

Afghanistan at a Crossroads

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By Isobel Coleman and Swanee Hunt

At a press conference during his quick visit to Afghanistan this week, President Bush expressed confidence that Al Qaeda will be brought to justice. If only we could be so sanguine about the broader issues of justice in Afghanistan, where notorious warlords and drug king pins operate with impunity, hold positions of power within the Karzai government and a tight grip on key institutions like the Supreme Court. Judicial reform, crucial to any efforts to expand the rule of law in Afghanistan, must be a priority. President Karzai has an opportunity to begin a judicial overhaul in his upcoming appointments to the Supreme Court - an institution responsible not only for interpreting the constitution, but also managing the judicial system throughout the whole country.

The composition of the current, interim Supreme Court is a case study in the corruption and political meddling that has so far plagued the Afghan government. Under pressure from religious conservatives, notably former militia leader Abdul Sayyaf, President Karzai has packed the court based on religious credentials. Every current member is experienced only in Islamic jurisprudence, neglecting the country's tradition of civil law. One member of the court has no official degree at all, failing to meet the higher education requirements set out in the constitution. And several members of the court are widely known to accept bribes.

The Supreme Court sets policy for the entire court system, including allocating budgets and hiring personnel. Professionalism at the top is imperative. It is also the final arbiter on constitutional questions, which will no doubt be an ideological battleground in coming years. While the constitution makes numerous references to human rights and equality before law, it also states in Article 3 that no law can be contrary to the beliefs and provisions of the sacred religion of Islam. Already, deep divisions are apparent in society, pitting those who demand a more conservative interpretation of Islamic law against those with more progressive views.

The interim Supreme Court has consistently sided with conservatives, dashing the hopes of reformers. It has issued bans on women singing on television, tried to bar a presidential candidate from the 2004 elections for questioning whether polygamy is in keeping with the spirit of Islam, and upheld the marriage of a 9 year-old girl, even though Afghan law sets the marriage age at 16.

In a controversial case last fall, a division of the Supreme Court argued that Afghan journalist Ali Mohaqeq Nasab be hanged for blasphemy. His crime: to suggest in magazine articles that women should be given equal status to men in court, and that those who renounce Islam should not be condemned to death. Charged with blasphemy, Nasab was sentenced to two years in prison, which infuriated religious conservatives who demanded his death. The Supreme Court agreed, saying that unless Nasab repented he should be hanged. After several months of refusing to apologize, Nasab capitulated. He told an appeals court that he was sorry if his magazine had caused any "confusion among the people" and his punishment was shortened to a six month suspended sentence.

The court's lack of legitimacy is openly discussed in Afghanistan's press. With his upcoming appointments to the Supreme Court (which must be approved by the parliament), Karzai has a chance to demonstrate that he is serious about taking on corruption and resisting political interference from religious extremists. He should nominate judges trained in Afghanistan's civil law, and not just in Islamic jurisprudence. He should also promote judges who have studied modern Islamic jurisprudence who will be adept at finding Islamic solutions to Afghanistan's modern development challenges. He should nominate qualified women to the court – there are several women judges in Afghanistan today with higher qualifications than some of the men currently serving on the interim court.

Strengthening the legitimacy of the Supreme Court is a critical step in the broader process of judicial reform that is much needed in Afghanistan, where there are few trained lawyers and 85% of justice is administered outside of the official court system. The country will never be able to develop a sustainable, modern economy, nor consolidate democracy, without establishing the rule of law across the country. Corruption cannot be countered in an environment where there is routine bribery and intimidation of judges. Afghanistan's commitment to international human rights standards will not be met as long as powerful individuals operate with impunity. Choosing Afghanistan's most qualified and representative men and women for the Supreme Court would send a powerful message that the Karzai government is serious about tackling the real challenges it faces, and deserving of continued international support.

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