LAW AND ORDER TRUST FUND FOR AFGHANISTAN

Terms of Reference

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Content

1. Introduction 4

1.1 Revision of the LOTFA TOR: 4

1.2 Rationale and linkage to other initiatives: 4

2. Rationale and Fund's Functions: 6

2.1 Rationale for revision of the Fund 6

2.2 Fund functions 7

3. Theory of Change and Scope of the Fund 8

3.1 Fund Strategy 8

3.2 Fund Theory of Change 10

3.3 Fund Results 18

4. Fund Governance Structure 18

4.1. Fund's Operation 19

4.1.1 Steering Committee 19

4.1.2 Trust Fund Management Unit 20

4.1.3 Technical Working Groups (TWG) 20

4.2. Fund's Administration 21

4.3. Fund Implementation: 22

5. Contributions 23

6. Project Approval Cycle 23

6.1. Regular cycle 23

6.1.1 Project identification, design and submission 23

6.1.2. Review of Projects 24

6.1.3. Project approval and funds transfer 25

6.2. Rapid cycle 26

7. Risk management 26

8. **Monitoring, evaluation and report** 27

8.1 Context 27

8.2 Monitoring and evaluation in LOTFA 27

8.3 Reporting 28

9. Accountability and transparency 30

9.1. Accountability: 30

9.2. Transparency: 30
10. Operational Manual 31
11. Amendments, duration and termination 31

1. Introduction

1.1 Revision of the LOTFA TOR:

The Law and Order Trust Fund for Afghanistan (hereafter referred to as 'LOTFA', the 'Trust Fund' or the 'Fund') was established by the Administrator of the United Nations Development Programme (UNDP) in 2002 and amended in 2008 as a mechanism for the international community to provide financial support to the Ministry of Interior Affairs (MOIA) and the Ministry of Finance (MOF) for the establishment, payment, equipment and training of the Afghan National Police (ANP) and the General Directorate of Prisons and Detention Centers (GDPDC) in Afghanistan.

The Fund was initially set up to cover the establishment/strengthening of the police force; payment of salaries of the police force; recruitment and training activities; rehabilitation of training facilities, dormitories and other relevant buildings; acquisition of non-lethal equipment and supplies; and payment of salaries of uniformed personnel employed by the GDPDC.

Based on consultations conducted in 2016-2017, a growing view emerged that the scope of LOTFA should be expanded to include the entire justice chain (police, courts and corrections) and thereby cover all security and justice institutions, with an increased focus on anti-corruption.

The Government of the Islamic Republic of Afghanistan (hereafter referred to as GIROA or the Government), UNDP and members of the international community have agreed to continue to provide this financial support to the MOIA and the police force in Afghanistan, while expanding the support to other national Rule of Law institutions, with a revision of the existing Terms of Reference (TORs), to take effect once endorsed by the first meeting of the LOTFA's Steering Committee held on 25 November 2018 and subsequent approval by the UNDP Administrator or his or her designee.

1.2 Rationale and linkage to other initiatives:

The Trust Fund has been established as a 'Multi-Partner Trust Fund' to support the GIROA in its efforts to strengthen the Rule of Law and as an enabler for improving national security and development. As outlined in the Afghanistan National Peace and Development Framework (ANPDF, 2017), "In Afghanistan, security, unrest, and under-development are inextricably linked. Building the legitimacy and effectiveness of the state is, therefore, an important goal in and of itself. This focus on a stable and legitimate state reinforces the importance of advancing peace, building political consensus, and stabilizing security." To address the continuing security challenges, the GIROA has proposed a comprehensive reform of the justice and security sector, to restore confidence and ensure the Rule of Law, justice and security and to combat pervasive corruption, as prerequisite and enabler of sustainable economic reforms. This is consistent with global best practices and development research demonstrating that "security, justice and jobs" are the most crucial factors in breaking chronic cycles of violence and insecurity.[1] The Trust Fund will bring greater coherence to policy, planning and programming on Rule of Law under the leadership of the Government. This is also in line with the One UN framework, which supports the GIROA in achieving the ANPDF and the Sustainable Development Goals (SDGs).

[1] World Bank (2011). *World Development Report. Conflict, Security and Development*. Washington DC: World Bank.

International partners remain committed to support the GIROA in its efforts to ensure the Rule of Law for the Afghan people. LOTFA is recognized as having the potential to bring together Government, Afghan Civil Society and international partners and facilitate the coordination needed to ensure policy and programmatic coherence and the introduction of adaptive management of change in a development field affected by the operations of multiple national and international actors.

The national Rule of Law institutions are central to this effort. Therefore, GIROA, Donors and UNDP have decided to increase the scope of work under LOTFA to address the entire justice chain and cover all relevant national Rule of Law institutions, with a more robust focus on service delivery through a carefully planned, sequenced, area-based approach. The MOIA and ANP are responsible for upholding compliance with the law, and preventing, detecting, and investigating crimes jointly with prosecutors, lawyers and the courts. These institutions play a key role in the security sector to build and sustain the Rule of Law. The police service is among the most visible institutions of the State that interfaces with local communities, and if it is considered to work professionally and in the best interests of the people, its effectiveness builds trust in the Government. Justice institutions, such as the Supreme Court (SC), Attorney General's Office (AGO), Ministry of Justice (MOJ), Afghan Independent Bar Association (AIBA), and traditional dispute resolution mechanisms, amongst others, are key to providing accessible and effective justice services which enable the Afghan people to obtain redress for violations against their rights in a timely, fair and impartial manner. Legislative, oversight and accountability institutions, such as the Parliament, Second Vice President's Office, Independent Commission for the Oversight and Implementation of the Constitution (ICOIC), Afghanistan Independent Human Rights Commission (AIHRC), Ombudsman, Civil Society Organizations (CSO) and the media also play a critical role as formal and informal agencies to ensure that the state's security and justice services are accessible, responsive and delivered effectively to address the needs of the Afghan people, uphold the Rule of Law, including respect, protection and promotion of their human rights.

LOTFA's programmatic priorities, timelines and funding ranges will be guided by the LOTFA Strategic Framework (Annex 1), which will be aligned with national development strategies and plans and will establish its programmatic priorities, timelines and funding ranges accordingly. In this regard, key national frameworks include, but may not be limited to the following: the Government's Afghanistan National Peace and Development Framework (2017), the National Priority Programmes (NPP), the MOIA Strategic Plan (2018-2020), H.E. President Ghani's letter to LOTFA Donors (2015) on priorities for MOIA and ANP reform, the National Justice and Judicial Reform Plan (2017), the Afghanistan National Strategy for Combatting Corruption (2017) and the National Action Plan on UNSCR 1325-Women, Peace and Security (2015). The Steering Committee of the LOTFA will review the Strategic Framework as may be required.

The LOTFA's strategic objectives and related programmatic priorities are defined to ensure complementarity with other existing multi-donor financing instruments that support the Government, such as the World Bank's Afghanistan Reconstruction Trust Fund (ARTF) and the NATO Afghan National Army Trust Fund (ANATF).

2. Rationale and Fund's Functions:

2.1 Rationale for revision of the Fund

The Rule of Law sector in Afghanistan is characterized by the existence of a plurality of national and international actors who provide sectoral and thematic support to the national Rule of Law institutions. To date, there has not been a single platform where these actors converge with all relevant national institutions within the sector to ensure coordination and oversight on the different interventions, nor a coherent framework for a more comprehensive and integrated approach to security and justice reform in Afghanistan.

As specific development partners tend to focus on specific areas for Rule of Law support when designing targeted interventions, relatively little time and resources are invested to establish a clear evidence-base on priorities and needs for programming and adaptive management of change.[2] This lack of evidence-base may lead to an ''ad-hoc'' and "supply driven" approach to programming that relies on untested and often generic assumptions and results in support that is fragmented, non-focused and truncated.

The absence of an evidence-base and a shared understanding on needs and priorities of Afghan people (demand) and service providers (supply) has inhibited the design and development of sector-wide programming and the ability of development partners to ensure effective coordination and monitoring of their respective interventions, leverage their expertise and resources to ensure complementarity and adequate coverage of the established priorities/needs and define their roles in addressing these according to their comparative advantage vis-à-vis other development partners.

For the Government, this lack of oversight and control presents a situation where the Government's ability to steer development efforts becomes limited, impacting national ownership and making development support to become mostly supply-driven.

The revised Trust Fund provides an opportunity to establish a platform to bring Government and development partners together in support of the national development strategies to ensure greater coherence in policy, planning, programming, monitoring and adaptive management of change; and to consolidate ongoing and future interventions under one Government-led coordination mechanism between the Government, UN and Donors. This will bolster the Government's ability to guide and steer partners' interventions in a comprehensive, integrated and coordinated manner. The previous LOTFA (2002-2017) was not able to provide LOTFA stakeholders with this required flexibility.

Therefore, in order to re-establish LOTFA as a Multi Partner Trust Fund, UNDP is appointing the Multi-Partner Trust Fund (MPTF) Office as the Administrative Agent (AA) of LOTFA.[3]

The revision of the Trust Fund comes at an opportune moment with the approval of the new MOIA Strategic Plan (2017), the National Justice and Judicial Reform Plan (2017), the Afghanistan National

[2] Sector-wide assessments and perception surveys are even more rare (due to their time and cost), due to which development partners may act with only a partial or ''anecdotal'' understanding of the priorities and needs within the sector.

[3] Donors will have the option to provide parallel contributions to all projects under LOTFA. In this regard, the agreement or arrangements will be managed and administered bilaterally between the donor and implementing partners and not the Administrative Agent of the Fund.

Strategy for Combatting Corruption (2017) and Afghanistan's National Action Plan on UNSCR 1325 – Women, Peace and Security (2015). The Fund's Strategic Framework and activities have been aligned to these.

2.2 Fund functions

The Trust Fund will function as a ''catalytic'' funding mechanism within the Rule of Law sector in Afghanistan, which will allow Government and international partners to jointly plan and design sector-wide, comprehensive equitable programming and adaptive management of change responsive to the needs, concerns and perspectives of Afghan men, women, girls and boys. This will address the entire justice chain (police, courts, corrections) using 'pooled' resources to support the achievement of jointly agreed Strategic Objectives, and to coordinate and monitor partners' interventions within the sector.

The Trust Fund will allow for greater adaptability, flexibility and responsiveness in the allocation and delivery of funds to respond to emerging needs in the kinetic political and operational environment of Afghanistan. The Trust Fund will provide predictability and reliability for multiyear programming and adaptive management to monitor the impact and outcome of interventions in the sector.

The Trust Fund will enable the Government, working with regional and municipal authorities, to strengthen national and local ownership within the Rule of Law sector, drive nationally-led and locally owned reform efforts and ensure government-coordinated sector-wide programming and adaptive management of change in alignment with national and appropriate sub-national strategies, plans and priorities. The strength of the Trust Fund as a platform for strategic/policy decision-making will be evidenced in its ability to complement policy with programming and adaptive management of change through the allocation of Trust Fund resources to finance activities, which implement Government decisions and policies. The Trust Fund will therefore be instrumental in supporting the implementation of national Security and Justice reform strategies and initiatives, as well as the Government's Anti-Corruption efforts. There will naturally be a close alignment between the Trust Fund and the Government's Council for Rule of Law. Support to other decentralized forums for Rule of Law at sub-national levels could be considered to bring together Government and Civil Society actors. There will also be a natural complementarity between the work of the International Police Coordination Board (IPCB) and the MOIA Support Team (MST) and the discussions in the LOTFA Steering Committee, as this relates to relevant LOTFA issues. The Trust Fund will provide a platform for coordination and information and knowledge sharing between partners to better inform planning, programming and adaptive management of change that would not only strengthen the implementation of projects under the Trust Fund, but also complement the implementation of other interventions by stakeholders as well.

The Trust Fund will be a mechanism to mobilize resources for implementation of the Government strategies and plans and finance other supporting activities (for example, to engage CSO's including women's' organizations) in implementation.

The Trust Fund will complement the current focus of LOTFA on institutional strengthening with a future stronger engagement and adaptive management of change at the community-level to monitor the effectiveness of Rule of Law service-delivery on the ground and how this impacts communities and Afghan people. ***This is a crucial shift in LOTFA programming which will provide citizen feedback on Government***

policies and programmes, strengthen community engagement overall and improve citizen's voice and accountability mechanisms.

3. Theory of Change and Scope of the Fund

3.1 Fund Strategy

LOTFA was established and has operated as a UNDP Project since 2002, focusing on salary payments to MOIA personnel including procuring non-lethal equipment and supporting critical police infrastructure. From 2012 onwards, a capacity development component was included in LOTFA which expanded the Trust Fund to support the MOIA on areas such as payroll management, institutional reform and police professionalization. ***With the present revision of LOTFA, the scope of the Fund will be expanded to cover the whole Rule of Law sector***. Accordingly, the Trust Fund will design and deliver programming across the justice chain in order to support the effective delivery of State-based Rule of Law, through a carefully planned and sequenced, area-based approach – initially targeting and consolidating highly populated urban areas, and expansion to reach rural communities. Support to Police, formal justice and traditional dispute resolution mechanisms and Corrections should be integrated and planned, based on the needs of the Afghan population. The revised Trust Fund will also address critical programming gaps within the Rule of Law sector, such as a comprehensive engagement with the formal justice sector in their interaction with traditional dispute resolution mechanisms, while supporting the engagement of Afghan civil society and local media in security and justice reforms to enhance civilian oversight, monitoring and feedback loops as well as greater accountability and transparency. The Fund Strategy and Theory of Change have been informed by lessons learned from international assistance to Justice and Security sector reform, both from the global and Afghan context.[4]

The Trust Fund's planning and programming will be guided by the Fund's Strategic Framework, which defines the Strategic Objectives the Fund will pursue throughout the fund cycle. The Strategic Objectives are organized according to the four established 'Thematic Windows', i.e. 1) Security, 2) Justice, 3) Anti-Corruption and 4) MOIA Payroll. Meeting the financial requirements of MOIA Payroll will remain the primary priority of the Fund.[5] This Strategic Framework sets the programmatic parameters for the Steering Committee to approve the activities to be financed through the Fund. The Strategic Framework will be reviewed annually to ensure the Fund's policy decisions, funding allocations and project approvals are aligned with the Government's strategies, plans and priorities. The Fund's Strategic Framework is outlined in Annex 1.

[4] The lessons learned have highlighted the importance of designing a joint strategy to coordinate national and international assistance within the framework of a common approach, with a strong emphasis on securing national ownership and leadership and on strengthening the governance of Justice and Security sector reform processes, allowing for flexible and adoptive management of the related initiatives. These lessons have been extracted from publications of leading organizations and think-tanks in this field such as the Clingendael – Netherlands Institute of International Relations, Friedrich Ebert Stiftung (FES), Organization for Economic Cooperation and Development (OECD), Special Inspector General for Afghanistan Reconstruction (SIGAR), Stimson Center, UK's Department for International Development (DFID), United Nations (UN), United States Institute of Peace (USIP) and World Bank (WB).

[5] The Steering Committee as the highest decision-making authority within the Fund will make fund allocations based on the priorities and requirements under each Thematic Window.

The strategy for the operationalization and implementation of the Fund is based on the following principles and priorities:

a) *Establishing a robust gender sensitive empirical evidence-base:* A robust evidence-base, with up-to-date and reliable collection and analysis of quantitative and qualitative data, is essential for determining sector-wide and specific priorities and needs for informing policy, planning, and programming. Sector-wide programming will take an integrated and comprehensive approach towards identifying and monitoring priorities and needs of the Afghan people and security and justice service providers. The evidence-base will establish clear baselines (including mid-line and end-line) to measure progress and impact over-time and evaluate interventions. Evidence-based programming needs to be fully owned and driven by Afghan authorities to inform planning of demand-driven Rule of Law and international support to the sector.

b) *Enhancing Government coordination and oversight:* The Trust Fund will strengthen the position of the GIROA to steer programming in alignment with its priorities, strategies and plans. By bringing Government institutions, Donors and (inter)national partners together under the Fund, the Government can effectively exercise oversight by ensuring coordination between interventions and leverage the expertise and resources of development partners to ensure adequate coverage of the established priorities and needs. This will also support policy coherence on institutional reform strategies and programmes. Consequently, it will strengthen national ownership and make development support more demand-driven.

c) *Strengthening service-delivery at local level:* The Trust Fund will have a stronger focus on equitable service-delivery at community-level so that Afghan people and communities perceive the direct and immediate impact of improved service-delivery.[6] The focus on service-delivery at the community-level will be complemented by ongoing needed support at the levels of policy development and planning and institutional strengthening. The Trust Fund will also strengthen community-based monitoring through engaging Afghan CSO's and enable citizen feedback and voice mechanisms.

d) *Increasing strategic communication and outreach:* The Trust Fund will support the Government in public and community outreach on strategic Government reform plans in order to receive citizen's feedback and inform Government's reform efforts and policy development. Simultaneously, by engaging CSO's, including women's' organizations, in implementation and community-based monitoring, a feedback loop towards the Government will be ensured. This focus on communication will also help to generate success stories to demonstrate immediate impact, acceptability, garner local support and create visibility.

e) *Enabling adaptive management:* The stronger focus on M&E will ensure the availability of quantitative and qualitative data to inform the Steering Committee in its decision-making on policy, fund allocation, planning, and programming. The use and application of actual and updated data will provide an ongoing feedback loop to assess the probability and resource effectiveness and efficiency for achieving intended results. This will give the Fund the needed adaptability to responsibly plan and manage the Fund's investments and activities.

f) *Cross-cutting approaches:* Throughout the Fund's activities, UNDP as host of the Trust Fund Manager Unit will ensure a Human Rights-based approach to programming, a focus on Gender,[7] Women's empowerment and adherence to the UN's Human Rights Due Diligence Policy (HRDDP). Where the Trust Fund engages in infrastructural support activities, environmentally friendly and

[6] This should ensure that service-delivery meets the needs of men, women, girls and boys.

[7] Gender mainstreaming is a key approach within programming under the Trust Fund. Activities implemented under the Fund will seek to advance the objectives as stated in the National Action Plan on UNSCR 1325 – Women, Peace and Security.

energy efficient solutions will be ensured, for example by constructing environment-friendly, energy-efficient infrastructure for Police, Courts, and Correctional facilities.

The Fund's strategy is based on the following assumptions:

a) *The Fund will be capitalized to ensure predictability and reliability of funding:* Security and Justice Sector reform is a long-term process, which requires multi-year commitment and resources to plan and deliver the needed support over-time.
b) *National ownership directs Trust Fund planning and programming:* Strong Government leadership ensures that projects and Fund delivery is in line with national strategies, plans and priorities. Inversely, changes in political leadership might produce changes in the Fund's direction. Political instability (e.g. after elections) will severely affect the Fund's operations.
c) *Both State and non-State actors support national development efforts:* The Trust Fund in its catalytic role as a funding mechanism for the Rule of Law sector has the potential as strategic convening platform to bring actors together for policy dialogue, planning, and programming. It is critical for this coordination to lead to synergies between efforts undertaken by State and non-State actors as this can otherwise produce inefficiencies, overlap, and duplications within the sector.
d) *Security conditions allow for service-delivery at the community-level:* Government institutions and CSO's are able to access communities in rural areas to expand and improve State-based Rule of Law service-delivery to those geographically isolated areas previously underserved by the State.

Sustainability of the Fund's activities will be achieved by ensuring that Government has the capacity to deliver on its commitments in a consistent manner and by sustaining its own operations through Government funding.[8] It is the expectation that the Government will gradually increase its funding to finance the national security and justice institutions in order to consolidate the progress achieved under the Fund towards ensuring its sustainability. This will compensate for any potential decrease in donor contributions to the Fund over-time.

3.2 Fund Theory of Change

The Fund's goals are to i) improve State-based Rule of Law service-delivery to Afghan people; ii) increase security and safety for Afghan people[9] at community-level; and iii) foster trust in the State and enable the State to build its legitimacy with the Afghan people. These goals are aligned with the national strategic frameworks on Security,[10] Justice[11] and Anti-Corruption,[12] as well as in the National Action Plan on Women, Peace and Security (UNSCR 1325),[13] and are reflected in the Government's respective sectorial

[8] Ensuring financial sustainability lies outside of the scope of the Fund and will depend on the development and economic growth of the country.
[9] This applies to both the actual security conditions on the ground, as well as the public's perception and sense of safety and security.
[10] As stated in the Strategic Goals outlined in the MOIA Strategic Plan (MISP) 2018-2021: 1) Strengthen the public order and ensure security; 2) Provide law enforcement through detecting crime and countering criminal activity; 3) Provide effective and transparent citizenship services that are trusted by the public; and 4) Institutional reform to strengthen the efficiency and effectiveness of the MOIA (p. 18).
[11] As stated in the National Justice and Judicial Reform Plan (NJJRP) (2017) and its six Strategic Goals. The Fund goals are accurately reflected in the vision of the NJJRP as: ''(…) providing effective justice and judicial services, better access of people to justice, ensure Rule of Law, guarantee competency, protect and secure the basic rights and liberties of citizens, and enhance people's trust on justice and judicial sector'' (p. 5).
[12] As stated in the Afghanistan National Strategy for Combatting Corruption (2017): ''The goal of Afghanistan's anti-corruption drive is not only to improve efficiency and reduce waste but also to restore citizen's trust that their government and its officers are working in the public interest. While the immediate causes of corruption are government officials colluding to defraud the public interest, in our strategy the solution will come from collective action to build a domestic consensus that corruption will not be tolerated any longer.'' (p. 4)
[13] As stated in the National Plan (NAP) on Women, Peace and Security (UN Security Council Resolution 1325) (2015) in its strategic priorities on 'Participation', 'Protection', 'Prevention' and 'Relief and Recovery.' The NAP states that: ''The Government will implement and monitor reforms and capacity-building programs in the governance, justice and security sectors in order to incorporate a gender responsive approach based on

strategies on these areas. The Fund' Strategy and Theory of Change will support the Government in furthering its goals, strategies and plans.[14]

There are several internal and external challenges affecting the development and delivery of state-based Rule of Law in Afghanistan. The Security sector's key challenge is to build up the State's security architecture against the background of an ongoing and active conflict. Almost two decades after the overthrow of the Taliban regime, the Afghan National Defense and Security Forces (ANDSF), comprised of the Afghan National Army (ANA) and the ANP, are engaged in an ongoing fight against insurgent groups or ''Anti-Government Elements' (AGE)" who are disputing the Government's territorial, political, and administrative control over significant parts of the country. [15] Since 2015, this counterinsurgency is being conducted by the ANDSF with support of the NATO-led Resolute Support Mission (RSM). Although the Afghan people have demonstrated an overall improved confidence in the capacity of the ANDSF to provide safety and security for Afghans,[16] there remain significant concerns regarding the capacity of the ANDSF to sustain combat-levels with the high attrition rates facing the ANDSF.[17] The role of the ANP within the military-style counterinsurgency operations has led to a disconnect from people's security needs at the local levels.[18] In addition, the ANP is often poorly staffed, trained and resourced to deliver adequate law enforcement services to communities, further constrained by weak justice institutions that are disconnected from traditional dispute resolution mechanisms. Concerns around professional capacity and corruption also affect the capability of the security forces. The existence of ''Ghost Officers'' within the ANA and ANP has led to increased scrutiny on the ANDSF from Government and international partners regarding the use of international funding to support the security sector in Afghanistan. It is perceived that low pay, ineffective training due to weak police development, coupled with harsh living and working conditions and the limited career perspectives lead the ANP to engage in 'predatory behavior' on the local communities, such as extracting bribes, extorting money or even more serious human rights violations.[19] The role and function of the police is further undermined by the availability of alternative local non-State security providers, e.g. clan-based militias. As a consequence, police are neither seen by the Afghan people as a legitimate, capable and reliable State actor, nor as having the conditions to provide safety and security to the people, in accordance with their security needs and concerns, resulting in an overall low

women's needs. These efforts will lead to the establishment of policy and legal frameworks that protect women who participate in conflict resolution and strengthen their role at the negotiating table and in the security sector.'' (p. 5)

[14] The goals and aspirations of the Government are summarized in the ANDSF (2017): ''Building the people's trust that their government can provide a better future for them and their families is central to our national development plan. Our people must have confidence in a state that is well-governed through laws and institutions, provides a voice for the people to hold their government accountable, and delivers quality services'' (p. 2).

[15] According to SIGAR, as of August 2016, only 63 percent of the country's 34 provinces were under Afghan government control or influence. This was down from 72 percent by the end of 2015. SIGAR (2017). *Reconstructing the Afghan National Defense and Security Forces. Lessons from the U.S. Experience in Afghanistan*, p. 108.

[16] Although there remain challenges to the ANDSF's capacity to provide security, there is an improved perception that the ANA and ANP are ''honest and fair'' up to 60% in 2017 from 55% in 2016 for the ANA and up to 44% in 2017 from 37% in 2016 for the ANP. The Asia Foundation, *2017 Survey of the Afghan People*, p. 53.

[17] According to SIGAR, ANA attrition rates are just below 3 percent per month (or about one-third of the force annually), while the ANP attrition rates which have been consistently around 2 percent per month (or about a quarter of the force annually). SIGAR (2017). *Reconstructing the Afghan National Defense and Security Forces. Lessons from the U.S. Experience in Afghanistan*, p, 118 and 123.

[18] The SIGAR 2017 Lessons learned report on the ANDSF found that: ''Under Afghanistan's four-year plan for the ANDSF, the ANP's mission is to conduct community policing with a focus on rule of law. However, based on years of training and development as a counterinsurgency force, as of 2016 the ANP lacks the ability to protect the general populace as a civilian policing institution and struggles to address criminality and crime prevention that is not insurgent-related.'' *Idem*, p. 122.

[19] Idem, p. 131.

trust in the ANP.[20] In many situations world-wide Armed Non-State Groups have been offered a new relationship with the national police and Army providing that they pass human rights vetting.[21] This potential should be examined in Afghanistan as part of the longer-term strategy.

Main underlying causes to these challenges are the predominant counterinsurgency paradigm for policing in Afghanistan and the (in)availability of institutional resources and capacity to optimize service-delivery. With parts of the national territory disputed by AGE's, the policing model will likely be driven in practice by the security imperatives on the ground in high-risk provinces. However, the Senior Leadership of the ANDSF must be convinced that delaying investments in a civilian or community-oriented policing model, coupled with limited professional and career development for the police, will have long-term detrimental effects on the role the ANP may play in stabilizing Afghanistan. The people's interaction with the police, as the direct face of the Government for communities at the local level, will determine to a large degree the public perception of the State's credibility and legitimacy. Investments also need to be made in gender-sensitive police education, basic literacy, and numeracy, code of conduct and discipline as a foundation for further professionalization.

The Justice sector faces distinctive problems. The national justice institutions have limited resources to ensure the provision of services with full geographical reach throughout the country. Afghan people, especially women, have little legal awareness on rights and how to claim these in order to obtain remedies. Access to justice is oftentimes denied to Afghan people, particularly vulnerable groups such as women and children. As a consequence, public trust in the justice sector has consistently been lower than most other sectors.[22] Therefore, informal justice solutions, mediation and traditional dispute resolutions mechanisms are still oftentimes preferred by Afghan people due to their immediacy and perceived cultural appropriateness.[23] The informal justice sector is, however, better than no justice service-delivery at all, as it must be remembered that "justice delayed, is justice denied". Therefore, the widespread nature and the respect with which the informal sector is held should be harnessed by the Government wherever geographically possible. This will mean empowering and recognizing local mechanisms like the jirgas and shuras and also providing appropriate mentoring, education on all laws and monitoring of their performance, in particular with emphasis on their treatment of vulnerable groups such as women, children and religious and ethnic minorities.

Underlying causes are the (in)availability of resources to ensure geographical presence of justice institutions (MOJ, AGO, Courts) throughout the country,[24] including rural areas, combined with weak planning capacity to allocate the available resources in line with the demand. The national budget is under constraints with little allocation for the formal justice sector. This also affects the ability of justice

[20] There has been a decline in the perception that the ANP is effective in improving security from 46% in 2014 to 39% in 2017, although there was a slight improvement from 2016 to 2017. The Asia Foundation. *2017 Survey of the Afghan People*, p. 53.
[21] El Salvador and East-Timor are but two examples.
[22] According to the World Justice Project (WJP) 2017 Report on the Rule of Law in Afghanistan, Afghans have the least trust in the courts (43%) across all government institutions. The Police is the national institution most trusted (65%) by Afghans. WJP, *2017 Report on the Rule of Law in Afghanistan*, p. 19.
[23] The trust in informal dispute resolution mechanisms is shown by a preference of Afghan people to report crime to these mechanisms (57.5%), such as the local Shuras/tribal elders (34.9%) and to *maliks* and tribal leaders (22.6%), as against to the ANP (50.7%). The Asia Foundation, *2017 Survey of the Afghan People*, p. 49.
[24] Insufficient resources were seen by Afghans as mayor problems faced by the justice system to conduct criminal investigations and for the functioning of the courts. WJP, *2017 Report on the Rule of Law in Afghanistan*, p. 14-15.

institutions' public awareness initiatives to reach Afghan people. Another key obstacle to effective justice service-delivery is the insufficient knowledge of formal justice providers to inform Afghan people on legal avenues for obtaining remedies for their grievances. A key structural challenge facing the formal justice sector are the cultural values of the people who tend to seek out traditional dispute resolution mechanisms in accordance with their religious and tribal values and beliefs.[25]

This situation is compounded by the perception that formal justice mechanisms are 'imposed by the international community' and therefore 'foreign' to traditional dispute resolution practices in line with Afghan culture. This external factor further underlines the need for support, awareness raising, community/public outreach and education, to include local community and traditional leaders and elders. The population will only own and respect those mechanisms that they accept as truly Afghan. Changing the justice system is a long-term process and will take place gradually over generations, not imposed by fiat.

Corruption remains a significant challenge for the GIROA and for the Afghan people.[26] Corruption, whether in the form of petty or grand bribery, fraud, or misuse of funds, drains the State systematically of essential resources to fund its own administration, which in turn represents challenges to financial sustainability and legitimacy. As a result, State institutions are at risk of underperforming and under-delivering critical services to the Afghan people, potentially excluding vulnerable groups and far-out geographical areas of the country, particularly in rural areas. This is especially true for the Justice and Security sector.[27] This will also affect the people's perception and experience of justice and fairness, as corruption undermines the constitutional principle of equality. As a consequence, trust in the credibility and legitimacy of the Government and political leadership is at risk.[28]

Underlying causes are the suboptimal performance of the ''checks and balances'' within the Afghan democratic system. As a result, elites and power-holders within the State can pursue specific interests to profit from corruption and renegotiate national budget allocations to serve particular interests and strengthen their position and influence vis-à-vis Afghan people. This undermines the people's confidence in their (elected) leaders and authorities.

It is difficult to define quick and easy solutions to these problems. Without employing traditional dispute resolution mechanisms and dialogue between these brokers, Afghan civil society, government and security service providers as a foundation to future institution building, there is significant risk that further sections of the population may sympathize with the agenda of anti-government elements and a more radicalized form of traditional justice.

In light of the above, the Fund's Theory of Change (ToC) is illustrated in Figure 1 below and provides a visual outline of 'critical pathways' to address the problems identified. To strengthen the security

[25] Local Shuras/Jirgas continue to be preferred by Afghan people over State Courts. Afghan people find Shuras/Jirgas to be more ''fair and trusted'' than State Courts (82% as against 63%), better ''follows norms of the people'' (77% as against 56%) and is more ''effective at delivering justice'' (74% as against 51%). The Asia Foundation, *2017 Survey of the Afghan People*, p. 103.

[26] According to the Corruption Perception Index by Transparency International, in 2017, Afghanistan was ranked the 177th most corrupt country in the world out of o total of 180.

[27] The Asia Foundation, *A Survey of the Afghan People: Afghanistan in 2016*, 2016, p. 108.

[28] Satisfaction with the Government's performance had been declining from 80% in 2007 to 49.1% in 2016 but has seen a slight improvement to 56.9% in 2017. *Idem*, p. 96.

situation, the ANP's presence needs to be sustained throughout the country, with adequate equipment and infrastructure to allow for optimal conditions of service. As a priority, a community-policing model that is appropriately adapted and socialized for the Afghan context, is essential for the police service's effective engagement with local communities, to meet the needs of the Afghan people. Ongoing police professionalization (including literacy and numeracy, code of conduct and discipline) and improved living conditions for female and male officers will lead to significant enhancement of police performance and service-delivery. The MOIA will need to firmly address cases of corruption and abuse of authority within the police and demonstrate its political resolve to prosecute emblematic cases to signal a shift in policing culture.[29] If the MOIA shows its determination to sustain these efforts, then the availability and access to security services will increase, with functionality improved on key police performance areas. This will enhance police responsiveness on public security needs and police performance and inform policy and planning to enable ongoing improvements in service-delivery.[30] Maintaining close community-police engagement at the local level will be key to this. In time, this will lead to stable conditions of safety and security with the establishment of effective Rule of Law in the country.

Investments in strengthening the capacity of security and justice institutions at all levels, as well as building synergy between and improving access to security and justice service providers (Police, Prosecutors, Legal Aid, Courts), including synergy with traditional dispute resolution mechanisms, is essential for building the justice chain in Afghanistan. These investments need to be met with increased institutional capacity (i.e. staff, resources, knowledge) of justice sector institutions. When justice service providers address grievances by providing timely and effective remedies and communities have an enhanced role in demanding quality justice services and hold justice sector institutions accountable (e.g. through Civil Society and media) and demonstrate that remedies through the formal sector are compatible with Afghan cultural values and traditions, then the people's confidence in the State to ensure fairness and justice will increase. It is key to establish linkages between the formal justice system and traditional dispute resolution mechanism[31] to increase opportunities for people to fair, just and timely solutions, in compliance with Human Rights standards, to meet their needs.[32]

With the firm commitment to halt corruption and with the strict and diligent application of governmental internal controls and oversight mechanisms, the State institutions' resources will be put to use for institutional performance and service-delivery. This will also show the Government's resolve to transparency and accountability. With State institutions serving the Afghan people in all territories, the State will promote social cohesion with the people perceiving the State as upholding equality before the Law, thereby contributing to legitimacy, trust, and confidence in the State. If the Government stands fast by its commitment and prosecutes and adjudicates emblematic cases of corruption, then people will strengthen their confidence in its democratic elected leaders.

[29] There is a decrease in confidence amongst Afghans from 24% in 2013 to 21% in 2017 that high-ranking Government official caught in corrupt practices will be prosecuted and punished. In 2017, 79% of Afghans believed that the accusation against a high-ranking Government official would be ignored (29%) or that an investigation would be opened but never reaching a conclusion (50%). WJP, *2017 Report on the Rule of Law in Afghanistan*, p. 9.

[30] It is important that police service-delivery becomes responsive to people's most pressing needs. For example, this includes the capacity of the police to effectively address gender-based violence, as this remains a major problem for women and girls. Men and women should be able to report crimes and provide feedback on police's performance and behavior without fear of retribution.

[31] As recognized and accepted by the communities at the local level.

[32] This requires traditional dispute resolution mechanisms to be sensitive and responsive to issues from vulnerable groups, such as women and children.

The ToC can be summarized as follows: (1) *If* national institutions increasingly provide responsive and effective State-based Rule of Law services to meet the needs and expectations of the people, *then* people will acknowledge the State's authority and monopoly as security provider within the country. (2) *If* responsive national institutions demonstrate a continuous engagement with people to improve performance and service-delivery, *then* people will strengthen their confidence in the State. (3) *If* State legitimacy and trust in its democratic authorities are sustained over-time, *then* the Afghan State will have a viable and durable way ahead.

Figure 1: Theory of Change

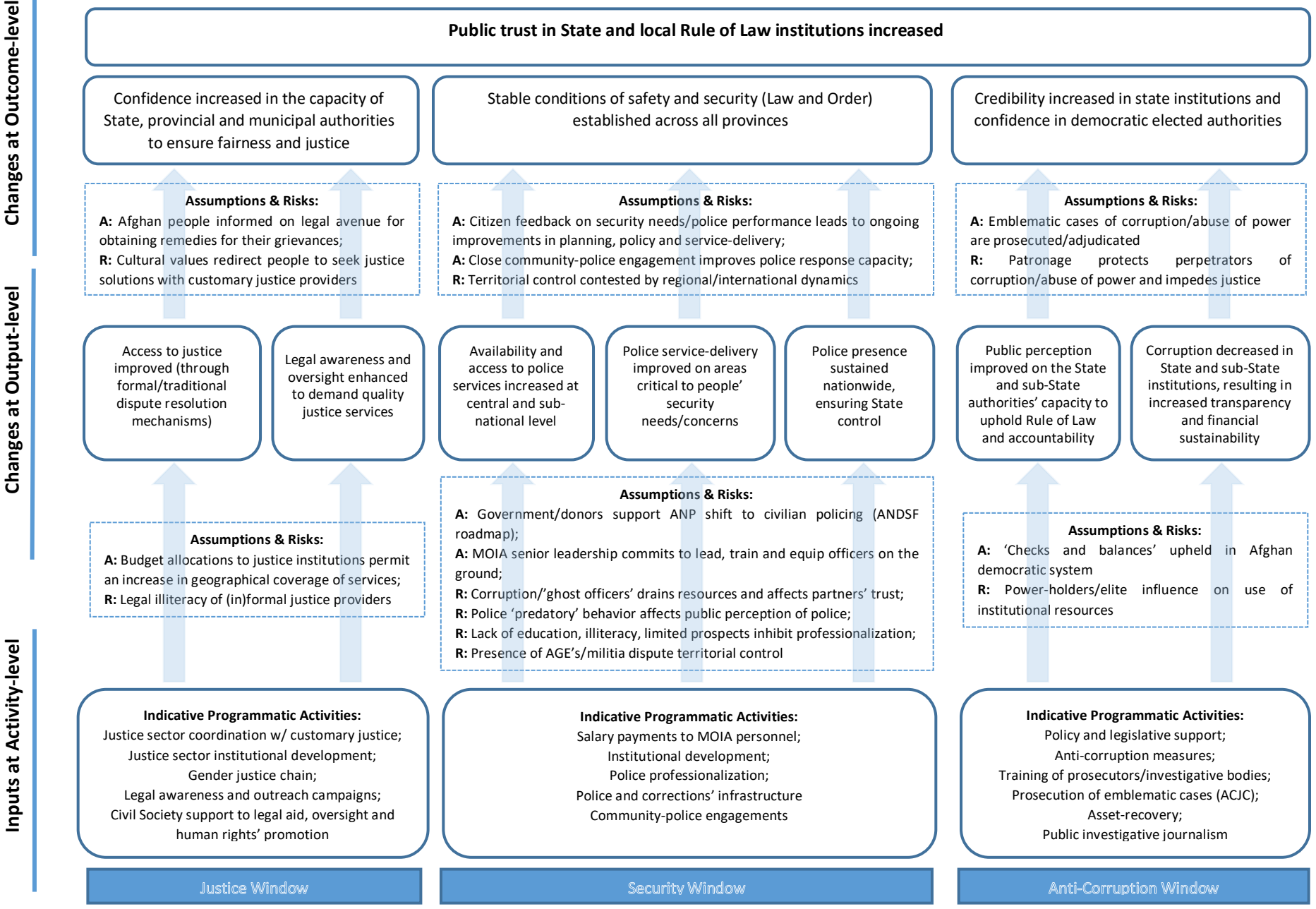
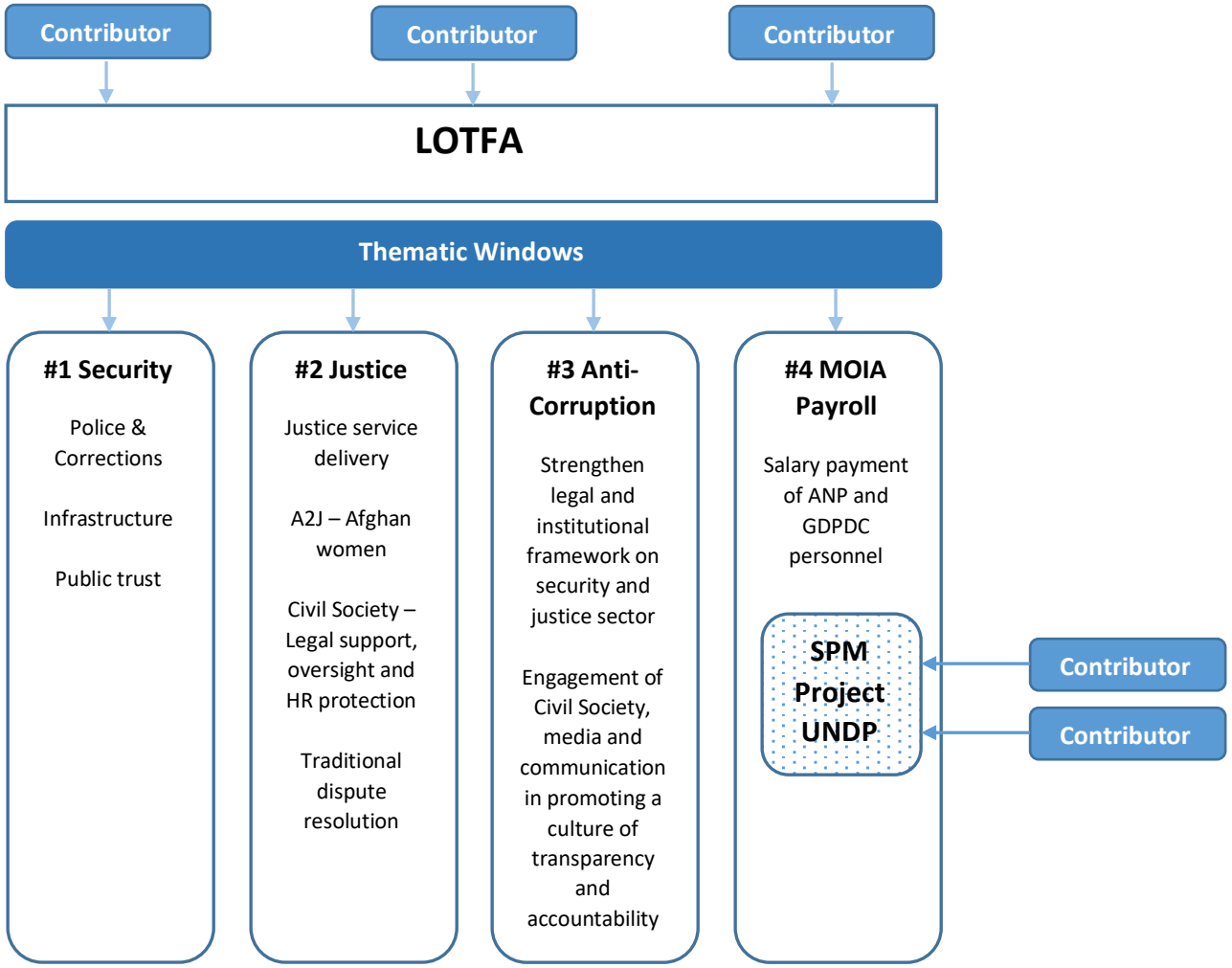


Figure 2: Fund Thematic Window architecture



3.3 Fund Results

Fund Goals:

i) Improve State-based Rule of Law service-delivery to Afghan people;
ii) Increase security and safety for Afghan people at community-level;
iii) Foster trust and enable the State to strengthen its Social Contract with the Afghan people.

Fund Outcome:

1) Confidence increased in the capacity of State, provincial and municipal authorities to ensure fairness and justice.
2) Stable conditions of safety and security (Law and Order) established in target provinces.
3) Credibility increased in state institutions and confidence in democratic elected authorities.

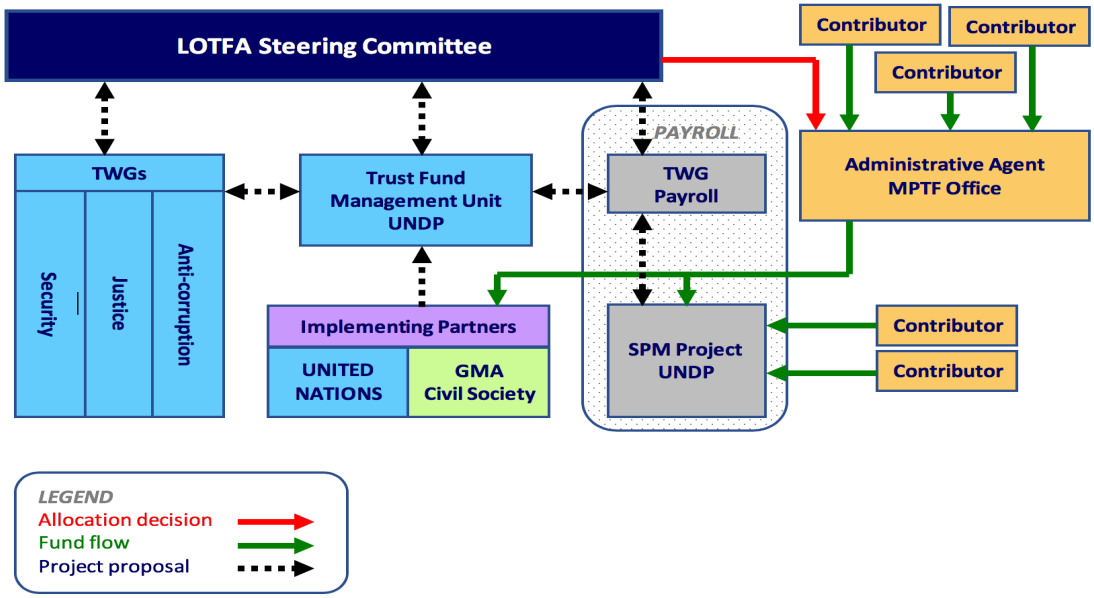
The fund-level Results framework is included in Annex 2 to this TOR.

Disclaimer: The Fund Results' framework will be reviewed on an annual basis and updated when necessary. This will ensure that the Fund's goals, outcomes, (indicative) outputs, and corresponding indicators remain relevant to guide the Trust Fund's investments and activities to address the priorities and needs of the Afghan State and people.

4. Fund Governance Structure

The Fund's governance involves three levels: Operation (Steering Committee, Technical Working Groups and the Trust Fund Management Unit), Design and Administration (MPTF Office) and Implementation (implementing entities).

Figure: Governance Architecture



4.1. Fund's Operation

4.1.1 Steering Committee

The Steering Committee is the highest decision-making authority within the Trust Fund and is charged with the strategic guidance and general supervision of the Fund, subject to UN regulations, rules, policies and procedures. It is chaired by the Ministry of Interior plus Deputy Chairs and co-chaired by the UNDP Resident Representative.

The Steering Committee comprises the following members, who hold decision-making authority:

- The Chair and the Deputy Chairs as appointed by H.E. President Ghani[33] and the Co-Chair.
- Donor Representatives.[34]
- United Nations System (UNS) representatives.

The MPTFO as the Fund administrator and ex officio member without decision-making authority.

Observers may be invited to the Steering Committee meetings but will not have decision-making authority.[35]

Responsibilities:

The Steering Committee meets bi-annually; however, it could also convene extraordinary meetings if deemed necessary. It is responsible for the following tasks, subject to UN regulations, rules, policies and procedures:

- Approve the Fund's strategic guidelines and the global results framework;
- Approve and update the Fund's Terms of Reference, as required;
- Supervise the progress of the Fund's results framework based on report updating (program-related and financial), prepared by the Trust Fund Management Unit and the MPTFO;
- Approve the Fund's risk management strategy and review risk monitoring regularly;
- Approve the Fund's Operational Manual;
- Approve projects to be financed by the Fund and make funds allocations decisions;
- Approve Fund's direct costs, specifically those related to the Trust Fund Management Unit to support operations, evaluations and audits;
- Review and approve regular reports consolidated by the Trust Fund Management Unit based on progress reports submitted by implementing entities;
- Request through the Trust Fund Management Unit, two separate evaluations (mid-term and final) about the overall fund's performance;
- Decide on extensions of the Fund's duration.

The Steering Committee makes its decisions by consensus. The Fund's Operational Manual provides more details on the Steering Committee's functioning.

[33] H.E. President Ghani, on 15 April 2018 through letter 1471, appointed the Minister of Interior Affairs as Chair of the Steering Committee, with the Finance and Administration Deputy General of the Attorney General's Office (AGO), the Head of Judicial Force Management of the Supreme Court and the Deputy Minister of Finance, as deputy Chairs of the Steering Committee.

[34] This includes Donors that provide parallel contributions to projects under LOTFA.

[35] Observers are invited following review and approval of the Committee's Chairmanship in consultation with current members. Observers may be non-contributing donors, International Partners, Civil Society Organizations and other Multi-Donor Financing instruments.

4.1.2 Trust Fund Management Unit

It is the entity responsible for the operational functioning of the Fund and this function is performed by the UNDP Country Office in Afghanistan. The Trust Fund Management Unit provides technical and administrative support to the Steering Committee and the Technical Working Groups (TWG) and organizes the processes of projects' proposals revisions, Fund's monitoring, evaluation and reporting as well as risk management.

UNDP will submit the Trust Fund Management Unit Organigram and budget to the Steering Committee for its approval. These will be annually reviewed and adjusted by the Steering Committee as per needs and budget availability.

Responsibilities:

The Trust Fund Management Unit main functions are:

- Advise the Steering Committee on strategic priorities and program-related and financial allocations.
- Support the development of projects to ensure coherence and risk management and to supervise the application of cross-cutting approaches within the Fund;
- Request funds transfer to the Administrative Agent based on decisions made by the Steering Committee;
- Fund monitoring through a Fund-level Results framework;
- Commission assessments, studies, surveys as instructed by the Steering Committee and the TWGs;
- Provide logistical and technical support to the Steering Committee and to TWGs in the preparation and submission of minutes of meetings, project documentation, including work plans, budgets and related revisions in line with the decision(s) of the Steering Committee;
- Analysis and management of Fund's knowledge, including knowledge systematization, establishment of good practices and lessons learned and proposals of recommendations;
- Ensure monitoring and control of operational risks;
- Consolidate the narrative annual and final reports submitted by implementing entities and present the consolidated report to the Steering Committee for approval;
- Develop a Fund's communication strategy;
- Develop the Fund's resource mobilization strategy.

The costs of the Trust Fund Management Unit (TFMU) will be charged to the Fund as direct costs to be approved by the Steerinig Committee. UNDP will establish the Trust Fund Management Unit as a Management Project within its ATLAS finance system. UNDP will conduct contracting procedures related to the Trust Fund Management Unit staff.

4.1.3 Technical Working Groups (TWG)

The TWGs serve as consultative bodies for each Thematic Window to coordinate the provision of technical inputs and support to assessments, studies, surveys, reviews and evaluations, as well as project proposal reviews, project monitoring, risk management and implementation issues. The TWGs will provide recommendations to the Steering Committee for decision-making and will operate on the premise of consensus. The TWGs are comprised of technical representatives from Ministries, Donors and the relevant UN Agencies. Other relevant stakeholders may be invited to participate in TWG meetings, subject

to the approval of the stakeholders. The TWGs are scheduled to meet monthly or as required to reduce transaction costs for optimizing the efficiency and effectiveness of the Fund's operations.

Responsibilities:

- Provide technical analysis and strategic advice to the Steering Committee on emerging issues and trends of the specific Thematic Windows;
- Facilitate, coordinate and quality assure assessments, surveys and studies within the specific Thematic Windows;
- Provide a platform for coordination between Government institutions, non-state actors and international partners within the respective Thematic Window, with the objective to facilitate a joint approach within the sector and its cross-cutting themes, coordinate the implementation of initiatives and avoid overlap and duplication of efforts;
- For projects submitted to the Fund:
  - ✓ Ensuring projects are aligned to national priorities;
  - ✓ Provide analysis and recommendations on the review of proposals and/or project documentation, ensuring that project design is based on a qualitative and/or quantitative assessment and evidence base and supported by an M&E Framework with clear targets, milestones and SMART indicators for measuring project performance;
  - ✓ Assessing progress reported by Projects, as well as identifying issues, challenges and risks arising during implementation, and proposing recommended actions and options to the Fund Management Unit for mitigating these.

The TWG will be chaired by a Government representative and co-chaired by a donor representative. The Chair and co-Chair will be determined based on consensus by the TWG members and will function on a rotational basis annually. The TWG will be supported by an independent UNDP Senior Advisor together with a UNDP National Coordination Officer who will provide substantive policy advice as well as technical and logistical support to the functioning of the TWGs. The positions of the Senior Advisor and the National Coordinator Officer will be funded through the TFMU.

4.2. Fund's Administration

The appointment of the Fund Administrator is legally formalized through the signature of the UNDP Administrator or his or her designee of the UNDP Fund Framework arrangement for establishing the LOTFA. This Framework is the foundation act for the LOTFA and describes the pass-through financial set-up.

The Fund is administered by the MPTFO under the pass-through management modality. Under this modality, funds are channeled through the Administrative Agent, which passes the programmatic and financial accountability to the Recipient UN Organizations.[36]

[36] The current MPTF is designed to pass-through funds only to UN Agencies. If Government and donors agree to transfer non-fiduciary payroll management responsibilities from UNDP to another managing authority, the Steering Committee will need to engage with the AA – the MPTF Office - to establish the appropriate fund transfer arrangements that will suit the new conditions.

The Fund's administration services, whose costs are 1% of received contributions, include:

(i) The Fund's setting up: support to the Fund's design (Terms of Reference and Operation Manual), and development of legal instruments; and

(ii) The Fund's administration: receipt, administration and release of funds to implementing entities in accordance with decisions from the Steering Committee, and financial report consolidation.

The MPTFO is responsible for the following functions[37]:

- Provide support to the design of the Fund;
- Sign a MOU with United Nations System implementing entities;
- Sign Standard Administrative Agreements with donors that wish to contribute financially to the Fund;
- Receive and manage funds included those related to the Fund's closure;
- Invest and reinvest the Fund's resources according to investment policies, practices and procedures and in line with the financing agreements signed with Donors. Any interests accrued will be added to the Fund's resources and will not be credited to the contributions of a particular donor.
- Provide updated information to the Steering Committee regarding the resource availability;
- Subject to the availability of resources, transfer funds to implementing entities in accordance with the Steering Committee decisions;
- Consolidate the financial annual and final reports submitted by implementing entities and present the consolidated report to the Steering Committee and to each of the Fund's contributors;
- Provide a Fund final financial report which includes a notice of the Fund's closure;
- Release funds as direct costs, including for the running of the Trust Fund Management Unit, based on the Steering Committee decisions. The Administrative Agent will annually notify the Steering Committee about the amounts used to that end.
- Release funds for additional expenses that the Steering Committee decides to allocate;
- Provide tools for fund management to ensure transparency and accountability.

4.3. Fund Implementation:

The Fund considers two categories of implementing entities: (1) Implementing Entities with direct access to the Fund via the Administrative Agent; and (2) Implementing Entities with access through a Grant Managing Agent (GMA). The Implementing Entities with direct access are the different UN implementing entities who will receive funds from the Fund Account. They will conclude a MOU with the AA. These so-called Recipient UN Organizations (RUNOs) will assume full programmatic and financial responsibility for the funds transferred directly to them by the MPTFO and will implement approved activities in accordance with their own rules and procedures, including those related to audits and contracts. The RUNOs will charge a maximum of 7% indirect costs.

The Implementing Entities with access through a GMA are the Civil Society entities whose programme proposals are financed through a GMA. These bodies need to conclude an agreement with the GMA.

[37] All the responsibilities of the AA described in this section (including those relating to the receipt, administration and disbursement of funds; financial reporting; and management of accrued interests) only apply to pooled funds that are channeled through the Fund. Parallel contributions to other projects are regulated by the prevailing contribution agreement or arrangement signed between the donor and the respective RUNO.

5. Contributions

The LOTFA resources will include: donor contributions, any interests, payments, repayments or net profit for investments less any authorized release and incurred expenses in accordance with these Terms of Reference and decisions made by the Fund's Steering Committee.

The Fund's resources will be used to finance or co-finance projects, programmes and operations approved by the Fund's Steering Committee. As a general rule, the contributions will not be earmarked and the allocations will be decided by the Steering Committee. In case donors have specific restrictions or requirements, earmarking will be allowed only at the Thematic Window level.

The contributions to the Fund will be administered by the MPTF Office as per the Standard Administrative Arrangements (SAA) signed between contributing donors and the MPTFO. The Fund receives contributions in fully convertible currency. Such contributions will be deposited to the bank account designated by the MPTF Office. The value of the contributions, if made in a currency other than US dollars will be determined by applying the UN operational rate of exchange in effect on the date of payment. Profit or loss due to currency exchange rate is registered in the Fund's account set by the Administrative Agent and will be taken on by the Fund.

Donors can provide parallel contributions to any of the projects financed by the Trust Fund. These parallel contributions will be administered as per the relevant parallel agreement or arrangements. For example, for the SPM project the parallel contributions will be administered as per the prevailing third-party Cost-Sharing Agreements (CSA) or relevant arrangements with UNDP and will follow the management, monitoring and reporting arrangements per UNDP rules and regulations. Similar arrangements may also be applied to any project in other windows.

6. Project Approval Cycle

Two types of project approval are proposed:

1. Regular cycle: includes phases of project identification, presentation, and review. Approval for all projects will only be authorized by unanimous consent.
2. Rapid cycle: the approval phases are shorter (total duration of maximum a week), to prioritize the approval of critical initiatives of short-term implementation. Approval for all projects will only be authorized by unanimous consent.

6.1. Regular cycle

6.1.1 Project identification, design and submission

Projects will be identified by the Steering Committee through a needs analysis that can be done at different levels: Thematic Windows, Government and UN agencies. Such projects should be aligned to the national priorities of the Government and particularly the guidelines provided from higher instances such as the Government Council on Rule of Law and Anti-corruption. The Steering Committee and the

TWG will be supported by the Trust Fund Management Unit in the identification of priorities and needs through a robust empirical evidence-base, with quantitative and qualitative data.

Two project submission processes are foreseen: Direct submission and Call for proposals.

1. Direct submission of projects: Based on SC directives, prioritizations and consultations, the Implementing Agencies may be directly invited to present project proposals to the Trust Fund Management Unit.
2. Calls for proposals: The Trust Fund Management Unit, based on Steering Committee's decisions, will request implementing entities to submit project proposals. The call will specify the requirements for submitting a proposal.

Prior to the Project Development, the implementing agencies will present a concept note to the Technical Working Groups through the Trust Fund Management Unit for validation. This is to ensure that prior to developing the full-fledged project proposal it is aligned to the relevant strategy and priorities and is within the funding range set by the Steering Committee for the respective Thematic Window.

The design of the projects will be the responsibility of the Implementing Agencies. During the process of project development, a close collaboration is foreseen between the Trust Fund Management Unit and TWGs, as well as the implementing UN agencies. The design of projects or programs shall be consistent with the programmatic parameters established in the Strategic Framework. The minimum requirement for project proposals should be: the key expected results and indicators, activities, indicative budget, a risk analysis, proposed implementing partners and geographical scope.

6.1.2. Review of Projects

The Trust Fund Management Unit with the support of relevant sector specialists will conduct a substantive, systematic, rigorous and detailed assessment of the project proposals. The criteria for the project design and development process are provided in the relevant submission form.

The assessment is divided in 2 reviews:

1. Trust Fund Management Unit Review

This review will ensure the administrative completeness of the submission and will be done within three days of the receipt of the proposal. The administrative review includes: (i) format, (ii) supporting documents, (iii) budget, and (iv) general value for money assessment.

2. TWG Review

Proposals are then transmitted by the Trust Fund Management Unit to the relevant TWG for a technical assessment. The TWG conducts the program-related quality control of the proposal and ensures alignment, coordination and prioritization of the intervention in the relevant Thematic Windows, including gender equality and environmental management. The review ensures that programs that are subject to the approval of the Steering Committee are aligned to priorities and needs of the Government strategies, plans and policies, coordinated with existent and foreseen activities, and developed in consultation with relevant actors.

The Trust Fund Management Unit shall send the consolidated package of all submitted proposals to the Steering Committee five working days prior to the date of the scheduled meeting.

6.1.3. Project approval and funds transfer

Project approval

Once the review is finalised by the Trust Fund Management Unit through the technical review conducted by the TWG, project documents will be submitted to the Steering Committee for approval. The Steering Committee will approve the Fund allocations based on the review package received from the Trust Fund Management Unit. The reviewing process will not go beyond one week from the reception of the project proposal. The Steering Committee will take into account all the proposals and will select these based on their alignment with the Fund's Strategic Framework, available funding, complementarity of the intervention with other ongoing or foreseen actions and level of involvement of concerned actors. The Cross-cutting criteria will also be taken into account.

Decision making regarding the approval of projects for fund allocation requires a quorum of 5 members of the Steering Committee, including the Chair and the Co-Chair. The Steering Committee will operate under the premise of consensus.

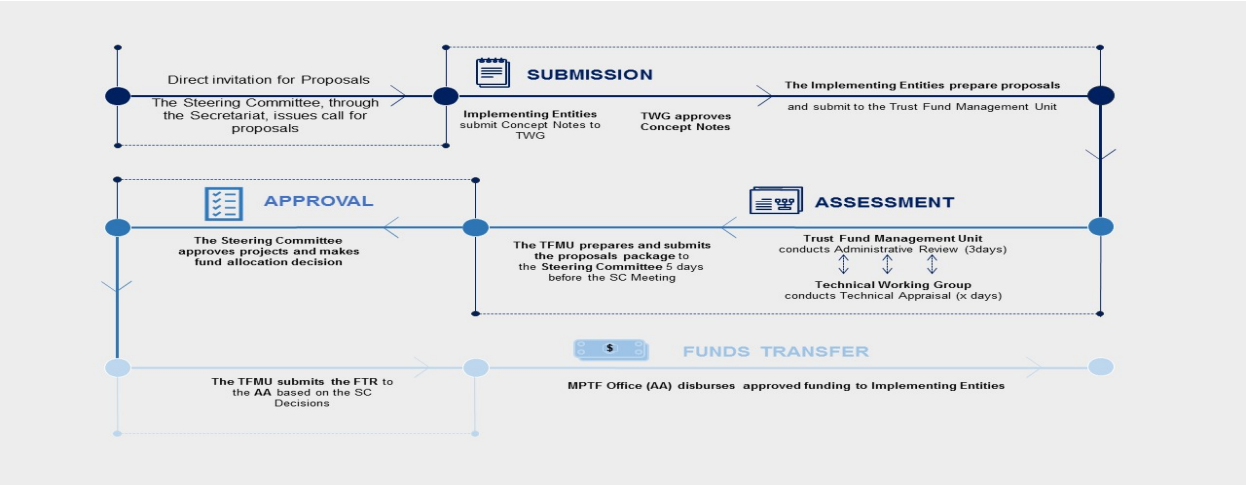
Programs or projects approved with recommendations do not require submitting a proposal again. The Trust Fund Management Unit shall ensure that the implementing entity incorporates the recommendations of the Steering Committee, before requesting the MPTFO to transfer funds to the implementing entity.

The Steering Committee decisions are recorded in its minutes of meeting, which are consolidated by the Trust Fund Management Unit. The Trust Fund Management Unit will electronically share the minutes of the Steering Committee meeting and approved allocations.

Funds transfer

The Trust Fund Management Unit shall prepare a Funds Transfer Request (FTR) form for each project and budget allocation approved by the Steering Committee. The MPTFO will carry out transfers approved by the Steering Committee to implementing entities no later than five working days after the receipt of the FTR. Upon completion of the transfer, the representative of the receiving organization and the Trust Fund Management Unit will be notified through electronic mail.

Figure 2: Project approval cycle



6.2. Rapid cycle

The Implementing Entity submits the project document to the Trust Fund Management Unit. The Trust Fund Management Unit convenes the corresponding TWG depending on its category, to review virtually the proposal within no more than 3 working days, at the end of which the project shall be deemed approved on a no-objection basis. Once the project document is endorsed by the TWG and the technical sheet is prepared by the Trust Fund Management Unit (within no more than 3 working days) the Trust Fund Management Unit will circulate these documents to the Steering Committee which will meet in person or virtually to make decisions on the project and resource allocation. The funds transfer follows the same process as the regular cycle.

This rapid cycle will be used exceptionally, in circumstances where the Steering Committee considers necessary the rapid launching of interventions (for instance, to respond to emergencies).

7. Risk management

The objective of a risk management strategy at the Fund-level is to facilitate the achievement of program-related objectives of its interventions in the context of the risk in which it operates. The Trust Fund Management Unit will develop a risk management strategy whose main objectives are to:

- Improve the risk management capacity of national institutions;
- Accelerate implementation and impact of Fund activities; and
- Verify that resources are used for foreseen purposes.

The Fund's risk management strategy will encompass the following tasks:

- Develop a shared understanding of risks faced by the Fund;
- Define risk appetite or tolerance of the Fund (Fund's risk profile);
- Establish the Fund's policies regarding identified risks (Fund's risk policies).
- Identify or clarify potential compensation from risk taking and seek consensus among stakeholders regarding its management;
- Determine risk treatment through measures of mitigation or adaptation;
- Identify risk holders, control its spreading and define follow-up measures;
- Establish information strategies and common messages about the risks.

Every program or project approved by the Fund shall comply with the risk management strategy. The fulfillment of such strategy will be one of the selection criteria during the process of project evaluation. The Fund's risk strategy will be developed after the establishment of the Fund. The strategy should ensure compliance with multiple needs and expectations from main stakeholders, including the following elements:

- Risk management framework;
- Risk matrix for risk identification and follow-up;
- Institutional agreements to make the strategy operational;
- Needs identified for capacity development and risk management improvement;
- Information management agreements;
- Estimated cost of mitigation measures.

To develop the strategy, the Trust Fund Unit and the Government will conduct a joint risk evaluation that provides a baseline for the strategy development. This evaluation will also identify the tools for monitoring and evaluation of risks.

Once the strategy is prepared, this section will include the description of the duties of the different Fund's bodies in terms of risk management. It will also describe key processes of risk management in the projects and at the level of the Fund. Lastly, it will provide a general overview of tools and methodology for risk management.

8. Monitoring, Evaluation and Reporting

8.1 Context

Law and Order reform generally and in Afghanistan in particular (as evidenced in the MISP 2018-2021) is as much an evolutionary and adaptive challenge as it is a technical challenge and, although this has been recognized by many commentators, it is only now starting to feed through to changes in policy, strategy and action. This change is slow, in part; because of institutional reliance on large-scale prescriptive change programs that are designed to deliver pre-specified supply/push Outputs and achieve pre-determined Outcomes within managed levels of risk. In practice, unforeseen consequences of action and continuous changes in context usually invalidate these assumptions. Whilst technical Outputs can be "forced through" they often fail to achieve their intended outcomes.

Monitoring and evaluation (M&E) sit at the heart of adaptive management, responsiveness and effectiveness (MISP 2018-2021). Accordingly, the Fund requires an adaptive, flexible and responsive framework, strategies and tools to support a new way of doing business through LOTFA by establishing an effective and comprehensive M&E system for security and justice reform in Afghanistan.[38] As LOTFA uses adaptive demand-pull policy and programs, the importance of near real-time, 'ground-truth' information becomes paramount.

8.2 Monitoring and evaluation in LOTFA

M&E will be brought in as early as possible into the fund design and into the design stage of each project. The following principles will be used by LOTFA's new model:

- *People-centered:* The LOTFA M&E system will be designed to respond first to beneficiaries and then to the institutions that serve them.
- *Local ownership:* The LOTFA M&E system will involve the participation of a wide range of stakeholders strengthening local ownership over time.
- *Sustainability:* The LOTFA M&E system will ensure that GIROA´s country M&E systems are sustainable beyond the life of the programme.
- *Gender sensitivity:* ensuring the policies and programmes identify the needs of men, women, and children and adjust programming to the differing needs.

[38] Adaptive management in M&E is an extension to conventional policy and practice and is characterised by some donors as 'Doing Development Differently'.

- *Conflict sensitivity:* The LOTFA M&E system will be designed and used in a conflict-sensitive manner.
- *Accountability, transparency, and governance:* The LOTFA M&E system will be designed to be impartial, independent, credible, and transparent. Data will be made accessible to all LOTFA stakeholders as appropriate.

In implementing the principles outlined above, LOTFA's M&E activities will incorporate iterative, flexible and near real-time feedback loops that support adaptive program management and respond to local needs and demands. These activities will:

- Assess the context of projects in each Thematic Window to determine the extent to which adaptive planning and management is appropriate;
- Gather evidence in a way that validates and reevaluates assumptions and allows effective and efficient M&E at an outcome and impact level;
- Integrate M&E as early as possible in the design stages of the thematic windows and their projects.
- Provide 'early warning' of problems and enable the LOTFA Trust Fund Management Unit and project managers to take remedial measures in a timely manner;
- Ensure that lessons learned during LOTFA operations are fed back promptly into fund policy, decision-making, operations and dissemination and communications systems;
- Provide the LOTFA Communications Team with key messages for strategic communications to support all LOTFA policy, programs, and projects;
- Integrate and use cutting-edge / new technologies for data collection and analysis at the Project level e.g. SenseMaker®, Outcome Harvesting, and Analytical Dashboards at fund and window level.

M&E Organizational Structure

The new Trust Fund will have a centralized team to oversee all M&E work across the fund. This M&E team will ensure that data is streamlined and aggregated, inject new M&E approaches across all of the Fund's Thematic Windows and enable near real-time reporting to all LOTFA stakeholders. The M&E team will also provide a strong evaluation function at the fund level to ensure completion of a full suite of fund and project level surveys including, but not limited to, baselines for all project activities. It will also provide strategic advice on adaptive management and deliver real-time dashboards.

Project-level M&E

A minimum of two M&E specialists will be appointed for each Thematic Window and, if necessary, for some larger projects to ensure evaluation, monitoring, analysis and reporting are carried out to the required standard. These appointees will work with the project teams and report to the Fund-level M&E team.[39]

8.3 Reporting

The responsibilities related to reporting are gathered and detailed in the Memorandum of Understanding (MOU) and Standard Administrative Agreements (SAA). All the implementing entities will carry out annual and final reports on activities and expenditures according to a common format designed for the Fund.

[39] The M&E specialist in each window or large project must act as independent specialists. They will have a reporting line to the TF M&E specialists, but an operational line of reporting to the respective project managers.

Narrative & Digital Reporting

The implementing entities will present the following reports to the Trust Fund Management Unit for consolidation and further transmission to the Steering Committee:

(a) Annual narrative reports to be provided no more than three months (March 31st) after the end of the calendar year;

(b) Final narrative reports after the end of activities contained in the program-related approved document, including the final year of such activities, to be submitted no more than four months (April 30th) in the following year after the financial closure of the Fund.

Annual and final reports will exhibit results based on evidence. Annual and final narrative reports will comprise actual results in terms of outputs and outcomes and will provide conclusions and recommendations for the future. Moreover, the final report will assess how LOTFA has contributed to the impact on Law & Order in Afghanistan.

Operational reporting will be conducted through dashboard visualization, which will be updated in near real-time. All stakeholders with an operational need to know will have real-time access to the appropriate dashboards. This will enable the provision of ad-hoc data/brief reports to GIROA Ministries, the donors and other LOTFA stakeholders.

The Fund-level M&E team will organize regular (monthly) meetings with the TWGs and/or key LOTFA stakeholders to discuss recent data/findings and agree with the project managers on course corrections, next steps and necessary decisions to be taken.

Financial Reporting

The UN Agencies will present the following financial statements and reports to the Administrative Agent:

(a) Annual financial statements and reports to December 31st, regarding released resources by the Fund to them; these shall be provided no more than four months (April 30th) after the ending of the calendar year;

(b) Final certified financial statements and financial reports after the completion of activities contained in the program-related approved document, including the final year of such activities, to be submitted no more than six months (June 30th) in the following year after the financial closure of the project.

Based on these reports, the Administrative Agent will prepare consolidated narrative and financial reports, which will be submitted to each of the Fund's Contributors and to the Steering Committee as per the schedule established in the SAA.

Reporting on payroll:

UNDP, through the Trust Fund Management Unit and the SPM project, will provide reporting on MOIA payroll:

(a) Monthly financial reports on the fund's status related to MOIA payroll;

(b) Monthly Monitoring Agent (MA) reports on MOIA payroll expenditures; and

(c) Monthly SPM TWG to discuss and analyze issues related to payroll.

9. Accountability and transparency

These clauses are detailed in the legal instruments that govern the Fund (MOU and SAA).

9.1. Accountability:

The accountability framework spelling out the responsibility and liability of the Administrative Agent, the Recipient UN Organizations and the Donors for the use of LOTFA funds is established in the Memorandum of Understanding (MOU) and the Standard Administrative Arrangement (SAA). As per these legal agreements for pass-through modality:

The Administrative Agent is accountable for effective and impartial fiduciary management and financial reporting.

The Recipient UN Organizations receiving funds from the Fund assume full programmatic and financial accountability for the funds disbursed to them by the Administrative Agent. Each Recipient UN Organization will establish a separate ledger account under its financial regulations and rules for the receipt and administration of the funds disbursed to it by the Administrative Agent from the Fund Account. That separate ledger account will be administered by each Recipient UN Organization in accordance with its own regulations, rules, policies, and procedures, including those relating to interest.

The Recipient UN Organizations will provide implementation services in accordance with its own financial regulations, rules and policies.

UNDP will receive funds as Recipient UN Organization to perform the Trust Fund Management Unit functions.

Financial audit: The Administrative Agent and the Recipient UN Organizations will be audited according to their own financial rules and regulations.

9.2. Transparency:

The MPTFO website, Gateway (http://mptf.undp.org), is a web-based service portal that provides real-time financial data issued directly from the UNDP accounting system. Once established, the Fund will have a separate page in the Gateway portal, which will allow partners and the public at large to follow-up the Fund contributions, transfers and expenses, and access key documents and reports. At the same time, a LOTFA-Gateway at country-level will be established to allow for direct access to relevant documents related to LOTFA and its projects.

The Trust Fund Management Unit and the MPTFO will ensure that the Fund's operations are posted on the Gateway portal. From its side, each implementing entity will take appropriate measures to promote the Fund. Information shared with the media regarding beneficiaries of funding, official press releases, reports and publications will acknowledge the role of the Fund.

10. Operational Manual

The operational details of the Fund will be developed in the Fund Operational Manual by the Trust Fund Management Unit and the MPTFO after the establishment of the Fund. (Annexed to this TOR once finalized).[40] The Operational Manual is approved by the Steering Committee.

11. Amendments, duration and termination

The details regarding the amendments, duration and termination of the Fund are detailed in the MOU and SAA.

The Steering Committee will be able to modify any of the provisions of these Terms of Reference or establish complementary agreements.

It is stated that the Fund will have an initial duration starting on the date of the endorsement of its Terms of Reference until the expiration of the current Warsaw commitments in 2024.[41] UNDP will have the authority to modify the Fund's duration based on the decisions of its Steering Committee.

Any remaining balance in the Fund's account after the closure of the Fund will be used for a purpose established by the Steering Committee and the Donors, or it will be reimbursed to the Donor(s) in proportion to their contribution to the Fund, as decided by the Contributor and the Steering Committee.

Annex 1: Fund's Strategic Framework
Annex 2: Fund's Results Matrix
Annex 3: Fund's Operational Manual

[40] The contents of the Operational Manual are subjected to the TOR.
[41] The duration of the Fund's operations does not include the closure period of the Fund.