

***COURT ADMINISTRATION AND
CASEFLOW MANAGEMENT: KEY
ISSUES FOR JUSTICE SYSTEM
LEADERS***

**Materials prepared for a Meeting with Afghan
Court System Leaders and Senior
Administrators**



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PART ONE

**MATERIALS ON PURPOSES OF
COURTS, KEY IDEAS RELEVANT TO
COURT SYSTEM MODERNIZATION,
and
COURT PERFORMANCE STANDARDS**

PURPOSES OF COURTS

1. To do individual justice in individual cases
2. To appear to do justice—*i.e.*, demonstrate the workings of a fair and responsible judiciary
3. To provide an impartial forum for the resolution of legal disputes
4. To protect against the arbitrary use of governmental power
5. To establish a formal record of legal status

Common Characteristics of Court Systems

1. Similar practitioner views concerning basic values and characteristics of a well-functioning judicial system
2. Similar perceptions about obstacles to improvement – especially resource constraints
3. Lack of strong public or legislative support for court operations
4. Wide variations across courts on key dimensions of case processing (case scheduling practices, case processing times, size and age of pending caseloads, ratio of dispositions to new filings, etc.).
 - Some courts clearly function much more effectively than others
 - Some courts have large old case backlogs; others are current
5. Tradition of deference to lawyers' requests for continuances/extensions of time
6. Judges' focus on individual cases, not overall system performance

Values and Characteristics of a Well-Functioning Judicial System

1. Fair processes
2. Accessible by all
 - Affordable
 - Easy to use
 - Open to the public
3. Competent and well-trained judiciary
4. Prompt/timely resolution of cases
5. Adherence to relevant laws
6. Impartial: free from bias
7. Similar cases handled in a similar fashion
8. Honest judges and staff – no improper influences on decision-making
9. Safe and secure court environment
10. Respect for all participants
11. Protection of basic human rights
12. Well managed: sound use of resources
13. Transparent processes/accountability
14. Public trust, confidence, and support

OBSTACLES TO COURT SYSTEM IMPROVEMENT

1. **Limited resources; dependence on external donors**
2. **Public apathy; distrust of formal legal system**
3. **Lack of management expertise**
4. **Lack of essential information**
 - **About court operations and performance**
 - **About judicial system performance**
 - **About resource allocation and utilization**
5. **Limited staff capabilities**
6. **Lack of clear judicial system goals**
7. **Conflicting priorities and perspectives**
 - **Central administration v. local courts**
 - **Traditional dispute resolution approaches v. courts**
 - **Judges' perspectives v. administrators' views**
8. **Non-judicial political influences on policy**
9. **Lack of a "judicial branch community"**
10. **No tradition of innovation, experimentation
or collaborative problem-solving**
11. **Limited capacity for in-service judicial branch
education and training**

Group Exercise #1

1. Working individually, review the list of "Values and Characteristics of a Well-Functioning Court System." Consider:
 - a) Are there any additions that should be made to this list?
 - b) Should any items be deleted?
2. Still working individually, review the list of "Common Obstacles to Court System Improvement." Consider:
 - a) What other obstacles should be considered?
 - b) Should any items be deleted?
3. After individual listing, discuss your responses in the group. Try to develop consensus on:
 - a) Changes (if any) to be made in the two lists
 - b) Top priority obstacles other than limited resources
4. Summarize your answers.

Report Form A - Small Group

Exercise #1

Please cross out any values and characteristics that do not apply to the Afghan judicial system.

Are there any values and characteristics that should be added? If so, add them in the spaces below

Fair processes

Accessible by all: affordable, easy to use

Competent and well-trained judiciary

Prompt/timely resolution of cases

Adherence to relevant laws

Impartial: free from bias

Similar cases handled in a similar fashion

Free from government and political influence

Safe and secure court environment

Respectful of all participants

Protection of basic human rights

Well managed: sound use of resources

Transparent processes/accountability

Public trust, confidence, and support

Values and characteristics that should be added:

• _____

• _____

• _____

Report Form B - Small Group

Exercise #1

Please cross out any common obstacles that do not apply to the Afghan judicial system.

Are there any obstacles that should be added? If so, please add them in the spaces below:

1. Limited resources
2. Public apathy; distrust of formal legal system
3. Lack of management expertise
4. Lack of essential information
 - About court operations and performance
 - About judicial system performance
 - About resource allocation and utilization
5. Limited staff capabilities
6. Lack of clear judicial system goals
7. Conflicting priorities and perspectives
 - Central administration v. local courts
 - Traditional dispute resolution approaches v. courts
 - Judges' perspectives v. administrators' views
8. Extra-judicial political influences on policy
9. Lack of a "judicial branch community"
10. No tradition of innovation, experimentation
or collaborative problem-solving
11. Limited capacity for in-service judicial branch
education and training

Additional obstacles:

- _____
- _____
- _____

“Traditional” Court Systems

- Little or no pro-active administrative leadership at either national or local level
- Executive Branch sets court budgets, resource levels, and many court procedures
- Little or no investment in training for judges or staff
- No research capability
- Outdated court procedures and record-keeping methods
- Lack of reliable information and statistics for planning and management
- No concept of “judicial branch community”
- In many courts, heavy backlogs and lengthy delays
- No systemic approach to managing caseload
- Little interaction between courts and community
- Little collaborative work with other justice system stakeholders
- Court practices and procedures rarely revised

Key Differences in Court System Organization and Procedures

1. Locus of responsibility for funding and management
 - National v. State and Local
2. Different historical and cultural traditions underlying formal legal procedures
3. Locus of responsibility for serving documents and producing witnesses, including expert witnesses
 - Court - Parties - Others
4. Availability and use of computer-based data on case processing times and pending caseloads
5. Prevalence, selection and role of court administrator
 - Professional management training for administrators
 - Executive team model: president judge – court administrator teams, organized to facilitate caseload management and overall court administration
6. Methods for making a record of in-court proceedings
7. Procedures for assigning cases to judges
 - Random assignment of cases v. assignment by president judge
 - Key issues: transparency, perceptions of fairness
8. Acceptance and use of techniques of case differentiation for purposes of scheduling and management
9. Opportunities for training on court management
10. Availability of research findings and materials
11. Emphasis on judges' responsibility for timely case resolution and caseload management

COMPARING LEGAL SYSTEM MODELS INQUISITORIAL v. ACCUSATORIAL

INQUISITORIAL MODEL	ACCUSATORIAL MODEL
Mainly a written process	Primarily an oral process; some written materials
Truth emerges from long segmented trial process, conducted in installments	Truth emerges from adversarial process; continuous trial
Evidence is collected and reviewed by the judge before the trial	Evidence for its case is collected by each party prior to trial and presented during the trial
Court is responsible for service of process and production of witnesses	Parties are responsible for service of process and production of witnesses
Judges dominate the process	Judges manage the process
Secret dossier	Public trial; public records
Jury trials are rare	Jury trials are more frequent
Written judgment and sentence	Oral verdict or written judgment and
Appeal of facts and law; new evidence often allowed	Appeal on law; new evidence not allowed

BUILDING A CAPACITY FOR EFFECTIVE COURT SYSTEM PLANNING AND MANAGEMENT KEY COMPONENTS

1. Goals/Standards for System Performance
2. Information
 - Data on current organization and operations
 - Data on current performance in relation to goals
 - Capacity for effective analysis and use of information
 - Identify strengths
 - Identify organizational weaknesses and problems
 - Use for planning and budgeting
 - Use to shape education and technical assistance
3. Structures for Consultation and Feedback
 - Judicial system bodies
 - Judicial Council
 - Judges' associations
 - Outreach to other institutions and the community
4. Budgeting/Financial Management Capability
5. Human Resources/Personnel Management
6. In-service Education and Training Capability
7. Capacity for Innovation and Experimentation
8. Capacity for Synthesis and Priority Setting
9. Leadership and Leadership Development
10. Capacity for Enabling Accountability
 - Reports on court performance in relation to standards
 - Auditing of fiscal records
 - Oversight by Judicial Council and/or Supreme Court
 - Codes of Ethics
 - Commissions for inquiry and discipline

PART TWO

MATERIALS ON COURT PERFORMANCE STANDARDS

COURT PERFORMANCE STANDARDS

What are they?

Performance standards are statements that describe how a court or court system should function.

Standards define expected court performance, not the performance of individual judges.

Standards articulate the vision and core values of the court or court system. They define excellence.

Standards are not laws or rules. They are tools that any court or court system can use to:

- Articulate its own vision and values;
- Guide its own policies and operations;
- Evaluate its own performance.

Standards focus on the day-to-day operation of the court and on the results of those operations.

Standards may be established for a single aspect of court performance (for example, access to the court or timely resolution of cases) or for the entire range of court activities.

WHY ARE COURT PERFORMANCE STANDARDS IMPORTANT?

Standards:

1. Define core values and key functions.
2. Acknowledge the public interest in *effective* court performance.
3. Establish expectations.
4. Provide a basis for assessing courts' effectiveness as institutions.
5. Stimulate self-examination and continuing assessment of court operations.
6. Provide a framework for judicial system accountability to other governmental bodies and to the public

U.S. Court Performance Standards

In 1990, the Commission on Trial Court Performance Standards in the United States published its final report.

The Commission identified five areas in which all courts must perform well to fulfill their societal and legal roles. These largely correspond to the "Values and Characteristics" we discussed earlier. The five areas are:

1. Access to Justice
2. Expedition and Timeliness
3. Equality, Fairness and Integrity
4. Independence and Accountability
5. Public Trust and Confidence

Within these five performance areas, the Commission recommended adoption by courts of 21 standards to guide court performance.

Court Performance Area #1: Access to Justice

Main Theme: Courts should be open and accessible to all.

Standard 1.1 Public Proceedings

- ❖ Open hearings
- ❖ Courtroom proceedings accessible and audible

Standard 1.2 Safety, Accessibility and Convenience

- ❖ Court facilities are safe, accessible, and reasonably convenient to use
- ❖ No unnecessary barriers for persons with disabilities

Standard 1.3 Effective Participation

- ❖ Language comprehensible to lay person
- ❖ Court hours
- ❖ Interpreters available when needed
- ❖ Responsive staff at public counters
- ❖ Court procedures simple and understandable

Standard 1.4 Courtesy, Responsiveness and Respect

- ❖ Responsive staff at public counters
- ❖ Respect for the dignity and value of all persons

Standard 1.5 Affordable Costs of Access

- ❖ No “unreasonable” court fees
- ❖ Court records available at reasonable cost

Court Performance Area #2: Expedition and Timeliness

Main Theme: Courts should meet their responsibilities in a timely and expeditious manner.

- Unreasonable delay causes injustice and hardship
- Delays are a primary cause of loss of public trust and confidence in the courts

Standard 2.1 Timeliness in Case Processing

- Courts comply with case processing time standards
- Courts (judges working with staff) take responsibility for timely resolution of cases
- Courts manage caseloads to avoid or eliminate backlogs

Standard 2.2 Compliance with Schedules

- Working hours
- Court events occur when scheduled.
- Fund disbursements are on schedule
- Reports are submitted in a timely manner

Standard 2.3 Prompt Implementation of Law and Procedure

- Changes in laws and rules are implemented promptly and correctly

Court Performance Area #3: Equality, Fairness and Integrity

Main Theme: Courts should provide due process and equal protection of the law to all.

Standard 3.1 Fair and Reliable Judicial Process

- Adhere to relevant laws, procedural rules, and established policies
- Ensure that cases are dealt with fairness, efficiently and speedily.
- Duty to protect the rights and freedoms of all persons.

Standard 3.2 Representative Juries

Standard 3.3 Court Decisions and Actions

- Individual attention to every case
- Decisions based on law and legally relevant factors
- Similar cases treated similarly

Standard 3.4 Clarity of Orders and Decisions

- Decisions unambiguously address the issues
- Court orders are clear on how to comply

3.5 Responsibility for Enforcement

- Courts should facilitate the efficient and cost-effective enforcement of judicial decisions.

3.6 Production and Preservation of Records

- Accurate and complete
- All necessary documents preserved and accessible

Court Performance Area #4: Independence and Accountability

Main Theme: The judiciary should maintain its distinctiveness as a separate branch of government. Courts should establish their legal and organizational boundaries, monitor and control their operations, and account publicly for their performance.

Standard 4.1 Independence and Comity

- Independence in decision-making of judges and the courts
- Responsible for managing caseloads
- Comity and effective working relationships with other justice system institutions

Standard 4.2 Accountability for Public Resources

- Sound fiscal practices; prudent use of resources
- Public budgets
- Account for use of public resources

Standard 4.3 Personnel Practices and Decisions

- Fair employment practices - merit hiring, nondiscrimination

Standard 4.4 Public Education

- Inform and educate the public

Standard 4.5 Response to Change.

- Organizational capacity to respond to changes in the legal and social environment

Court Performance Area # 5: Public Trust and Confidence

Main Theme: Courts should work to instill public trust that courts are accessible, fair and accountable.

Standard 5.1 Accessibility

- Courts are seen to be open and accessible

Standard 5.2 Expeditious, Fair, and Reliable Court Functions

- There is public trust and confidence that court business is conducted fairly and expeditiously
- Court decisions are seen as having integrity

Standard 5.3 Judicial Independence and Accountability

- Courts are recognized as independent institutions, not unduly influenced by other components of government
- Courts are accountable for their performance
- Performance in relation to standards can be measured

Group Session #2

The purpose of this exercise is to provide an opportunity for discussion of the concept of court performance standards for Afghanistan courts.

Review the U.S. Court Performance Standards in these areas:

- Access to justice
- Expedition and Timeliness
- Equality, Fairness, and Integrity
- Independence and Accountability

Then consider the following questions:

1. Which of the standards would be appropriate for Afghan courts?
2. Which of the standards would NOT be appropriate for Afghan courts?
3. What additional standards should be considered for Afghan courts?

After discussing these areas, consider Area #5: Public Trust and Confidence. With respect to this area:

4. How would a court's performance in any of these areas affect public trust and confidence in the courts?
5. What are the most important things that Afghan courts can and should do to increase public trust and confidence in the courts?

PART THREE

MATERIALS ON CASEFLOW MANAGEMENT

CASEFLOW MANAGEMENT

What is it?

Caseflow management is the coordination of court processes and resources to ensure that cases move from filing to resolution in a timely manner.

- It involves the entire set of actions that a court takes to monitor and supervise the progress of cases, from initiation to conclusion.
- It has both micro and macro aspects
 - Organization and management of daily dockets
 - Management of individual cases
 - Management of the court's overall pending caseload
 - Visioning and strategic planning
 - Budgeting and resource utilization
 - Court and justice system leadership

The core purpose of caseflow management is to enable justice to be done promptly and fairly in all cases.

WHY IS CASEFLOW MANAGEMENT IMPORTANT?

Widespread concerns about court delays:

“The excessive length of judicial proceedings is a central concern of the Council of Europe.”

European Commission for the Efficiency of Justice,
Framework Programme (June 2004)

Effective caseload management enables courts to achieve their core purposes:

- ♦ To provide justice in individual cases – fairly, promptly, and economically
- ♦ To appear to do justice
- ♦ To provide an impartial forum for the resolution of legal disputes
- ♦ To protect against the arbitrary use of government power
- ♦ To establish a formal record of legal status

Focusing on caseload management leads to improvements throughout court operations

- ♦ Must re-examine traditional practices
- ♦ Need to acquire and use reliable information
- ♦ Highlights education and training needs
- ♦ Leads to improved use of information technology
- ♦ Excellent caseload management is a pre-requisite for high performance throughout the court

ABA STANDARDS RELATING TO COURT DELAY REDUCTION

Standard 2.50 *Caseflow Management and Delay Reduction: General Principle*

From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery, and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.

GOALS OF CASEFLOW MANAGEMENT

1. Fair treatment of all litigants
 - Similar cases treated similarly
 - Fair processes
2. Timely disposition of cases
 - Time frames can vary, depending on case complexity and other circumstances
3. Adequate time and opportunity for
 - Case preparation
 - Negotiation concerning resolution
 - Consideration of difficult issues
4. Predictability/certainty in case scheduling
5. High quality litigation process
6. Effective use of limited resources
7. Public confidence in the court

DIMENSIONS OF CASEFLOW AND DOCKET MANAGEMENT

1. Managing daily dockets
2. Management of individual cases
3. Management of the court's overall pending caseload
4. Trial management
5. Planning the use of available time
 - Week
 - Month
 - Year

WHY ARE CASE PROCESSING TIME STANDARDS VALUABLE?

1. Provide a statement of purpose and intent
 - Set forth what the court will seek to accomplish
2. Acknowledge the public interest in prompt and fair resolution of cases
3. Establish expectations
 - Lawyers, parties, and court staff will know how long cases are expected to take
4. Provide a framework for scheduling case events in individual cases
5. Provide a way of measuring overall effectiveness in caseflow management
6. Stimulate self-examination and continuing assessment of case management practices.

Group Exercise #3A

Caseflow Standards: Criminal Cases

The object of this exercise is to focus the attention of each participant on duration of different types of criminal cases.

1. Individual Work

Working as individuals (without discussing with the others-) take the following steps:

- a) Assume that your court has sufficient and appropriate resources and that delay and backlog do not exist. The court is functioning excellently.

Divide criminal cases into two large categories:

- i. "Routine cases" (cases relating to simple crimes, with few proofs and few witnesses, simple to hear and evaluate, a single accusation, a single defendant, etc)
 - ii. "Complex cases" (very complicated cases by the nature of the offense, number of defendants, large amount of evidence etc.)
- b) Consider this question: In these circumstances, how long should the court take to resolve each of these case types (routine and complex) assuming that the court is functioning well and has reasonably adequate resources?
 - c) Use a piece of paper in order to indicate the period of time that an ordinary, inexperienced citizen would consider appropriate for each type of case to be disposed.

Routine cases: _____days

Complex cases: _____days

2. Group discussion

When each person has finished filling out their card, take the following steps:

- a) List each participant's recommended time for each type of case.
 - i) Routine Cases
 - ii) Complex cases

- b) For the person that indicated the longest disposition time: Why should the cases take that long?
- c) For the person that indicated the shortest disposition time: Why would it be possible to dispose of such a case in so little time?
- d) For the entire group: Can you arrive at an agreement about what ought to be an appropriate standard in each type of case?
 - i) Routine criminal cases (about 80-90% of the total)
 - ii) Complex criminal cases (about 10-20% of the total)

Group Exercise #3B

Caseflow Standards: Civil Cases

The object of this exercise is to focus the attention of each participant on duration of different types of civil cases.

1. Individual Work

Working as individuals (without discussing with the others), take the following steps:

- a) Assume that your court has sufficient and appropriate resources and that delay and backlog do not exist. The court is functioning excellently.

Divide civil cases into two large categories:

- i. "Routine cases" (cases relating to simple matters, with few proofs and few witnesses, simple to hear and evaluate, a single plaintiff, a single defendant, etc.)
 - ii. "Complex cases" (very complicated cases by the nature of the complaint, number of defendants, large amount of evidence etc.)
- b) Consider this question: In these circumstances, how long should the court take to resolve each of these case types (routine and complex) assuming that the court is functioning well and has reasonably adequate resources?
 - c) Use the cards we have provided you in order to indicate the period of time that an ordinary, inexperienced citizen would consider appropriate for each type of case to be disposed.

Routine cases: _____ days

Complex cases: _____ days

3. Group discussion

When each person has finished filling out their card, take the following steps:

- a) List each participant's recommended time for each type of case.
 - i) Routine cases
 - ii) Complex cases
- b) For the person that indicated the longest disposition time: Why should the cases take that long?
- c) For the person that indicated the shortest disposition time: Why would it be possible to dispose of such a case in so little time?
- d) For the entire group: Can you arrive at an agreement about what ought to be an appropriate standard in each type of case?
 - i) Routine civil cases (about 80-90% of the total)
 - ii) Complex civil cases (about 10-20% of the total)

COMMON OBSTACLES TO ACHIEVING TIME STANDARDS

1. Existing practices may make it impossible to achieve the standards. For example:
 - No procedures for dealing with complex cases separately from other cases
 - First in-first out approach to resolving cases – priority always given to oldest case
 - All cases follow same procedures, with same events and similar timing
 - No way to identify cases that can be resolved easily and quickly with early court intervention
2. Judges and staff may not be familiar with techniques for effective case management.
3. Lawyers and parties may resist efforts to resolve cases expeditiously.
4. Existing caseload may be so large that judges and staff are discouraged from attempting to achieve ambitious time standards.
5. Court may not have enough judge and/or staff resources

USING CASELOAD MANAGEMENT INFORMATION

Key Questions About Pending Caseloads

1. What are the trends?
 - Size of total pending caseload
 - Number of cases pending longer than the applicable time standard
2. What are the old cases on the docket?
 - Which cases are over the time standard?
 - Which cases will be over the time standard soon unless action is taken?
 - What needs to be done?
3. Are there specific categories of cases that consistently take a long time?
4. Are there specific attorneys who consistently have a large number of old pending cases?

USING CASELOAD MANAGEMENT INFORMATION POSSIBLE INDICATORS OF CASEFLOW MANAGEMENT EFFECTIVENESS

Clearance rate: Annual dispositions equal to or greater than annual filings.

Pending Caseload:

- Total size decreasing over time
- Few (or no) cases pending longer than applicable time standard

Time to Disposition:

- Few (or no) cases taking longer than times called for by applicable time standard
- Times for median and 80th percentile cases decreasing over time

Judicial Productivity: Dispositions per judge increasing over time

Case Scheduling Effectiveness: High percentage of scheduled hearings take place on date scheduled (Few continuances)

Quality of Justice: Difficult to measure but important to ascertain perceptions of quality

* * *

IMPORTANT TO USE MULTIPLE INDICATORS!!!

DEFINITIONS

Backlog: The number of cases pending for more than an acceptable period of time

or

the number of cases pending for more than the case processing time standard applicable to that category of cases

* * *

Delay: Any elapsed time other than reasonably necessary required for pleadings, discovery, and court events.

PLANNING FOR BACKLOG REDUCTION

FIRST STEPS

1. Define “backlog” for your court.
 - › Does the court have case processing time standards? (If so, any cases older than the maximum period allowed under the relevant standard are part of the backlog)
 - › If the court does not have standards, what do court leaders regard as an acceptable time for resolving cases of particular types? (older cases = backlog)
2. Set priorities for case categories. Which components of the backlog should be eliminated first?
 - Criminal - Civil - Family
3. Take inventory of top priority category, beginning with the oldest cases by the year in which the cases were filed.
 - › Review registers
 - › Review case files if necessary
 - › Make lists of unresolved cases, by year filed
4. Record, for each case on each list, the information needed to take action to resolve the case.
5. Develop a plan for resolving the backlog cases.
6. Identify and organize the resources needed to resolve the cases in the backlog.
7. At the same time, develop a plan to prevent recently filed and newly filed cases from falling into backlog status.

AXIOMS OF CASEFLOW MANAGEMENT

1. Early and continuous control of case progress helps minimize delays.
2. Differentiated case management works.
3. Dispositions take place when key decision-makers have the necessary information.
4. Every case must always have a date certain, *for a purpose certain*, assigned.
5. Achieving dispositions before trial dates are set conserves time and resources.
6. Accurate and timely information is essential.
7. What you count *counts*. Information reports influence behavior.

PART FOUR

PLANNING FOR FUTURE COURT SYSTEM DEVELOPMENT

COURT SYSTEM DEVELOPMENT

KEY AREAS FOR EDUCATION AND TRAINING

1. Purposes of Courts; Unique Roles and Responsibilities
2. Caseload Management
3. Budgeting and Financial Management
4. Information Technology
5. Records Management
6. Human Resources/Personnel Management
7. Court Security; Enhancing Access to the Courts
8. Delivery of Effective Education and Training
 - ✦ Development of in-service judicial branch education
 - ✦ Linkage with research and technical assistance
9. Acquisition and Effective Use of Information
10. Building Effective Management Teams
11. Strategic Planning
 - ✦ Visioning and goal setting
 - ✦ Performance measurement
 - ✦ Feedback mechanisms
12. Court Leadership Skills
13. The Court and Justice System Environment