government.
- ◆ Difficult operating conditions for both business and civil society, often stifling both individual and collaborative efforts.
- ◆ On the one hand, the perception that CSOs are politicised; on the other hand, the perception that the Government exercises excessive control.
- ◆ A lack of effective coordinating structures for civil society / business / Government collaboration.
- ◆ The lack of Government policies that allow incentives to corporate giving.

Within an environment of scarce human and financial resources, philanthropy channelled through structured partnerships between business and civil society would increase the effectiveness of grant making. Improving the environment for such social responsibility would require:

- ◆ A demonstration of improvements in corporate ethics and the establishment of corporate social responsibility principles and practices.
- ◆ Greater public awareness about the development work of civil society and businesses.
- ◆ Promotion by civil society of good governance, transparency and accountability within their sector.
- ◆ Introduction of a system of certifying “good practice” and credible CSOs, thereby allowing CSOs to make a stronger case for support.
- ◆ Creation of an institution to support the building of partnerships between the business community and civil society.
- ◆ Better coordination and institutional networking among Government, business and civil society.

Discussion Questions

- ◆ How can the concept of “social responsibility” be introduced into the private, for-profit sector, as part of business’ broader responsibilities in the development process?
- ◆ What challenges have businesses faced in developing relationships, including funding relationships, with civil society? What challenges has civil society faced in developing relationships with businesses, including accessing funding?
- ◆ How can awareness about the potential and the value of collaboration between business and civil society be increased? How can greater mutual trust be built?
- ◆ How can business identify specific opportunities for giving? How can they exercise adequate “due diligence” in evaluating potential beneficiary organisations? How can corporate and individual support for economic and social development through civil society be institutionalised?
- ◆ What measures on the part of Government could improve the environment for collaboration between business and civil society? What legal and/or fiscal incentives encourage social responsibility among business?

Proposed Recommendation and Actions

8.0 Instil an active practice of social responsibility and philanthropy which leads to the institutionalisation of private (business and individual) support for economic and social development through civil society.

8.1 Create the necessary legal and fiscal incentives that actively encourage individual and corporate support for social and economic development.

D. Exploring ways of Government and the private sector working together

To achieve Afghanistan’s development agenda, there is a need to explore the range of possibilities for the Government to work with the private sector in a manner that draws on their respective strengths in effective ways.

9. Establishing public-private partnerships to build economic infrastructure and deliver social services

The inadequate provision of public services such as transportation infrastructure, water, power, education, health and other social services to the Afghan population is a major bottleneck to the country’s social and economic development. Several factors contribute to this:

- ◆ Afghanistan has never enjoyed large-scale access to public infrastructure, and much of what once existed is now either destroyed or dilapidated.
- ◆ The difficult physical environment, including high mountain areas, extreme climatic conditions and “de-greening” in parts of the country, coupled with low population density, has resulted in high per capita costs of building, rehabilitating and maintaining economic and social infrastructure.
- ◆ The situation is exacerbated by a limited Government budget and, in the short- to medium-term, insufficient Government capacity to deliver quality services and carry out maintenance.

Despite enormous efforts to rebuild, expand and improve the economic and social infrastructure, the demand for these public services remains largely unmet, particularly in rural and remote areas.

All possible resources – including those from the private sector – need to be brought to bear to develop Afghanistan’s economic infrastructure and social services. Examples from other developing countries have demonstrated that private sector capacities can make an important contribution to the delivery of public services.

Public-Private Partnerships internationally

Over the last 15 years, countries faced with fiscal and capacity constraints throughout the developing world have turned to the private sector as a partner in the provision of infrastructure services. Since 1990, over 130 developing countries have transferred the operating risk of power, water, telecommunications and transport projects to the private sector through a wide range of public-private partnerships. These 2,500 infrastructure projects have resulted in the mobilisation of about US \$750 billion in investment commitments.³⁵

Over the past five years, a vision that sees Government as an enabler and regulator for an economy led by the private sector, has emerged. Implementing this vision however raises issues of the public/private roles in productive activities (issues of privatisation of state-owned enterprises) and of public/private roles in building economic infrastructure and delivering social services (issues of partnerships between the public and the private sectors).

Positive experiences of collaboration between the public and private sectors have occurred in the area of telecommunications (awarding of licences on a competitive basis with reform of the legal and regulatory framework to encourage private investments), the provision of healthcare (through the contracting of NGOs for the delivery of the Basic Package of Health Services within a Government-driven policy framework) and engaging communities in their development (through the National Solidarity Program). Significant private resources have not yet been leveraged in the areas of power generation, water resource management, provision of water and sanitation facilities, delivery of quality education or the rehabilitation of cultural heritage.

The roles and responsibilities of Government, business and civil society need to be examined with a view to delivering public services more effectively. This requires overcoming an environment often characterised by tension between Government and business and between Government and civil society, and where the relative strengths of each player are recognised and valued.

To improve its own capacity to provide public services and to leverage resources from the private sector, Government could consider a range of options:

- ◆ Scaling-up public investment and improving the delivery of public services through better programmatic and financial management.
- ◆ Contracting out the delivery of public services to the private sector.
- ◆ Exploring various forms of “Public-Private Partnerships.”
- ◆ Creating a regulatory environment which offers incentives for private sector investment. This is especially relevant in rural areas where it is unlikely that Government will be able to provide quality public services in the short- to medium-run (for example, rural link roads, water and electricity provision and education).

What is a Public-Private Partnership?

Public-Private Partnerships, which take on multiple forms, involve various aspects of the private sector working with the public sector in a relationship that entails reciprocal obligations and mutual accountability, including either voluntary or contractual ties; sharing of investment and risks; and joint responsibility in planning, design, and implementation. PPPs allow Government to transition from managing and providing services, to enabling and regulating the private sector which delivers the services.

Typically PPP projects are classified in two main categories:

Economic infrastructure: *Services for which sustainable levels of revenue can be derived to pay for investments, operations and risk-related rewards. Prime examples typically include transport infrastructure, power generation, water treatment concessions and telephone services.*

Social services: *Projects where private sector operation and management expertise and risk sharing is seen as beneficial. Typical examples can include the development and delivery of health facilities and health services, educational services/schools, water and electricity distribution.*

Discussion Questions

- ◆ Where do opportunities lie to engage private resources for the rebuilding and expansion of economic and social infrastructure and services?
- ◆ What concrete steps could be taken to encourage greater private sector investment in the delivery of public services? Are there specific elements of a (sector specific) regulatory framework that would be necessary or useful?
- ◆ What opportunities could public-private partnerships offer? What constraints would they face in the current Afghan context and what measures would be required to make them successful?

Proposed Recommendation and Actions

9.0 Establish the principles of private sector involvement in the provision of public services. Advance energetically to define specific approaches exploring – among other options – the establishment of Public-Private Partnerships.

9.1 Identify three pilot projects to test new approaches.

E. Clarifying roles and responsibilities; streamlining decision-making

An enabling environment is characterised not only by a framework of policies, laws and regulations, but also by the systems in place to carry out the framework, and the capacity and the political will to follow through. This section examines these issues in Afghanistan's current context.

10. Clarifying roles and responsibilities; streamlining decision-making

Throughout the preparatory process for the Conference, two obstructions to strengthening the Enabling Environment were identified by Government officials, business and civil society leaders:

- ◆ Despite the adoption of the principle of private sector engagement in Afghanistan's development, the responsibilities of Government, business and civil society are unclear, leading to an environment of uncertainty.
- ◆ Decision making structures and processes are inefficient and ineffective; the implementation of the framework for private initiative lags far behind the adoption of the framework itself.

This section draws from evidence across the Overview Paper and background materials to underline the significance of these two issues.

Responsibilities of Government, Business and Civil Society in the Development Process

The *Constitution of the Islamic Republic of Afghanistan* and the *Afghanistan Compact* highlight the Government's commitment to involving private initiative in the country's development. However, the potential of private initiative to contribute to the development of the country remains unfulfilled. One obstruction is a lack of understanding of the responsibilities of Government, business and civil society.

The underlying factors are: (a) a blurring of lines between Government, business and civil society; (b) limited perspective on and knowledge of the range of contributions private initiative (both for-profit and non-profit) could make; and (c) in certain quarters, a preference for centralised planning in social and economic development and the accompanying vested interests and desire to retain control over strategic sectors and assets.

Survey of Afghan leadership (2004)

*A 2004 survey of Afghanistan's leadership showed that divergent beliefs and attitudes present a challenge to creating a unified national agenda for investment. The report outlined a lack of a shared understanding among leaders concerning the environment for private initiative: "...leaders are almost equally divided on the amount of Government intervention required in the economy, in the form of the ownership of enterprises and in terms of direct redistribution of wealth from the fortunate to the less fortunate." In terms of trust, the report notes that, "only one in five (leaders) are satisfied with the trust levels between the Government and the private sector."*³⁶

The recent Breaking Point report outlined this issue succinctly: "Despite the new strategy to improve governance, in most ministries and provincial offices there are still no clear roles, no terms of references and patchy legal frameworks defining and restricting the activities of the institutions. The lack of clarity on rules and procedures creates an environment conducive to turf battles between Government bodies and encourages the creation of multiple parallel institutions all conducting similar activities." Center for Strategic and International Studies, Breaking Point: Measuring Progress in Afghanistan (Washington, DC, 23 February 2007).

In the interaction between Government and the private sector, unclear roles and responsibilities play out in a numbers of ways:

- ◆ While policy is prepared at the higher levels of Government, with international support, its execution runs into difficulties because of a lack of awareness and understanding at middle and lower levels of Government.
- ◆ There is a lack of clarity in roles between various arms of Government.
- ◆ The privatisation process has been slow and subject to delays; conflicting roles of Government as "owner" and "regulator" have not been addressed (for example, in the airlines industry).
- ◆ The optimal degree of Government involvement in licensing and oversight has not been worked through; requirements and procedures are overly burdensome and create opportunities for corruption.
- ◆ Government sees civil society as a competitor, rather than an ally, in economic and social development. They do not yet work together as effectively as they could to determine where the public sector and where civil society can draw from

each sector's respective strengths to the economic and social development agenda.

Decision-making processes and structures

Concerns are often raised about decision-making processes within Government. Multiple and overlapping responsibilities across ministries result in conflicting signals being transmitted. Evidence from the preparatory process for the Conference suggests that decision-making processes are not fully institutionalised, leading to lengthy and uncertain paths to come to a decision – a laborious process from the points of view of both Government and the private sector.

- ◆ Decision-making processes are characterised by conflict between laws, regulations and subsequent decisions, and often take a long time to complete.
- ◆ Multiple interactions with different points in Government are required to get a decision taken or clearance approved.
- ◆ Often, agreements are not respected, or it takes months to work through differences. Nevertheless, there are successful examples of processes whereby dialogue and consultation have been successful in resolving issues.
- ◆ It is unclear how and where organisations register; it is unclear who sets standards and how they are reinforced.
- ◆ Problems are solved on a case-by-case basis, rather than being addressed systematically. Such processes lead to situations where powerful entities can put the time and resources to resolve issues while smaller entities are unable to do the same.

An Enabling Environment is possible only when the private sector is fully engaged with Government in the development process, with both sectors having a clear understanding of their respective strengths as well as roles and responsibilities, thereby reinforcing the relationship between citizens and State and increasing the ways of working together effectively.

Discussion Questions

- ◆ In what areas would the clarification of the roles and responsibilities of Government and the private sector lead to a more effective allocation of resources in the development process? For Government? For business? For civil society?
- ◆ What challenges does Government face in streamlining decision-making processes and structures? In this regard, what can be done to build confidence between Government and the private sector?
- ◆ How can the Government move from problem solving on a case-by-case basis to putting into place consistent and systemic procedures?
- ◆ How can the proposed recommendations for the Conference Road Map serve to develop a deeper understanding of roles and responsibilities between Government, business and civil society as well as their decision-making processes and structures?
- ◆ What other means exist for building a sense of confidence between state and non-state actors, allowing both to contribute the most effectively to Afghanistan's ambitious development agenda?

Proposed Recommendation and Actions

10.0 Pinpoint bottlenecks that have been reported repeatedly and take immediate action to streamline decision-making procedures.

10.1 Establish a "one-stop shop" to serve as a high level and independent mediator to rapidly resolve bottlenecks faced by the for-profit and not-for-profit private sector.

III. WAY FORWARD: MECHANISMS FOR FOLLOW-UP

The recommendations and actions emerging from the Conference deliberations will have little meaning without energetic follow-through in the days and months following the Conference. Conference follow-up is designed to ensure the implementation of the Road Map (agreed-upon recommendations and actions) and provide the opportunity to institutionalise a process of continuing dialogue between Government and the private sector.

Post-Conference follow-up mechanisms need to be time-bound, pragmatic and action-oriented. Conditions for success include continued commitment and engagement of the top levels of Government to reinforce dialogue and to remove the bottlenecks preventing the implementation of agreed-upon actions. Further factors of success are the establishment of purposeful mechanisms to further reflection, dialogue and the tracking of progress; and the continuing engagement of the international community from both the public and private sector.

Experience in other parts of the world has shown that councils under the leadership of the President (referred to variously as Investors' Roundtables, Presidential Roundtables, Presidential Councils), with engagement from Government decision-makers, domestic private sector / civil society leaders (for-profit and not-for-profit) and with contributions from international private sector leaders, have been an effective tool for institutionalising dialogue, setting priorities and ensuring follow-up. Such a Council could be informal in its structure, but would be firmly committed to meeting at regular intervals to determine how best to ensure the strengthening of the enabling environment for effective private sector contribution to development in Afghanistan.

Improved Government dialogue with the business community and civil society can help pinpoint priority areas for change, suggest solutions based on practical experience, and help create an atmosphere of greater confidence by providing a recognised and transparent platform for dialogue. Constituting a Council or similar mechanism could add value by blending domestic knowledge and understanding with strategic international experience and expertise.

It is proposed that a Council bringing together committed Government leadership, business and civil society leaders from both within and outside Afghanistan, under the direction of the President,

meet on a regular basis as a top priority activity, to institutionalise a process of dialogue and consultation, resulting in concrete action to improve the environment for the private sector in Afghanistan.

While recognising that it is highly important to institutionalise decision-making and problem resolution, the creation of a “one-stop shop”, that has access to the highest levels of Government, as an interim measure could serve to get rapid turnaround on resolving issues.

Discussion Questions

- ◆ How could such a Council contribute effectively to momentum built through the Conference to strengthen the Enabling Environment? What would be the appropriate scope of activity, terms of reference and tasks to be undertaken by such a Council?
- ◆ How would such a Council interface with existing structures and mechanisms e.g., the Joint Coordination and Monitoring Board (JCMB), the Afghanistan National Development Strategy Oversight Committee, Cabinet, and/or the National Assembly?
- ◆ How can post-Conference follow-up be effectively “driven” and its progress monitored after the Conference?

Proposed Recommendation and Actions

11.0 Establish mechanisms to oversee the implementation of measures to create an enabling environment for the private sector involved in social and economic development in Afghanistan, initially focusing on the Conference’s recommendations.

11.1 Create a Council for the private sector (for-profit and non-profit), chaired by the President, whose membership would include representatives of the Government (Administration, key Ministries, National Assembly) the private sector (Afghan and international, for-profit and non-profit) and the international community.

CONCLUSION

Although Afghanistan has made significant progress over the past five years in the areas of political, economic and social development, a number of challenges remain. The Enabling Environment Conference has been convened to address a finite set of these challenges. In particular, it is seeking to establish the conditions needed for the private sector to make more effective contributions to development in Afghanistan.

The issues identified on the basis of the extensive consultations during the preparatory process for the Conference come as no surprise. Indeed, what leaders of Government, business and civil society have called for is to develop a deeper understanding of the potential contributions of the public and private sectors, to build a greater sense of confidence and trust and to move forward to consistently implement a framework which allows Government and the private sector to fulfil their respective roles.

In light of the current stakes in Afghanistan, bold and immediate action is required on the part of Government, business and civil society to move from a climate of uncertainty and short-term perspectives to one of confidence in the long-term economic and social future of the country and its people.

ANNEX 1

Status of Enactment of Key Laws governing Commerce, Financial Intermediation and Civil Society

Under Ministry of Commerce Oversight:

- ◆ **Corporations Law:** to permit foreign corporations and business entities the opportunity to set up Afghan corporations; signed by the President in January.
- ◆ **Partnership Law:** to permit foreign partnerships and business entities the opportunity to establish local partnerships (as affiliates, etc.); signed by the President in January.
- ◆ **Commercial Arbitration Law:** to permit foreign business and opportunity to enforce arbitration awards by the courts within Afghanistan; signed by the President in January.
- ◆ **Commercial Mediation Law:** to establish a framework for voluntary mediation; based on the international UNCITRAL model for voluntary mediation; signed by the President in January.
- ◆ **Contracts Law:** to bring Afghanistan's law of contracts (including the enforcement of agreements made between domestic and foreign business entities) into conformity with international best practice standards; under review at the *Taqnin* (at the Ministry of Justice).
- ◆ **Agency Law:** to allow for a contractual tripartite set of relationships when an "Agent" is authorised to act on behalf of a Principal to create a legal relationship with a Third Party. Under review at the *Taqnin*.
- ◆ **Standards Law:** to establish the framework for developing standards under ISO, exports/imports standards; under review at the *Taqnin*.
- ◆ **Copyrights Law, Trademarks Law, Patents Law** to bring Afghanistan's intellectual property rights laws into conformity with WTO requirements. Under review at the *Taqnin*.

Under the oversight of Da Afghanistan Bank

- ◆ **Mortgage/Secured Transactions Law:** to allow the use of the value of assets (real estate, movable property) to access credit and to create a central registry for secured transactions.
- ◆ **Negotiable Instruments Law:** to establish practices for negotiating, transferring and circulating negotiable instruments ("commercial paper" to replace cash, such as checks, bills of exchange and promissory notes).

These two laws are awaiting review by the *Taqnin*.

Laws regarding Civil Society Organisations

- ◆ **Social Organisation Law, 2002** (Amendment to the Law, currently in preparation): to set the requirements for the establishment and oversight of Social Organisations, under the Ministry of Justice.
- ◆ **Non-Governmental Organisation Law, 2005** (Revisions to the decree): to set the requirements for the establishment and oversight of Non-Governmental Organisations, under the Ministry of Economy.

ANNEX 2

Summary of Road Map of Proposed Recommendations and Actions

Recommendation	Specific Action
<p>1.0 Enact and implement key laws and amendments to establish the basic legal and regulatory framework that encourages private sector activity in social and economic development in Afghanistan. The laws and regulations should: (a) be clearly specified and transparent; (b) be further streamlined, involving the minimum necessary steps, bureaucratic processes and institutions; (c) reduce discretionary decision-making; and (d) be predictably, consistently, competently, and impartially applied.</p>	<p>1.1 Enact the required laws to complete and update the basic legal and regulatory framework governing private sector activity in social and economic development.</p> <p>1.2 Establish the principle and processes of engaging the private sector in a meaningful and timely manner during the process of drafting laws and regulations.</p> <p>1.3 Establish the principle that no law can be implemented unless it has been gazetted, published in the newspapers and had electronic and hard copies made available at no cost in an agreed place and manner.</p> <p>1.4 Consolidate the registration of private sector entities into a single platform – extending the service to smaller businesses and including the issuance of tax identification numbers. Eliminate additional licensing requirements except for reasons of health, safety, environmental protection, land use and access to natural resources.</p> <p>1.5 Establish and enforce “one-stop collection points” for tax payment and other Government revenue collection in individual jurisdictions.</p> <p>1.6 Apply customs regulations consistently across the country and commit to achieving an average time for importing and exporting goods in line with best practice in the region (reduced by at least half of current levels).</p>
<p>2.0 Establish and enhance the capacity of existing mediation and arbitration tribunals to ensure efficient, effective and impartial resolution of disputes.</p>	<p>2.1 Establish and recognise the authority of mediation and arbitration tribunals to resolve private-private and private-public disputes – including land issues.</p> <p>2.2 Ensure the competency and transparency of tribunals by establishing standards and building the capacity of arbitrators, mediators and lawyers.</p>
<p>3.0 Implement measures to facilitate access to land – clarification of and transfer of titles as well as permitting longer-term leases.</p>	<p>3.1 Devise a land policy that comprises: legal frameworks for land registration; land adjudication, including community-based systems; and the formalisation of informal land holdings, including legislation for adverse possession.</p> <p>3.2 Simplify the procedures associated with the transfer of publicly-owned and privately-owned land.</p> <p>3.3 Permit foreign investors to obtain access to land through long-term leases and permit the Government to enter into long-term leases with foreign and domestic investors.</p>

Recommendation	Specific Action
4.0 Expedite the involvement of the private sector in the generation and distribution of electrical power in major urban centres as well as rural areas.	<p>4.1 Enact and implement the legal framework to permit and encourage private (for-profit and non-profit) power generation and distribution, including through the establishment of PPPs.</p> <p>4.2 Pursue the execution of priority power generation initiatives: (a) Sheberghan natural gas generation project; (b) the high voltage transmission line from Tajikistan.</p> <p>4.3 Launch specific initiatives in non-grid small and medium-scale provision in smaller cities and in community based rural power, including micro-hydro power.</p>
5.0 Strengthen the financial sector in Afghanistan to increase access to credit and other financial services, paying special attention to alleviating capacity constraints.	<p>5.1 Conduct an efficient consultative process among the DAB, Government and the range of financial institutions in Afghanistan to determine and implement a set of time-bound actions to significantly increase the provision of credit, insurance and other financial services throughout Afghanistan, with a particular emphasis on SMEs.</p> <p>5.2 Establish an independent bankers' training institute as a joint commercial bank - DAB initiative.</p>
6.0 Broaden and deepen the understanding of the role and contribution of civil society in development. Provide a framework to strengthen the governance and operations of civil society organisations (CSOs).	<p>6.1 Revise, clarify, and update the legal framework governing civil society organisations – including NGO Law and Social Organisations Law – to cover civil society more comprehensively, easing establishment / registration and ensuring adequate (but not burdensome) oversight.</p> <p>6.2 Develop effective self regulatory mechanisms for CSOs, with clearly defined quality standards or a “code of conduct” – to ensure that civil society is well managed, accountable, and their activities are well conceived, effective and attuned to the needs of Afghans.</p> <p>6.3 Establish independent certification bodies for civil society organisations that are recognised by the Government, the private sector, donor agencies and civil society; and introduce the associated capacity building services required to achieve certification.</p>
7.0 Establish programmes (both private and public-led) to build capacity to alleviate the binding capacity constraints facing the private and public sectors.	<p>7.1 Develop institutions (especially public-private partnerships) that offer short-cycle (two to three month), certificate-level education for school leavers to rapidly develop the skills of young people and adults that are crucial to economic development.</p> <p>7.2 Actively support the achievement of national education goals through both private provision and public-private partnerships (basic through to tertiary levels).</p>

Recommendation	Specific Action
8.0 Instil an active practice of social responsibility and philanthropy which leads to the institutionalisation of private (business and individual) support for economic and social development through civil society.	8.1 Create the necessary legal and fiscal incentives that actively encourage individual and corporate support for social and economic development.
9.0 Establish the principles of private sector involvement in the provision of public services. Advance energetically to define specific approaches exploring – among other options – the establishment of Public-Private Partnerships.	9.1 Identify three pilot projects to test new approaches.
10.0 Pinpoint bottlenecks that have been reported repeatedly and take immediate action to streamline decision-making procedures.	10.1 Establish a “one-stop shop” to serve as a high level and independent mediator to rapidly resolve bottlenecks faced by the for-profit and not-for-profit private sector.
11.0 Establish mechanisms to oversee the implementation of measures to create an enabling environment for the private sector involved in social and economic development in Afghanistan, initially focusing on the Conference’s recommendations.	11.1 Create a Council for the private sector (for-profit and non-profit), chaired by the President, whose membership would include representatives of Government (Administration, key Ministries, National Assembly) the private sector (Afghan and international, for-profit and non-profit) and the international community.

ANNEX 3: REFERENCES

Conference Background Material

Background Papers

- ◆ Lack of Access to Energy - *The World Bank Group*
- ◆ The Operating Environment for Small and Medium Enterprises in Rural Afghanistan: Enabling or Disabling? - *Saeed Parto, Anna Paterson and Asif Karimi, Afghanistan Research and Evaluation Unit*
- ◆ Unleashing Entrepreneurship: Nurturing an Enabling Environment for SME Development in Afghanistan - *UNDP Afghanistan*
- ◆ Challenges of Access to Financial Services - *The World Bank Group with Asian Development Bank*
- ◆ Lack of Human Capacity in the Public and Private Sectors - *Dr. Sarah Lister*
- ◆ Challenges Presented by the Legal and Regulatory Framework Governing Private For-Profit Activity - *Altai Consulting*
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- ◆ Potential for Public Private Partnerships in Afghanistan - *Michael Barrow and Martin Tornberg, Private Sector Operations Department, Asian Development Bank*
- ◆ Corporate Social Responsibility: Business and Civil Society Working Together - *Pakistan Centre for Philanthropy*

Case Studies

- ◆ Government and the Private Sector Working Together to Create the Afghan Telecommunications Industry
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- ◆ Helping Afghanistan's Street Working Children: ASCHIANA
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- World Bank. 2007. Doing Business in South Asia / Afghanistan Economy Profile. Washington, DC.

¹ The background papers were prepared by AKDN and the co-sponsoring agencies, the case studies by AKDN and the case study subjects. Round tables were organised by AISA (six events in four cities of Afghanistan), FCCS/ACSF (civil society organisations) and AKDN together with the Government of Afghanistan (international NGOs and international business in Afghanistan, Afghan Diaspora in Canada and Europe).

² An additional challenge is the fact that three overlapping systems constitute the legal framework in Afghanistan: the *Sharia* (Islamic Law), the *Shura* (traditional systems of informal justice), and the formal system based on the 2004 Constitution.

³ TISA and International Agencies, *Securing Afghanistan's Future: Accomplishments and the Strategic Path Forward. Trade and Investment and Public Sector* (January 2004):13, quoted in Sarah Lister and Zainiddin Karaev, *Understanding Construction Market in Afghanistan* (Kabul: AREU 2004), 24.

⁴ The World Bank, *Investment Climate in Afghanistan* (Washington, DC: December 2005): 21.

⁵ Ministry of Commerce and Industry and Adam Smith International, *Investor Roadmap* (Kabul: October 2006): 29.

⁶ The World Bank, *Doing Business in South Asia* (Washington, DC: 2007): 15.

⁷ Ministry of Commerce and Industry and Adam Smith International, *Investor Roadmap* (Kabul: October 2006): 3-4.

⁸ Background paper prepared by Altai Consulting for the Enabling Environment Conference.

⁹ Anna Peterson, *Going to Market* (Kabul: AREU 2006):18.

¹⁰ *Doing Business in South Asia*: 15.

¹¹ *Doing Business in South Asia*, and The World Bank, *Doing Business 2007, Economy profile: Afghanistan* (Washington, DC: 2007): 7.

¹² The offer of tax holidays was also absent from the 2005 Investment Law.

¹³ *Doing Business in South Asia*: 17.

¹⁴ An amount to additional fees charged to cover the expense of tax collection.

¹⁵ The Afghan American Chamber of Commerce has compiled an inventory of business taxes, quoted in Afghan International Chamber of Commerce, *National Business Agenda* (Kabul: August 2006).

¹⁶ As explained before, the Income Tax Law has provisions for assessing taxes on the income of individuals and informal companies which do not keep sufficiently accurate records to pay taxes based on profit and loss statements. These so-called "Fixed Taxes" are imposed in lieu of the formal taxes, such as the Business Receipts Tax (BRT) or the Corporate Income Tax.

¹⁷ The World Bank, *Doing Business* (Washington, DC: 2005, 2006, 2007).

¹⁸ *Investment Climate in Afghanistan*.

¹⁹ *Going to Market*: 33.

²⁰ *Doing Business in South Asia*: 18.

²¹ Center for Strategic and International Studies, *Breaking Point: Measuring Progress in Afghanistan* (Washington, DC, 23 February 2007): 53 – 54.

²² *Doing Business in South Asia and Doing Business, Economy Profile Afghanistan*: 7.

²³ *Investment Climate in Afghanistan*: 26

²⁴ Informal Sector Survey, conducted by Altai Consulting for the Ministry of Commerce and Industries/Adam Smith International, May-August 2006.

²⁵ The Private Investment Law 2005 foresees international arbitration in the case of disputes over foreign investment.

²⁶ In fact, this has already happened in Mazar-e Sharif and Herat, where adequate supply is available through interconnection to neighbouring countries, but the local distribution networks cannot carry the available supply.

²⁷ By tapping into Afghanistan's numerous water sources, micro-hydro electricity has provided an alternative in some villages. With a capacity to serve about 150 families (approximately 20 residents per KW), typical micro-hydro projects provide a cost effective and sustainable way to deliver electricity to small businesses and families. It faces, however, its own set of constraints: lack of funding (including an unpredictable flow of funds under the National Solidarity Program), weak technical capacity/lack of training opportunities, and little support for innovation.

²⁸ *Doing Business in South Asia*. With the passage of legislation underway, 2007 indicators are expected to improve significantly.

²⁹ *National Business Agenda* (Kabul: August 2006).

³⁰ In comparison, in India almost 17 percent of small firms train. *Investment Climate in Afghanistan*

³¹ Ministry of Labour, Social Affairs, Martyrs and Disabled, *National Skills Development Strategy* (Kabul: 14 April 2007).

³² Defined broadly as education services provided by NGOs, faith-based organisations, private for-profit schools, private non-profit schools, community schools and philanthropic schools.

³³ De Stefano, J., Schuh Moore, A., Balwanz, D. and Hartwell, A. *Meeting EFA: Reaching the Underserved through Complementary Models of Effective Schooling*. USAID. (Washington DC: 2006)

³⁴ For example, Roshan's Social Programmes Division, Bayat Foundation, Afghan Women's Business Association, Al Dawee group, Al-Khuzay Tea and the business community in Herat.

³⁵ *The private sector's role in the provision of infrastructure in post conflict countries: patterns and policy options*. The World Bank, Social Development Papers (Washington DC: August 2004)

³⁶ OTF Group/USAID, *Survey of Afghanistan's Leadership: Mental Models and Business Environment*, Afghanistan Competitiveness Project, (Washington, DC: February 2005).