

# Governance in Afghanistan

## An Introduction

Aarya Nijat  
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## About the Author

AARYA NIJAT specializes in policymaking, strategic planning, governance, gender and leadership capacity development. She contributed extensively to the development of Afghanistan's first ever Sub-National Governance Policy (2010) and Anti-Sexual Harassment Policy (2013), applicable to all local governance institutions. Trained in adaptive leadership, Aarya has twice served on the Harvard Kennedy School teaching team. A Fulbright Scholar and a Mary Boies Fellow, she holds a Master's degree in Public Administration from the Harvard Kennedy School of Government, a Master's degree in International Relations and dual undergraduate degrees in Political Science and Law from Quaid-i-Azam and Punjab Universities. She is accessible through her personal blog [www.aanijat.blogspot.com](http://www.aanijat.blogspot.com) and email address [aarya.nijat@post.harvard.edu](mailto:aarya.nijat@post.harvard.edu).

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## Foreword

Governance reform is, without doubt, among a number of critical factors that will determine the future direction of Afghanistan in the aftermath of the imminent political transition (2014-2015) and over the course of her Transformation Decade (2015-2024). In light of this, I have little doubt that the study which follows will be an invaluable source of reference for both national and international policymakers alike.

I have taken great pleasure from my numerous discussions with our researcher, Arya Nijat, on the subject of governance in Afghanistan, and I commend her for the very comprehensive outline and analyses that she presents within this study. I thank her for her efforts and also wish to extend my gratitude to all AREU staff involved in the research and publication process. Last but not least, I wish to thank the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH for their partnership in relation to this study and look forward to further collaboration with the German Government in the field of policy research and development.

With studies such as this, and with the invaluable support of our partners, all at AREU continue to strive to conduct, deliver and disseminate research for a better Afghanistan.



Nader Nadery  
Director: AREU



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## Glossary

Loya Jirga	Grand Assembly
Meshrano Jirga	House of Elders, used as a synonym for the Senate, Upper House of the Parliament
Mustofiat	Provincial Representative of the Ministry of Finance
Taqneen	Legislation used for MoJ's Directorate that deals with legal drafts
Tashkeel	Organizational Structure
Wolesi Jirga	House of People, used as a synonym for the Lower House of the Parliament

## Acronyms

AGO	Attorney General's Office
AIBA	Afghanistan Independent Bar Association
AIDA	Association of Independent Defence Attorneys
AIHRC	Afghanistan Independent Human Rights Commission
ANDS	Afghanistan National Development Strategy
ANP	Afghan National Police
AWP	Annual Work Plan
CBR	Capacity Building for Results
CDC	Community Development Council
CEDAW	Convention on Elimination of all forms of Discrimination against Women
CSO	Central Statistics Organization
DCC	District Coordination Council
DDP	District Development Plan
DG	District Governor
DPG	Deputy Provincial Governor
ECC	Election Complaints Commission
EVAW	Elimination of Violence against Women (Law)
GDLCA	General Directorate of Local Councils Affairs
GDMA	General Directorate of Municipal Affairs
GDP	Gross Domestic Product
HOO	High Office of Anti-Corruption and Oversight
IARCSC	Independent Administrative Reform and Civil Service Commission
IDLG	Independent Directorate of Local Governance
IEC	Independent Election Commission
KII	Key Informant Interview
LOTFA	Law and Order Trust Fund for Afghanistan
MAB	Municipal Advisory Board
MoE	Ministry of Education
MoEC	Ministry of Economy
MoF	Ministry of Finance
MoHE	Ministry of Higher Education
MoJ	Ministry of Justice
Mol	Ministry of Interior
MoIC	Ministry of Information and Culture
MoUD	Ministry of Urban Development
MoWA	Ministry of Women Affairs
MRRD	Ministry of Rural Rehabilitation and Development
NAO	National Audit Office
NAPWA	National Action Plan for the Women of Afghanistan
NDS	National Directorate of Security
NGO	Non-Governmental Organization
NGPAR	Next Generation Public Administration Reform
NPP	National Priority Plans
NSP	National Solidarity Programme
OAA	Office of Administrative Affairs
OHCHR	Office of the High Commissioner for Human Rights
PAR	Public Administration Reform
PFEML	Public Finance and Expenditure Management Law
PG	Provincial Governor
PRT	Provincial Reconstruction Team
SNGP	Sub National Governance Policy
SNTV	Single Non-Transferable Vote
TMAF	Tokyo Mutual Accountability Framework
ToR	Terms of Reference

## Executive Summary

Afghanistan is not new to governance reform. But the establishment of a sound system of public administration is a long-term process depending on strong, sustained and coordinated partnership between and within the Afghan government and the international community. Government reform implementation requires an accurate understanding of the Afghan context which is characterized by difficult geography, ethnic divisions, religious supremacy, a young demographic, patriarchal society, authority-driven leadership practices and continued conflict. Strong informal, feudal, top-down governance mechanisms overwhelm the on-paper appearance of the Afghan government where patronage trumps law enforcement.

The visible footprint of Western legal institutions upon post-2001 legal reform efforts point to a gap between reform and the potential for implementation. Weak legislative and enforcement capacity has diminished confidence in the current body of laws and regulations which, if implemented, could significantly contribute to effective governance. Although the Constitution permits delegation of authority to local administration units, subnational planning, budgeting, spending and overall decision-making capacity are severely restricted by the centralized structure of the Afghan government thereby hindering effective reform implementation at the local level.

Non-governmental organizations, with the support of the international community, operate independently or to extend government service delivery, particularly in areas where the government's reach is limited. In contrast, informal governance structures, including customary people's councils, have received less international attention and trust despite being the stronger, more widely used and primary source of order in most of rural Afghanistan. Political parties have grown in number and outreach capacity despite limitations posed by the Single Non-Transferable Vote (SNTV) mechanism controlling the electoral system.

The Bonn Process of 2001 marks the initial loop in a chain of policy frameworks that continue to this day, and which is responsible for Afghanistan's development, both positive and negative. The rate of effective implementation of policy frameworks has diminished over time. Implementation of the recently-developed National Priority Plans is intended to achieve the Tokyo Mutual Accountability Framework Indicators, to which continued global assistance to Afghanistan's decade of transformation is tied.

Afghanistan has come a long way since 2001. The year 2013 alone witnessed numerous achievements in the legal, policy and implementation fronts, with the journey ahead full of opportunities for inter-dependent growth. Yet challenges remain, making transformation harder.

Broken institutional linkages between administration and justice represent one set of challenges, while the lack of practical consensus between and within the Afghan government and the international community on the elements of a sound system of public administration present another. Socially and economically vulnerable groups such as women and youth bear the brunt of these challenges. Weak law enforcement, particularly in relation to gender injustices, adds to the ordeal that half the Afghan population undergoes, a workforce whose intellectual capacity is yet to be mobilized. The over-politicized, symbolic, isolated and urban women's rights rhetoric has resulted in the creation of unsuccessful institutional roles, such as the Ministry

of Women's Affairs and its subsequent Gender Units, which cannot miraculously transform Afghanistan's patriarchal social structures and women's secondary status, particularly in just 12 years. The result, supplemented by widespread corruption impeding law enforcement, is increasingly witnessed and reported in cases of violence against women.

Women are not the only victims of corruption. It continues to weaken governance and service delivery, taking its toll on institutional legitimacy and becoming one of the major common features of Afghan identity both at home and abroad. The good thing is that everyone—including government officials, private sector giants, civil society and media players as well as donors and the general public—complains about it. However, no one, and particularly not Afghanistan's specialized government agencies and elected representative bodies, is prepared to take responsibility for curbing it. The blame game continues, leading to the general public profoundly losing hope amid the jargon of good governance, and losing sight of its own role in monitoring anti-corruption initiatives.

In addition to corruption, weak budget implementation capacity hinders effective and efficient service delivery. Despite improvements in budget execution capacity, central bureaucracy is generally inclined toward not taking provincial budget breakdowns into account or to not involving subnational departments in the process. The problem appears to be a lack of technical financial capacity, but the undercurrents of this trend lie in fundamental legal contradictions and the rentier nature of the state, where bureaucracy functions to manage resource distribution processes rather than deliver good governance and efficient services.

Weak legislative and research capacity, over-politicized legislation, the inability of the governance machinery to operate as one system as opposed to separate and disconnected units, patronage and political interference in technical decision-making, an internally divided civil service, harmful urban-focused reform implementation and insecurity will continue to challenge good governance. However, there are opportunities worth exploring.

The first opportunity lies in alternative ways of analysing problem situations by recognizing and appreciating the adaptive nature of challenges which, if not making the job easier, can certainly save resources from being misspent. The second opportunity lies in the long-term nature of the fight against corruption, which in the short term can focus on law enforcement and in the long run on encouraging organized associations and political parties to perform better as responsible collectives of human beings. The third opportunity lies in the under-estimated appetite for change and over-estimated resistance to reform, particularly if the element of loss associated with change is identified and recognized.

Increased focus on smart economic development and increased engagement with and mobilization of the rural population and customary governance structures can improve governance. Accurate understanding of Afghanistan's complexity, a serious commitment to on-budget, monitored funding to the Afghan government, treating reform implementation as a long-term process and building civil society's capacity to be both the people's friend and the government's partner can support governance reform implementation. But the Afghan governance transition from paper to practice will take more than this. It will take strong political leadership and readiness on the part of the general public to bear loss, as Afghanistan marches towards defining her priorities and takes ownership of processes that facilitate their implementation.

# 1. Introduction

This paper is a critical overview of governance in Afghanistan, with a focus on administration and justice. It offers an introduction to basic elements of Afghan governance including the institutional, legal and policy frameworks, most recent developments in the field, persistent challenges and recommendations for a way forward. Chapters 2 to 5 contain factual information, with Chapters 1, 6 and 7 offering analyses of context, linkages, challenges and opportunities. Primarily targeting development practitioners with limited exposure to Afghanistan, the paper is essential reading for anyone with limited or no prior knowledge of Afghan governance since it horizontally covers a broad array of issues related to governance without engaging too greatly in vertically explored, in-depth conversations that may not be of considerable interest to newcomers to Afghan governance.

During the course of unwrapping the overall Afghan context in Context Analysis, the paper underlines four key features of the development context, namely globalization, Afghan reform history, output-driven Public Administration Reform (PAR) and strong informal power relations making PAR a long-term and difficult process. By explaining features of the Afghan governance context, it notes that difficult geography, ethnic divisions, religious supremacy, a young demographic, patriarchal society, authority-driven leadership practices and continued conflict are some of the main features of the Afghan context, while strong informal, feudal, top-down governance mechanism overwhelm the on-paper developed appearance of the Afghan government.

Chapter 2 provides a brief overview of some of the key legal frameworks governing relationships in administration and justice, and is divided into four sub-sections: Over-arching laws (the Constitution and the Law on the Basic Organization of the State,) Administration (Civil Service Law, Civil Servants Law, Labour Law, Procurement Law, Law on Public Finance and Expenditure Management, Local Administration Law, Municipal Law and Provincial Councils Law,) Justice<sup>1</sup> (Law on the Organization, Structure and Duties of the Courts, Law on the Organization, Structures and Duties of the Afghanistan Independent Human Rights Commission and Elimination of Violence against Women Law) and Civic and Political Participation (Electoral Law, Law on Political Parties, Law on Associations, NGOs Law and Law on Mass Media.)

Chapter 3 presents an overview of the institutions of governance at the national and subnational levels, including non-governmental organizations and customary governance. Chapter 4 outlines over-arching policy frameworks, namely the Bonn Process, the Afghanistan Compact, the Afghanistan National Development Strategy and the National Priority Plans, as well as the National Action Plan for the Women of Afghanistan and Sub-National Governance Policy. A brief report on the status of implementation of each is also included in this section. Chapter 5 provides a concise list of achievements in the legal, policy and implementation fronts in 2013 only, based on progress reports of the Afghan government or international assessments, and is followed by Chapter 6 which explores legal and institutional linkages between administration and justice in addition to a critical analysis of efforts on cross-cutting issues of gender equality, anti-corruption and budget implementation. This chapter also includes an abstract overview of major donor interventions in administration and justice.<sup>2</sup>

<sup>1</sup> Civil Law and Penal Code are not included in the legal frameworks' overview for reasons of length and detail that is beyond the scope of this paper.

<sup>2</sup> The initial idea was to offer project-level information on donor interventions. However, given that almost every donor is doing something on governance, rule of law and human rights in Afghanistan, project-level list would have made it too lengthy and thus beyond the scope of this paper.

The paper concludes with Chapter 7 which includes an analysis of twelve major challenges to administration and justice followed by nine broad recommendations based on the literature review and Key Informant Interviews conducted between 28 December 2013 and 14 January 2014. The challenges include weak legislation and parliamentary oversight, weak legal analysis and research capacity, the lack of a whole-of-government approach to public administration, political patronage, divided civil service system, weak Afghan capacity to prioritize and domination of foreign priorities as a result, too much planning and too little implementation, absence of a cross-sectoral national economic vision, urban-focused governance reform and lack of organic connections with the rural areas, a predatory elite, insecurity and inefficient urban governance which has led to slow urban development and municipal service delivery.

The recommendations underline the need to question assumptions and to revisit the challenge analysis lens, understand Afghan priorities and cultural context, adopt a whole-of-government approach by helping clarify institutional roles on capacity building, engage in smart investments as opposed to frozen, support anti-corruption efforts by strengthening law enforcement and promoting the culture of organized associations, bridge the rural-urban divide, identify and acknowledge the losses resulting from reform, and build the capacity of civil society as both the people's friend and the government's partner.

The purpose of this paper is to inform the evaluation of recent work and advise programme strategies for the next three to five years. Given the plethora of existing material on the achievements of the past 12 years including, but not limited to, Afghan Government reports on the Tokyo Mutual Accountability Framework Indicators, the paper has an intentional focus on identifying gaps and thus may sound discouraging on the subject of progress to date. Therefore, it is important to underline from the outset the significance of the journey that Afghan governance has taken, which would not have been possible without the collective and consistent work of Afghans and their international partners, a partnership that will remain at the heart of development efforts during the decade of transformation.

## 1.1 Methodology

The research methodology included a comprehensive desk review of existing research, literature and documentation on governance, and primary qualitative research in the form of Key Informant Interviews (KIIs) with key stakeholders in the governance sector. Key Informants were identified on the basis of their affiliation with a key national or subnational governance institution or by their expertise in the field.

The table below presents the Key Informants interviewed for this study, but does not include four senior practitioners in the fields of public financial management, urban governance, justice and the civil society sector who requested to remain anonymous.

No	Name	Title	Relevance
1	Dr. Shaam Laal Bhatija	Senior Adviser to the President	Presidency
2	Abdul Ghafoor Lewal	Director Regional Studies Centre	Research/Civil Society
3	Habiba Sarabi	Former Minister of Women Affairs, Former Provincial Governor Bamian, Current Vice-Presidential Candidate	Women's Rights/ Elections/ Civil Society
4	Ahmad Shafiq Qarizada	Deputy Minister Policy, Ministry of Finance	Bureaucracy/MoF
5	Abdul Hafiz Mansoor	Member of Parliament	Parliament
6	Attiqullah Raofi	Director, Secretariat of the High Council of Supreme Court	Judiciary/ Supreme Court
7	Saeeq Shajjan	Attorney at Law/Managing Partner Shajjan Associates	Private Legal Enterprise/ Civil Society
8	Dr. Hashmat Hashimi	Public Administration Adviser, Civil Service Management Department, IARCSC	Civil Service Commission
9	Abdul Baqi Popal	Director General Directorate of Municipal Affairs, IDLG	Urban Governance
10	Najibullah Jami	Director General Human Resources, Ministry of Justice	Bureaucracy/Ministry of Justice
11	Barna Karimi	Former Deputy Minister Policy at IDLG, Former Afghan Ambassador to Canada	Private Sector
12	Farid Hamidi	Commissioner, Afghanistan Independent Human Rights Commissioner, Legal Analyst	Human Rights/Civil Society
13	Dr. Sibghatullah	Adviser to the Deputy Minister Policy and Technical, IDLG	Subnational Governance

The framework of Adaptive Leadership<sup>3</sup> influences the analysis methodology. This framework employs a "systemic/outside-in approach to challenge analysis as opposed to a personal/inside-out approach, putting context, factions and their perspectives, rather than individual motives, intentions or personal inclinations, at the heart of the analysis. It categorizes challenges as technical or adaptive, depending upon the level of complexity of the problem, the existing capacity to define it and the skill set to address it. In technical situations, the problem and solution both are well defined. In adaptive situations, problem and/or solution definitions are not clear and an easy fix is not available. These situations require sustained learning to help define the problem arrive at a way out through a collective process in which technical authorities and those affected both share responsibility.

<sup>3</sup> For more please see Heifetz, Ronald, *Leadership Without Easy Answers*, Cambridge: Belknap/Harvard University Press, 1994.

## 2. Context Analysis

From a reform perspective, four major features characterize the overall context.

The future of Afghanistan depends on adapting to globalization and a genuine need to build sustainable regional and international ties. The tango of development in Afghanistan will take two: Afghans taking the lead with international partners in support. Therefore, global continued engagement with Afghanistan is vital to the country's sustained progress.

The phenomenon of reform is almost a century old. Today's democracy is the outcome of sustained interventions by thousands of men and women since the times of King Amanullah Khan in 1919.<sup>4</sup> The intense fighting of the post-Najibullah<sup>5</sup> period (1992-1996) followed by the Taliban (1996-2001) may have marked the darkest periods of Afghan history, but citizen empowerment through democratic reform goes back further than 2001.

The Afghan system of public administration reform is characterized by an overemphasis on output and under-emphasis on the processes that facilitate output delivery.<sup>6</sup> At an operational level, this may translate into a premature focus on measurable indicators of improved service delivery rather than sustained and gradual reform implementation in the system of public administration itself.

Insecurity, strong informal power relationships as compared to formal systems of governance, lack of visionary and committed leadership practices and lack of a broad consensus between the national government and the international community on the most necessary elements of the public administration system and the nature of the relationship between them, render the task of realizing Article 50 of the Constitution—creating a strong and sound system of public administration—difficult if not impossible. Public administration reform, therefore, should be treated as a long-term process.

### 2.1 The Afghan Context

The lack of accurate understanding and analysis of the context has created a space for the dangerous misdiagnosis of Afghan challenges in the past 12 years. Afghanistan faces three major sets of problems: technical problems, which can be addressed with the existing knowledge, systems, skills and expertise of Afghans and international partners; adaptive problems which require long-term, sustained and consistent processes of adaptive change involving culture, value systems, religion, customs, habits and behaviours; and combined sets of technical and adaptive challenges that require both for sustained durations over more than a mere 12 years. Broad reflection upon the past decade's interventions reveals an average understanding of the first set of challenges on the part of the Afghan and International Community, and little to no understanding of the last two sets of problems. The consequent outcome has been well-intended and well-attempted interventions of the first nature on all three sets of problems, leading to unanticipated results.<sup>7</sup>

<sup>4</sup> "The lens with which I observe Afghanistan is 30 years old. Afghan democracy has taken decades to build. Our social fabric has fallen apart though, which is what we started rebuilding from the scratch in 2001." KII, Dr. Sham Laal Bhatija, Senior Advisor to the President, Dec 28, 2013

<sup>5</sup> Dr. Najibullah was president from 1986 until April 1992, when mujahedin and other militia forces overran Kabul.

<sup>6</sup> KII, Dr. Hashmat Hashimi, Public Administration Adviser, Civil Service Management Department, IARCSC, 12 January 2014

<sup>7</sup> This analysis is based on the framework of Adaptive Leadership. For more please see Heifetz, Ronald, *Leadership Without Easy Answers*, Cambridge: Belknap/Harvard University Press, 1994.



Contexts activate roles, perspectives, interests and incentives, and understanding them is imperative to successful reform implementation. The following are some of the mega patterns that together represent the Afghan context:

Afghanistan has a difficult terrain and climate, thereby restricting access and facilitating regional shadow governments. Despite apparent<sup>8</sup> mega-urbanization trends, Afghanistan remains a rural and patrimonial<sup>9</sup> society with a largely agricultural economy.<sup>10</sup> Afghan society includes diverse ethnicities. Sub-ethnic entities at local level, such as tribes and clans, form the foundation of the Afghan political and social landscape<sup>11</sup> reflected at times through violent conflicts over power and resources. The civil war of 1992-1996 revolved around ethnic power dynamics. The makeup of the 2014 Presidential tickets is also a useful reflection of this social trait. The Afghan population is almost 100 percent Muslim with a small Hindu minority whom the representatives elected by the majority are not yet ready to welcome or accommodate.<sup>12</sup> Any intervention in Afghanistan must therefore take into account the role of religion<sup>13</sup> and local interpretations of religion<sup>14</sup> as a basis for understanding commonly-observed behaviours such as misogyny.

According to the United Nations (UN), 50 percent of the Afghan population is under 18 years of age and 68 percent below the age of 25.<sup>15</sup> An economic system lacking in self-sufficiency and dependent on foreign assistance may not succeed in ensuring sustainable employment opportunities for this cohort, who will then remain more vulnerable to political manipulation. Furthermore, children typically acquire their value systems from parents, family, relatives, school, community and the larger society. Due to extensive migration and other traumatic experiences, including discriminatory treatment or a sudden collapse in social status or economic wellbeing, Afghanistan's new generation—a generation of war and migration—has acquired its value system through value chains that are disconnected at many levels. The result has been a lack of consensus on values and laws, poor capacity to respect values and obey laws, and, as a result, less predictable behaviour. Unprecedented access to technology and contact with the outside world, and exposure to foreign experiences, render this generation a very useful asset but also a liability.<sup>16</sup> Fears<sup>17</sup> associated

8 "What we face today is not genuine urbanization but urban inflation" KII, Abdul Ghafoor Lewal, Director Regional Studies Centre, 30 December 2013. It must be noted that there are conflicting views on this issue. David Sedney, a Former Deputy Assistant to the Secretary of Defense of the US criticized the recently published National Intelligence Estimate for reasons of neglect to the "rural-urban population shift and the burgeoning young generation." Sharif Amiry, US Intelligence Report Rebuffed, Tolo News, 4 January 2014.

9 KII, Ahmad Shafiq Qarizada, Deputy Minister Policy, Ministry of Finance, 4 January 2014, and Habiba Sarabi, Former Provincial Governor Bamian and a current Vice-Presidential Candidate for the 5 April 2014 Presidential Elections, 2 January 2013.

10 Agriculture accounts for most of Afghanistan's near-term growth, with roughly 70% of the population living in the rural areas engaged in agriculture, contributing to only 30% of the Gross Domestic Product (GDP). 'Towards Self-Reliance - Strategic Vision for the Transformation Decade' Government of Afghanistan.

11 Felix Kuntzsch, 'Afghanistan's Rocky Road to Modernity: Non-State Actors and Socio-Political Entities in the Process of State- and Nation-Building', July 2008, 21.

12 On 14 December 2013, The Lower House of the Parliament rejected the Presidential Decree adding a reserved seat among its ranks for the Hindu and Sikh minorities. Fabrizio Foschini, 'A Lost Opportunity? Hindus and Sikhs do not get a reserved seat in parliament', Afghanistan Analysts Network, 16 December 2013, <http://www.afghanistan-analysts.org/a-lost-occasion-hindus-and-sikhs-do-not-get-a-reserved-seat-in-parliament>

13 "Sustainable transitional justice reform in Afghanistan is heavily affected by the Islamic tradition of 'an eye for an eye' as opposed to South Africa's Christianity driven culture of forgiveness." KII Dr. Bhatija

14 Nazif Shahrani, 'Afghanistan's Alternatives for Peace, Governance and Development', The Centre for International Governance Innovation, August 2009, 6.

15 Information taken from National Joint Youth Programme Annual Report 2008, available at [http://www.undp.org/af/whoweare/undpinafghanistan/Projects/dcse/prj\\_youth.htm](http://www.undp.org/af/whoweare/undpinafghanistan/Projects/dcse/prj_youth.htm) (accessed 6 January 2014).

16 KII, Dr. Bhatija.

17 There are divergent views on this. To some, 2014 represents an opportunity in exercising restraint on expenses and an attempt at striking a balance between revenue and expenditure levels. KII Dr. Bhatija.

with the 2014 withdrawal of troops and drawdown of development assistance reflect upon the possibility of large numbers of unemployed and angry youth, following this or that so-called leader to the streets and potentially creating havoc.

Afghan society is patriarchal. Gender roles are well defined. Men and manhood are associated with authority, control, power, influence, leadership, capacity and even humanity itself. Women have a secondary status and are accountable to men throughout their lives. School textbooks include *advice notes* that recommend not trusting women and not sharing secrets with them.<sup>18</sup> Local interpretation of religion legitimizes physical punishment of women and requires them to obey the male members of their family. Although there is an apparent shift in these attitudes among the urban population, it is largely driven by a survivalist mode or peer pressure, rather than a deeper running wave of change in mindsets<sup>19</sup>.

In Afghanistan, leadership means authority, which is derived either from formal positions of power or informal sources such as wealth, property, social status, religious learning, number of followers, and the apparent glory of one's existence reflected in one's lifestyle. Building leadership capacity among men has been seen as adding to their authority, empowering them to rule, improving their persuasion skills, and thus building their capacity to acquire more listeners and, therefore, more followers. Building women's leadership capacity is a vague concept to the majority because women are seldom associated with authority. There are some women in senior positions of authority but they are seen as dependent on male advisers, i.e. the real decision-makers.

Afghanistan is not a post-conflict country.<sup>20</sup> This mistaken assumption has led to the serious neglect of the role that continued war in most parts of Afghanistan plays, affecting the economy, rule of law, justice and public service delivery. Therefore, conducting comparative analyses of Afghanistan's case with post-conflict countries and arriving at statistical conclusions can provide data, but not necessarily practically useful data.

## 2.2 Afghan Governance

On paper,<sup>21</sup> the Afghan government has the appearance of a developed, centralized state, but in reality it has a stronger core of patrimonial customary governance that is too strong for 12 years of a centre-focused,<sup>22</sup> quick-fix approach to alter it despite the increased participation of the "new generation" of Afghan technocrats. To some, the Afghan state is a hybrid political order with a core of customary governance that may not necessarily represent fragility or weakness.<sup>23</sup> Capacity-building efforts focused on providing policy development support and technical trainings have not achieved a great deal.<sup>24</sup> The lack of efficient and effective public service delivery, coupled with corruption, has contributed to the revival of parallel mechanisms of governance at subnational level. The Taliban, as an insurgency, relies on and fills this vacuum of

18 KII Lewal and Author's personal observation as a student in the Afghan educational system.

19 KII Lewal.

20 United Nations General Assembly Report 2011 and KII Sarabi.

21 KII Dr. Bhatija

22 KII Qarizada

23 Volker Boege, Anne Brown and Kevin Clements, 'Hybrid Political Orders not Fragile States', *Peace Review, A Journal of Social Justice*, 2009

24 A civil society activist from Kunduz Province and a senior provincial government staff from Parwan Province, on not remembering an earlier training's content: "I have been to so many training programmes that I can hardly remember them now."

governance and with reasonable success. Understanding the hybridity—of formal and informal governance institutions—of the Afghan political order has to be at the heart of any governance reform intervention.<sup>25</sup>

The core of Afghan governance is feudal in nature, which is evident from the rural and agricultural nature of the country's industry and demography. Government revenues have long depended on taxes on farmers and foreign rents, except during Amanullah Khan's time when the government attempted to enhance government revenue through direct taxation<sup>26</sup>--a reform that contributed to his eventual removal from power and one that the post-2001 government did not want to risk. Foreign aid to the central government disturbed this equilibrium but did not, as some state,<sup>27</sup> create rent-seeking behaviour anew. Huge funds that poured in alongside international military assistance were channelled mainly through the Provincial Reconstruction Teams (PRTs) to regional, patronage-based power brokers.<sup>28</sup> Given the weak central government and stronger regional leaders, aid proved effective for the latter and did a disservice to the former, resulting in a further weakened national government, socially, politically and economically. Continuation of this trend of off-budget, unaccounted funds will do nothing to transform Afghanistan into a self-sufficient economy, particularly given the historical nature of dependency on foreign support. Besides, a thriving economy relies on business investment and, in its 2010 report, the World Bank ranked Afghanistan's capacity to protect its investors as one of the lowest in the world.<sup>29</sup>

Decision-making dynamics are top-down in Afghanistan. Men, especially elderly men with white beards or men in positions of formal and informal authority, are most often at the top of this chain and are thus the key decision-makers, leaving women, youth, minorities, financially disadvantaged communities and the general public at the bottom. Principles of good governance such as bottom-up accountability, transparency, access to information and openness contradict default informal governance mechanisms. Not fully understanding the dichotomous nature of the governance system<sup>30</sup> may lead to misdiagnosed challenges.

Afghanistan's governance context consists of many factions, each with different perspectives on institutional, policy and legal frameworks. The dynamics of authority determine the nature of inter-institutional and intra-institutional relationships. Reform and development represent interventions that shift these dynamics by introducing disequilibrium into the system, thereby affecting all factions and creating competition over resources—principally foreign funds—that shape the nature and direction of change. A short-term approach to development sets in motion a process of intense and rather cruel change, with rough competition. If not a revolution per se, Afghanistan has been through an intense process of change over the past 12 years with fierce competition among factions with different and often conflicting perspectives over resources channelled by the international community through off-budget, direct funding mechanisms which have exacerbated corruption to record levels.

25 Boege, Brown and Clements, 2009

26 Willemijn Verkoren and Bertine Kamphuis, 'State Building in a Rentier State: How Development Policies Fail to Promote Democracy in Afghanistan', International Institute of Social Studies, 2013

27 Astri Suhrke, 'Statebuilding in Afghanistan: A Contradictory Engagement', *Central Asian Survey*, 32:3, 271-286, <http://dx.doi.org/10.1080/02634937.2013.834715>

28 Colin Cookman and Caroline Wadhams, 'Governance in Afghanistan: Looking Ahead to What We Leave Behind', Centre for American Progress, May 2010, 29.

29 World Bank, 'Doing Business: Reforming through Difficult Times', 2010, <http://www.doingbusiness.org/-/media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB10-FullReport.pdf>

30 Byrd, William A, Gary Milante, and Kenneth Anye, 'A New Approach to Understanding Afghanistan's Transition: Comparisons with International Post Conflict Experience', USIP, 2013

The national decision-making machinery is controlled by the well-established predatory elite that has, in the past 12 years, excelled in the art of system abuse for personal gain at the expense of the public interest.<sup>31</sup> The 2014 Presidential election marking Afghanistan's first real transfer of political power from one elected President to another may instil the fear of restricted access to power among some contenders<sup>32</sup>, at least in terms of the number of terms and the duration of each term that they can serve, thus further exacerbating corrupt behaviour patterns. The senior leadership's values and rent-seeking behaviour, which is expected to continue as mineral wealth may replace foreign aid in the years to come, have rendered ineffective a number of well-intended administrative reforms. Although not unique to Afghanistan, this cohort of predatory elites represents a major challenge to external actors who have to engage with, and obtain the approval of, this cohort before investing technical or financial resources. In such a context, one may not expect sound state-building—a conclusion which the Afghanistan National Development Strategy (ANDS) echoed in 2008<sup>33</sup>, as did the Office of the High Commissioner for Human Rights (OHCHR) in 2010.<sup>34</sup> The section on linkages between administration, justice and cross-cutting issues explores predatory patronage in greater detail.

At a higher level of abstraction, the international decision-making machinery has been characterized by a serious lack of coordination and is a prime example of an operationally dysfunctional situation that has become destructive overtime due to deeper problems that are often unacknowledged. The failure of repeated attempts at coordinating donors in Afghanistan through, for instance, Governance Cluster "donor coordination meetings" jointly held by the United Nations Assistance Mission for Afghanistan (UNAMA) and the Independent Directorate of Local Governance (IDLG) point toward a problem that runs deeper than these meetings can address. At its core, this may be a conflict between two different perspectives on reform and development: the American and the European perspectives which are distinct in terms of their approach to financial resources and programme implementation. The former has had a rather *generous* approach to fund flow and a quick-fix approach to programme implementation; the latter has been inclined toward careful spending and long-term programme execution. The difference has also been evident in terms of each camp's programmatic focus. The US-influenced development efforts have largely demonstrated an inclination towards interventions that offer tangible and physically measureable results, with European efforts more inclined towards what is called soft reforms including, but not limited to, basic freedoms such as freedom of expression and human rights. Ideally, the two should complement each other, but in the past 12 years the American approach has, for the most part, been dominant. The fact that recent research,<sup>35</sup> including this paper, has increasingly underlined the need to change course, could be a reflection of the underlying competition between two world-views regarding development interventions currently being played out in Afghanistan.

31 KII, Lewal.

32 Verkoren and Kamphuis, 2013

33 "Ineffective institutions, including the disabling economic environment; weak regional governance, service delivery and corruption, weak social protection Programming and social inequities" are key determinants of poverty in Afghanistan.

34 OHCHR, 'Human Rights dimensions of Poverty in Afghanistan', 2010: For corrupt politicians, "personal gains take priority over public interest,"

" , Communities are disempowered and "have limited means to have their needs fully considered and respected by decision makers in the government," and "support by the international community to mistrusted Afghan power-holders further entrenches abusive dysfunctional, and corrupt political structures."

35 Astri Suhrke's 'Statebuilding in Afghanistan: A Contradictory Engagement', published in the fall of 2013 is one example of academic advocacy in favour of the need to alter perspectives.

These trends are likely to continue as the mega post-2014 contextual outlook is one of impending NATO drawdown, reduced development aid, the April 2014 Presidential and Provincial Council elections followed by the 2015 Parliamentary elections, an uncertain peace and reconciliation process, a looming water shortage leading to water conflicts<sup>36</sup> particularly in the border areas with Pakistan and Iran, deepening effects of climate change, continued rapid population growth and the rise of Afghanistan's new generation in the public, private and civil society sectors.

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<sup>36</sup> Mujib Mashal, 'What Iran and Pakistan want from the Afghans: Water', Time, 2 December 2012, <http://world.time.com/2012/12/02/what-iran-and-pakistan-want-from-the-afghans-water/>

### 3. Overview of Legal Framework

Given the pattern of top-down decision-making and Afghanistan's dependence on Western powers, post-2001 legal reform initiatives have not, for the most part, reflected Afghan social values and have left unhelpful footprints affecting the system's capacity to seriously engage with Afghanistan's legal foundations: Islamic Law and Afghan traditions. The apparent result is a disconnect between legislative reform and on-the-ground potential for implementation.<sup>37</sup> The current legal framework, based on the 2004 Constitution, is a hybrid of both civil law and Sharia, and thus embodies inherent contradictions depending on the source of interpretation.<sup>38</sup> Prior laws remain in effect until they are repealed, as long as they do not contradict the Constitution or Afghanistan's international obligations.<sup>39</sup>

#### 3.1 Over-Arching Laws

**The Constitution:** In 12 chapters and 162 articles, the Constitution defines Afghanistan as an Islamic, independent, unitary and indivisible republic. Article 3 makes all legal frameworks binding to Islamic principles, while Article 7 obliges the Government to observe the International Declaration of Human Rights, UN Charter, international treaties and ratified human rights conventions. Article 10 encourages private capital investment based on a market economy. Chapter 2 (Articles 22-59) provides legal safeguards for the protection of all fundamental rights, ensures freedom of expression, the right to life and liberty, to elect and be elected, to fair trial and hold demonstration, immunity of private property from invasion and confidentiality of personal correspondence, the right to free education and health services, and to hold government accountable, prohibiting torture, discrimination and forced labour. The Constitutional Loya Jirga is the only entity authorized to process Constitutional Amendments (Article 111) which is a rigid condition according to some, given the technical, logistic, security and financial burden of convening the Constitutional Loya Jirga.<sup>40</sup>



*Afghan representatives in constitutional Loya Jirga*

**Law of Basic Organization of the State:** The original Law of Basic Organization of the State is 43 years old. The revised draft has been pending in Parliament since early-2008.<sup>41</sup> According to the law, the State consists of the Government (Executive,) National Assembly (Legislature) and Judiciary, with the President as the head of all three branches of the State. The number of Vice Presidents is limited to two, but the number

<sup>37</sup> Astri Suhrke, Kaja Borchgrevink, 'Negotiating justice sector reform in Afghanistan', *Crime, Law and Social Change*, March 2009, Volume 51, Issue 2, 211-230.

<sup>38</sup> Article 3 of the Constitution obliges all legal frameworks to be based on Islam, while Article 2 and 7 confirm freedom of religion.

<sup>39</sup> Afghanistan has ratified the International Covenant on Civil and Political rights ICCPR, International Covenant on Economic, Social, and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC).

<sup>40</sup> KII, Abdul Hafiz Mansoor, Member of Parliament, 6 January 2014

<sup>41</sup> The Wolesi Jirga passed the draft law on 17 September 2007. The Meshrano Jirga returned the law to the Wolesi Jirga on 26 February 2008.

of Ministerial Advisers is left to the discretion of the President. The State is centralized and the Executive consists of 25 Ministries.<sup>42</sup> The Legislature is bicameral, responsible for legislation and for confirming international treaties as well as the establishment, change and dismissal of administrative units (ministries). The Judiciary is independent, comprising the Supreme Court (SC), Appeals Court, Primary Court, General Directorate of Administration and Central Departments. Subnational governance consists of provinces and districts, with the Provincial Governor (PG) representing the Executive and leading all subnational agencies and Ministerial Line Departments. Afghanistan has 34 Provinces and 34 Provincial Councils. Municipalities manage urban governance, and the Mayor and Municipal Council (MC) members are to be elected through free, fair and direct secret ballot. The chapter on linkages between administration and justice discusses the impact of this law and the lack of its enforcement in more detail.

### 3.2 Administration

**Civil Service Law:** Also known as the IARCSC's Law, the law, aimed at establishing a sound system of public administration through implementing reforms, defines the duties of the civil service which include the management, regulation and delivery of government services, policy development and advisory services, and development and implementation of laws, decrees and other relevant regulations. It defines a civil servant as a "person appointed by the Government to perform its executive and administrative duties," and places the Independent Administrative Reform and Civil Services Commission (IARCSC) at the lead, responsible for the "regulation, reform, formulation and implementation of structure policies of public administration system,"<sup>43</sup> independent in its performance and directly accountable to the President's Office (President and Vice Presidents). The structure of IARCSC consists of four sub-agencies: the **Civil Service Management Department** (responsible for developing policy and monitoring implementation); the **Civil Service Appointments Board** (responsible for identifying and recommending the recruitment, appointment, promotion, transfer, retirement, pension payment and other personal matters of high-ranking civil servants with the approval of the President, and monitoring appointments at the ministries); the **Civil Service Appeals Board** (responsible for hearing, processing and monitoring the implementation of the Board's decisions at the ministries); and the **Administrative Reform Secretariat** (responsible for undertaking activities concerning executive, financial and administrative matters under the authority of the Chairman in accordance with relevant procedures, and monitoring the implementation of administrative reform programmes, projects and activities).

**Civil Servants Law:** Based on Article 50 of the Constitution and designed to improve the delivery of public services and implementation of public administration reform, this law, which is currently under revision, regulates the affairs of civil servants (permanent as well as contracted) including recruitment procedures at all government ministries, the Office of Attorney General, Independent General Directorates, Independent Commissions, Public Enterprises, Administrative Offices of both houses of the Parliament and Administrative Office of the Judiciary, with the exception of military appointments, judges and teachers. The Law defines the civil servant ranks (1-8), Steps (1-5) and conditions of recruitment for each, which do not require more than a bachelor's degree and four years of relevant work experience for Rank 1 (Director General). Civil servants are expected to perform their duties in accordance with their Terms of Reference (ToR), Annual Work Plan (AWP) and relevant laws and regulations in force at the time. Their

42 Foreign Affairs, National Defence, Interior Affairs, Finance, Justice, Education, Commerce and Industries, Public Works, Culture, Youths and Tourism, Public Health, Agriculture and Irrigation, Economy, Mines, Communication, Rehabilitation and Rural Development, Higher Education, Energy and Water, Transport and Aviation, Immigration and Returnees, Women's Affairs, Hajj and Islamic Affairs, Frontier and Tribal Affairs, Urban Development, Labour, Social Affairs, Martyrs and Disables, and Counter Narcotics.

43 Ideally, IARCSC should be the only partner for improving system of public administration.

performance evaluation is a process based on the ToR, the AWP and the Annual Report. This law confirms civil servant benefits such as salary, overtime payments, annual and sick leave, welfare and health, on-service learning opportunities and the right to resign. The law protects the civil servants from forced or groundless dismissal from work and from sexual, moral and emotional harassment at the workplace.

**Labour Law:** Based on Article 48 of the Constitution, the law prohibits forced labour, regulates and clarifies the obligations, rights, privileges and social security of employees, male or female, at all ministries, governmental or non-governmental organizations, independent commissions, public and private business entities, and international organizations operating in Afghanistan in which employees engage in production work or service. The law is applicable to Persons (Afghan or Foreign Nationals) working abroad in diplomatic missions or other State agencies of Afghanistan, as well as persons (Afghan or Foreign) who, either pursuant to previous contracts or without contracts, obtained or will obtain work permits in Afghanistan and are employed in State, mixed or private agencies working in domestic or foreign international organizations inside the country. The law protects the right to remuneration, non-discrimination and paid leave, and obliges the government of Afghanistan to observe international conventions to which Afghanistan is, or will be, a party and other treaties and standards of international organizations concerning labour and management. The law defines the nature, types and conditions of termination of an employment contract and protects the right to reappointment and pension. It limits work hours to 40hrs/week, reducing it to 35hrs/week for pregnant women and youth between the ages of 15-18, and to 30hrs/week for labourers working underground or in conditions hazardous to health. Female employees are entitled to 90 days of paid maternity leave. In addition, the law obliges employers to assign pregnant women to light assignments for the entire duration of their pregnancy, with an allotment of paid 30-minute breaks every three hours for nursing mothers and provision of kindergarten. The law prohibits the refusal of employment to pregnant or breastfeeding women. The law obliges the employer to offer employees on-the-job learning opportunities and to introduce them to institutions of higher education or vocational training<sup>44</sup> as necessary. The law prohibits the engagement of women and youth<sup>45</sup> in physically arduous or harmful employment, or night shifts, with the exception of hospitals.

**Procurement Law:** Based on Article 75 of the Constitution, the law regulates the public procurement of goods, services and coordination of works, both domestic and foreign, for all entities, municipalities and other units funded by the government budget. The law helps ensure transparency in procurement proceedings, effective control of financial affairs and public expenditure, and efficient procurement of goods, works and services by providing tendering opportunities to all eligible bidders in the procurement proceedings, and obliges preference to be given to procurement from national sources. The development of a procurement plan requires the entities to take into account the available financial resources, economies of scale and volume, appropriate time and other limitations. The entities also need to comply with the Public Finance and Expenditure Management Law (PFEML) in submitting their procurement plans. For the disaggregation of procurement, use of a less competitive procurement method is permitted and the divided procurement that exceeds the thresholds of the awarding authority is to be accurately audited.

44 Article 82 of the Labour Law: "The rules and procedures for the training centres of government and non-government organizations and the method for supervision by the Ministry of Labour and Social Affairs on such centres shall be regulated by the relevant legislative document." The Ministry of Labour and Social Affairs is also responsible for drafting standards and rules of Labour (Article 87).

45 Article 127: "The youth (young Employee) is a person who has completed the age of 14 but is under 18 years of age."



**Public Finance and Expenditure Management Law:** Based on Article 75 of the Constitution, the law regulates the organization and management of financial affairs, protection of public assets, preparation of the budget and management of public expenditure of the state administrations inside and outside Afghanistan. The law obliges the government to present all revenues and expenditures of state administration on a gross basis. The Ministry of Finance (MoF) is responsible for implementing the provisions of this law, and the authorities for state administration are made responsible to the President and the National Assembly concerning financial management of public resources. Budget preparation is to be based on multi-year national development, security programmes and economic frameworks. On the basis of the national economic framework and development framework, the Government shall estimate and determine the amount of revenues available, and the overall ceiling, for expenditures of the state for the next fiscal year. The financial statistics such as revenues, expenditures and financing in the annual budget documentation shall be set out and shall correspond with the Government Finance Statistics classification. The state administration is obliged to take action in accordance with annual budget procedures prepared under this law and adopted by the Wolesi Jirga. In case of contradictions with other laws, the provisions of the Budget Procedures shall prevail.

**Local Administration Law:** Based on Articles 136 and 137 of the Constitution and a draft of which is currently pending in Parliament, the law regulates local administration units and participation in local administration with the purpose of improving public service delivery and ensuring accountability and transparency. The law makes the Provincial Governor the representative of the State at the provincial level and the District Governor (DG) at the district level, and divides provinces and districts into grades 1, 2 and 3 based on population, size, number of districts, distance from other provinces, municipality and capacity to generate revenues. Provincial Administration consists of the Provincial Governor, Deputy Provincial Governor (DPG) and Directors/Heads of Ministerial Line Departments. Provincial Development Committees (PDCs) tasked with developing social, economic, cultural and technological plans consist of the PG, DPG, Directors/Heads of Ministerial Line Departments, Mayor, representative of civil society organizations and Provincial Director of the Chamber of Commerce. The Law defines the duties and powers of the Provincial and District Governors.<sup>46</sup>The PG is obliged to hold coordination meetings with all provincial representatives of ministries, including the Attorney General's Office (AGO) and Judiciary, without interfering in their affairs or affecting their independence. The Provincial Chief of Police is made accountable to the Provincial Governor. In order to ensure coordination, justice sector institutions (Courts, Attorney General and provincial and district departments of the Ministry of Justice) are obliged to keep the Provincial and District Governor in the loop of affairs.

**Municipal Law:** Based on Article 141 of the Constitution and with a draft currently pending with the Cabinet, the law aims at improving urban governance and regulates the work of all municipalities in Afghanistan, including the Kabul Municipality. Rendering municipalities independent, the law obliges them to report to the President's Office through the Independent Directorate of Local Governance (IDLG), with the Kabul Municipality reporting through the Office of Administrative Affairs. Identifying the conditions for the establishment of municipalities, the law divides cities into smaller units called Nahia. The Mayor, the executive head of the municipality, is to be elected through free, fair, transparent and secret ballot.<sup>47</sup>The Deputy Mayor is a civil servant

<sup>46</sup> For in-depth legal analysis of the role of Provincial Governor please see Functions, Roles and Relationships of Governor and Legal Framework for Provincial Governor and Provincial Council, IDLG, September 2013

<sup>47</sup> Mayoral and Municipal Council elections are yet to be held by IEC. Failure to hold elections have been linked to uncertain city boundaries, absence of city population estimates, identification cards and the pending law.

position. The Municipal Council is the highest level of municipal decision-making, comprising elected representatives of the people and which, among other duties, is authorized to address complaints against the elected Mayor. Municipalities have the power to generate, retain and spend revenues as per both their normal budgets and development budgets towards improving urban governance through implementation of master, strategic and detailed urban plans, as well as the promotion of urban culture.

**Law of Provincial Councils:** Based on Articles 138 and 139 of the Constitution and with a draft currently pending in the Parliament's High Oversight Commission on Constitution, the law regulates the activities of elected Provincial Councils (PCs) for the purpose of "creating a structure for partnership and participation of people and civil society institutions with State Administration at the provincial level, and counselling the provincial offices on related affairs."<sup>48</sup> Consisting of the Head, Deputy Head, Secretariat and Members, PCs participate in determining the development objectives and plans; provide consultation on the effective usage of the financial resources of the province; participate in dispute settlement, elimination of customs and traditions contrary to the law and Islam; evaluate the actions of law enforcement bodies and report to provincial administration; acquire information on the proceedings and work plans of the provincial administration and related branches; appraise the development plan and annual expenditure process of provincial administration and provide reports to the respective inhabitants of the province through the media; participate in counter-narcotics activities and the protection of historical monuments; and consult the inhabitants of the province in general consultative meetings at least once every three months and the governor and related department authorities at least once per month.<sup>49</sup> Article 8 of the law makes the meetings of the PCs public unless one-third of members demand otherwise. PCs can be suspended only if a state of emergency is declared and can be dissolved if found to have acted against the Constitution.

### 3.3 Justice

**Law of the Organization and Authority of the Courts:** This law has been enacted pursuant to Articles 116 and 123 of the Constitution for the purpose of managing the affairs related to the organization of the judiciary, including the duties and powers of the Supreme Court, Appeals and Primary Courts, and judges. The Judiciary shall be independent but subject to law, composed of the Supreme Court, Court of Appeal and Primary Courts, all serving the purpose of resolving disputes. Travelling courts may be established when needed on the recommendation of the Supreme Court and by approval of the President. The Supreme Court, the highest authority of the judiciary, is composed of nine judges appointed by the President in an agreement with the Wolesi Jirga and in accordance with Articles 117 and 118 of the Constitution. The judges must not hold political party membership. The president shall appoint one of the members as the Chief Justice of the Supreme Court. Article 5 of the law permits the parties to the case to appeal against decisions issued by the lower courts in accordance with law.<sup>50</sup>

**Law on the Structures, Duties and Mandates of the Afghanistan Independent Human Rights Commission (AIHRC):** This Law is made pursuant to Article 58 of the Constitution and Resolution 134 of 20 December 1993 of the United Nations General Assembly in order

<sup>48</sup> A copy of the draft PC Law can be requested from IDLG's General Directorate of Local Council Affairs.

<sup>49</sup> On the ground technical, institutional and individual capacity of PC members is too weak to facilitate effective performance.

<sup>50</sup> The article does not mention the need for sufficient grounds, rendering appeal against court decisions very easy. As a result, Appeals Courts and the Supreme Court receive more cases than they can process. This is considered to be a major factor contributing to poor judicial service delivery, because in addition to the overload of cases on the courts it opens avenues for corrupt practices by those with access to power and financial resources.

to monitor the observance of human rights, to promote and protect human rights and to regulate the affairs related to the structure, duties, powers and method of work of the AIHRC. The Commission shall monitor the situation of human rights in the country, promote and protect human rights, monitor the situation of and access to fundamental rights, and investigate and verify cases of human rights violations. Judicial and prosecutorial organs, ministries, governmental organizations, civil society groups, non-governmental organizations and all citizens are obliged to cooperate with the Commission in achieving the objectives set up by this law.

**Elimination of Violence against Women (EVAW) Law:** Based on Articles 24 and 54 of the Constitution, this 2009 law is a major government step in implementing the National Action Plan for the Women of Afghanistan (NAPWA).<sup>51</sup> For the first time, this law criminalized child marriage, forced self-immolation, forced marriages, forced labour and 19 other acts of violence against women, such as rape. The law protects the right to a defence attorney, access to free health services, legal services and safe houses, compensation, confidentiality and all other rights given in enforced laws. This law is currently enforceable but is based on a Presidential Decree because Parliament never passed it. The Ministry of Women's Affairs (MoWA) is responsible for taking immediate steps to helping the victim, while the Attorney General and Courts are expected to treat cases of violence against women on a priority basis. MoWA must also take preventive measures, raise awareness, and organize workshops, conferences, seminars and trainings. The Ministry of Haj and Religious Affairs is obliged to organize awareness-raising campaigns through mosques. The Ministries of Education and Higher Education are obliged to include relevant information in the curriculum, while the Ministry of Information and Culture is obliged to help raise awareness through print and electronic media, as well as facilitate the publication of useful material on the subject. Similarly, the Ministries of Justice, Interior and Health are instructed to take useful and relevant steps aimed at decreasing rates of violence against women and increasing their capacity to report cases of violence. Article 15 authorizes the establishment of a special Commission on Violence against Women, chaired by MoWA and with members including the Deputy Attorney General, Deputy Ministers of Interior, Justice, Health, Information and Culture, Education, Labour and Social Affairs, Haj and Religious Affairs, the relevant AIHRC Commissioner, the Head of Kabul's Special Family Court and the Head of the Association of Independent Defence Attorneys (AIDA).<sup>52</sup>

51 The law has a number of inherent weaknesses. For details on EVAW and its weaknesses please see "A Long Way to Go: Implementation of EVAW Law in Afghanistan" UNAMA and OHCHR, November 2011.

52 The Law is in practice now at the Judiciary, though culture and social pressures, as well as practices of customary governance remain to be a barrier to reporting incidents of violence to formal institutions of governance. Since legal reform has been incomprehensive and EVAW could not undo certain practices resulting from the Afghan Penal Code, a United Nations Assistance Mission for Afghanistan (UNAMA) report of 2012 found that "some murder cases and other serious crimes criminalized under the EVAW law were prosecuted under the Penal Code instead of the EVAW law" resulting in "acquittal of perpetrators, reduction of charges to less serious crimes, convictions with lighter sentences or women victims themselves being accused of "moral crimes."

### 3.4 Political and Civic Participation

**Electoral Law:** This law has been enacted in accordance with Article 33 of the Constitution to regulate election-related affairs which are to take place through free, general, secret and direct ballots. Elections are held to elect the President, Members of Parliament, Provincial Councils, District Councils, Village Councils, Municipal Councils and Mayors.<sup>53</sup>The Constitution guarantees the right to elect and be elected. The voters and candidates shall take part in elections on the basis of their free will. The imposition of any direct or indirect restrictions on voters or candidates related to language, religion, ethnicity, gender, tribe, region, residence, and social and occupational status is prohibited. State and non-state institutions, political parties, social organizations, civil society and relevant individuals shall cooperate with the Independent Election Commission, Central and Provincial Electoral Complaints Commissions and other commissions to be formed in accordance with the provisions of this law, and shall enforce the decisions made by these commissions within their jurisdictions.

**Political Parties Law:** This law is adopted pursuant to Article 35 of the Constitution on the establishment, functions, rights, obligations and dissolution of political parties. The political system of the State is based on the principles of democracy and pluralism of political parties. The law allows Afghan citizens of voting age to freely establish a political party irrespective of their ethnicity, race, language, tribe, sex, religion, education, occupation, lineage, assets and place of residence. Parties are obliged to have at least 10,000 members and present signed letters of commitment from at least 35 individuals in at least 20 of Afghanistan's 34 provinces. The Ministry of Justice has the right to register political parties, members of which can be all Afghans 18 years of age or above. The law makes the financial resources of political parties public, the sources of which can be member contributions, donations by legal persons up to two million Afghanis per year, the party's movable or immovable property, or election-related government subsidies. Financial and commercial government organs and the responsible officials heading those organs shall not use their position to favour or to disadvantage any political party. The Supreme Court, upon the request of the Minister of Justice, can dissolve political parties if they use force or threaten the use of force, or act against the Constitution.

**Associations Law:** Based on Article 35 of the Constitution and endorsed in September 2013, the law regulates the "affairs related to establishment and activity procedures, rights, obligations and dissolution of social organizations."<sup>54</sup>The law defines associations as "communities, unions, councils, assemblies and organizations which are voluntarily established by a group of real persons and cooperates as non-profit, non-political and in accordance with this law" and prohibits engagement in political activities or those outside their registered statute. The law permits associations to pursue both public and mutual benefit activities but, after registration at the Ministry of Justice, associations can have no less than 10 founding members. Afghans under the age of 18 years, stateless persons and foreign citizens cannot found associations. With a 10,000 Afghanis registration and renewal fee, the law renders registration mandatory for any association activities and registration expires every three years.

<sup>53</sup> Elections for Mayor and for District, Village and Municipal Councils have not been held so far.

<sup>54</sup> Available at <http://www.icnl.org/research/library/files/Afghanistan/assoclaw.pdf>

**Law on Non-Governmental Organizations (NGO):** Signed by the President in June 2005, but pending with amendments in Parliament,<sup>55</sup> the law is applicable to NGOs, both domestic and international, as long as both accept the terms of this law. The law permits NGOs to pursue both public and mutual benefit activities<sup>56</sup>, and obliges NGOs to seek registration with the Ministry of Economy which must grant them special permission to engage in construction contracts. The Law obliges NGOs to submit bi-annual reports and committed project documents to the Ministry for registration and verification purposes. Both pre-project work and post-ministerial assessments are required, although compliance in the latter case remains conspicuously low thereby leading to NGO terminations.<sup>57</sup> NGOs are prohibited from engaging in political activities, which most likely refers to campaigning rather than public advocacy, given that the term “political activity” is nowhere defined.

**Law on Mass Media:** Based on Article 34 of the Constitution and Article 19 of the International Covenant of Human Rights, the law aims at ensuring freedom of thought and expression, and at regulating the activities of the mass media which are registered with the Ministry of Information and Culture (MoIC) as means or instruments for dissemination of information. The law protects the right to freedom of thought, expression and access to information, permits journalists to form associations, and entitles citizens of the country, political parties, registered national organizations and foreign nationals to establish media entities. The law prohibits publication on subjects that are contrary to the principles of Islam, are offensive to other religions and sects, and those that dishonour and defame individuals. The law permits citizens of foreign countries to produce cinematographic films in Afghanistan, provided that they have obtained prior permission from the MoIC.

55 Draft Law on Foundations, a Draft Law on Volunteerism, and amendments to the Tax Code are pending, the last one which when enacted would introduce tax incentives for donors giving to tax-exempt organizations.

56 Article 10 of the Tax Law restricts “tax exempt organization” status to those organizations “organized and operated exclusively for educational, cultural, literary, scientific, or charitable purposes.”

57 In January 2012, Ministry of Economy announced the closure of 600 Afghan and 195 foreign NGOs due to failure to share biannual reports. “If NGOs don’t send us their reports every six months and if we continue not to receive them for two years, these NGOs are considered to be inactive” were the Minister’s words. For similar reasons, more than 130 national NGOs and 10 international NGOs were also dissolved in April 2013.

## 4. Outline of Institutional Structure

### 4.1 State - Presidency

**Afghan State:** The State in Afghanistan is unitary. Political authority is vested in the government in Kabul with some delegation of administrative and fiscal authority to subnational structures of governance as per Article 137 of the Constitution. Initiated with the Bonn Agreement<sup>58</sup> of 2001, the government is centralized and headed by the President, thereby rendering it a Presidential System, with separation of powers declared by the Constitution. The Executive (headed by the President and comprised of 25 Ministries and 11 Departments, five Commissions and a number of Independent Directorates and High Offices), Legislature (Bicameral National Assembly) and Judiciary (independent branch of the State comprised of the Supreme Court, Appeals Courts and Primary Courts) make up the State.

**Presidency:** The President, a combination of a King and a Prime Minister, has enormous constitutional authority (Chapter 3, Articles 60-70). As the elected Head of State, the President is the Head of all three branches of the State as well as Supreme Commander of the armed forces. The President has the power to make all senior appointments, sign laws and legislative decrees, declare emergencies, supervise the implementation of the Constitution, reduce or pardon penalties and determine the fundamental policies of the State. The President has two Vice Presidents and appoints the cabinet with a vote of confidence from the Wolesi Jirga (lower house) of the National Assembly. Limited to only two terms, the current President is due to step down in April 2014.



*Afghanistan flag waving over  
Presidential Palace*

### 4.2 Executive

Chapter 8 (Articles 136-142) of the Constitution defines national and subnational administration.

#### 4.2.1 National Bureaucracy

Chapter 4 (Articles 71-80) of the Constitution defines national bureaucracy, headed by Ministers. Line Ministries (Central Ministries, Provincial Line Directorates and District Offices) and subnational entities (IDLG, Provincial Governor's Office, District Governor's Office and Municipalities) make up the bureaucracy, run by civil servants (permanent and contracted).

#### 4.2.2 Subnational Governance

Article 137 of the Constitution discusses delegation of authority to local administration units, which includes provincial and district line departments of ministries and independent directorates and commissions. Planning, budgeting and decision-making powers of local

<sup>58</sup> An international conference brokered by the UN that featured many factions from the anti-Taliban Afghan resistance.

administration units are limited, thereby rendering local government weak.<sup>59</sup> There are four levels of subnational governance: Province, District, Municipality and Village; and four subnational governance institutions: Provincial Governor's Office (PGO,) District Governor's Office (DGO,) Municipalities and Provincial Councils (PC) connected to the central administration through the IDLG.<sup>60</sup> The Constitution obliges the government to establish elected councils at province, district, village and municipality levels; currently only provincial councils have been elected with elections for the rest pending indefinitely. District Coordination Councils (DCCs) jointly owned by the IDLG and the Ministry of Rural Rehabilitation and Development (MRRD) are supposed to ensure smooth transition to the elected District Councils. The Cabinet has approved the DCC Terms and Policy Guidelines<sup>61</sup> which will be formed either through direct District Development Assembly recognition as a DCC, direct Community Council recognition as a DCC, the merger of existing district-level institutions to form a DCC, or a formation of a new DCC in the event of an absence of district-level councils.<sup>62</sup> Provincial Line Departments represent the ministry at the subnational level and are responsible for the delivery of public services, with decisions made at the centre which render these subnational offices a mere weak extension of the central offices. Subnational units cannot generate or spend revenue with the exception of the municipalities (33 provincial, 120 district municipalities) which are better placed for urban service delivery provided Mayoral<sup>63</sup> and Municipal Council elections are held and the Municipal Law is passed. The Kabul offices collect all revenues for national plan-based redistribution purposes. Developed in 2010, the Sub-National Governance Policy (SNGP) was intended to orient local governance in Afghanistan, although it has had little success. One major challenge has been post-policy development legislation initiated almost three years ago and which remains stalled in the Cabinet and the Parliament.<sup>64</sup> The pattern of uneven distribution of resources by PRTs to provincial administrations has also damaged the subnational governance system.<sup>65</sup>

### 4.3 The Justice Sector<sup>66</sup>

The Justice Sector consists of the Afghan National Police (ANP), Attorney General's Office, the Judiciary/Courts and Ministry of Justice. The ANP is responsible for the discovery of crime, the AGO for the investigation and prosecution of crimes (criminal only), and the courts deal with dispute settlement while the Huqoq Offices of the Ministry of Justice help to implement the decisions of the courts.

<sup>59</sup> "The system needs immediate change and serious decentralization reform. Provincial Governors' financial management capacity must increase, but only after they are half-elected" (President must appoint the Provincial Governors from a pool of 5 candidates identified by the Provincial Councils, as people's elected representatives at the subnational level." KII Mansoor

<sup>60</sup> IDLG is responsible for strengthening subnational government, promoting good governance and ensuring that PGO's, DGO's, Municipalities and Local Councils' capacity is being enhanced to meet their mandate.

<sup>61</sup> Annual Report 1392, IDLG, [http://www.idlg.gov.af/eng/images/stories/AnnualReports/idlg\\_annual\\_report\\_2013\\_eng\\_version.pdf](http://www.idlg.gov.af/eng/images/stories/AnnualReports/idlg_annual_report_2013_eng_version.pdf)

<sup>62</sup> Please see approved DCC Terms for organizational and functional details of DCCs.

<sup>63</sup> By Law, Mayors are to be elected. However, the President continues to appoint them.

<sup>64</sup> IDLG Third Quarterly Report, July-September 2013

<sup>65</sup> Kenneth Katzman, 'Afghanistan: Politics, Election and Government Performance', CRS, 22 Nov 2013, <https://www.fas.org/sgp/crs/row/RS21922.pdf>

<sup>66</sup> There are conflicting interpretations on what constitutes justice sector institutions. NPP5 Law and Justice for all does not include Afghan National Police in this list, though the Constitution obliges police to discover crime, thus giving it a key role in the justice process.

### 4.3.1 Afghan National Police - Ministry of Interior

Article 134 of the Constitution makes the discovery/identification of crime the responsibility of the ANP, led by the Ministry of Interior and regulated by the 2005 Police Law pursuant to Articles 56, 75 and 134 of the Constitution. The Afghan National Police is a law enforcement force.

### 4.3.2 Attorney General's Office

Article 134 of the Constitution renders the AGO part of the Executive, but it is independent in its proceedings that include the investigation and prosecution of crime. The AGO has a central administration in Kabul as well as provincial offices.

### 4.3.3 Judiciary: Supreme Court, Appeals Court, Primary Court

Chapter 7 (Articles 116-135) of the Constitution defines the Judiciary as consisting of the Supreme Court, Appeals Court, Primary Court<sup>67</sup>, General Directorate of Administration and Central Departments. The Judiciary is independent<sup>68</sup> (Article 116 of the Constitution), the authority of which is regulated by the law of Structure and Authorities of Courts endorsed in 2005. Courts deal with all civil (as per the Civil Law) and criminal (Penal Code) cases. The Administration Directorate General of the Judiciary deals with the administrative affairs of the courts.<sup>69</sup> Article 117 of the Constitution grants the Supreme Court the highest judicial power. The High Council within the Supreme Court is the senior most body of judicial power.<sup>70</sup> With over 1,370 judges working in 365 courts, the Supreme Court deals with all civil, commercial, general criminal, public and military crimes, and crimes against public security and interest divisions. Although the Supreme Court has the authority to only deal with issues pertaining to the Constitution and the violation of Constitutional articles<sup>71</sup>, it continues to receive cases of all natures from lower courts leading to an overload of cases on the Supreme Court. Given this situation, only strong, high-level connections or stacks of cash can help move a case forward. There is an Appeals Court in each provincial capital, consisting of five divisions (General criminal, public security, civil and personal, public rights and commercial). Primary Courts include all city primary courts in the provincial centre and district courts in the district centres.

### 4.3.4 Ministry of Justice

The Ministry of Justice (MoJ) is part of the Executive and is responsible for organizing and developing legislative affairs as well as the consolidation of rule of law. The Directorate of Huqoq at the MoJ is where cases begin (civil only) and end (both civil and criminal.) The Huqoq Offices ensure that the courts' decisions are implemented.

<sup>67</sup> Children, family, primary commercial and counter narcotics courts and divisions fall under the category of "Other Courts."

<sup>68</sup> With corruption in the Judiciary reaching record levels, judicial independence is increasingly seen as a vice than virtue. KII Sarabi, KII Mansoor, and Najibullah Jami, Director General Human Resource, Ministry of Justice, 8 January 2014

<sup>69</sup> The Administration DG of Judiciary includes: Office of the Chief of Supreme Court, the Secretariat of High Council and the departments of Correspondence, Research and Studies, Judicial Inspection, Documents and Deeds Registration, Islamic Verdict, Publication, Press Affairs, Finance and Administration, Control and Monitoring, Construction and Personal Affairs.

<sup>70</sup> The High Council's duties include: interpretation of laws, revision of court decisions, proposing new legal frameworks for judiciary regulation, reviewing cases of restitution of convicts, authorizing case transfer between courts, ensuring consistency of the judicial procedure, approval of relevant regulations, budget preparation, performance monitoring of courts and initiating capacity-building programmes for judges.

<sup>71</sup> KII, Farid Hamidi, Legal Analysis Expert and AIHRC Commissioner, 11 January 2014



## 4.4 Legislature

Chapter 5 (Articles 81-109) of the Constitution defines the bicameral legislature's structure and the authority of its elected and appointed members, as well as the legislative process. The Afghan National Assembly is the highest legislative body and the symbol of the people's power, comprised of the appointed and elected Upper House (Senate, House of Elders/ Meshrano Jirga - 102 seats) and the elected 72 Lower House (House of the People/ Wolesi Jirga - 249 seats). Both houses convene two regular, concurrent but separate sessions for a term of nine months each year. The Rules of Procedure of Meshrano Jirga and Wolesi Jirga, developed pursuant to Article 160 read with Articles 87, 88, 89, 106, 108, 109 of the Constitution, govern the working of the Senate and Lower House of the Parliament, respectively, while the Civil Service and Civil Servant Laws of Afghanistan govern the administrative processes of both houses. The Speaker of both Houses must be elected by majority and through secret and direct ballot for the term of the legislature. Members of the house can organize themselves into Parliamentary Groups with a minimum of 15 (Senate) and 23 (Lower House) members per group and a maximum of one group membership for each House member. This rule is also applied to the Upper House's 11 sectoral Standing Commissions and ad-hoc Subcommittees, and to the Lower House's 18 Joint and Standing Committees and Commissions. The Committees and Commissions have the right to call ministers and the directors of the Independent Commissions, General Directorates and all the government officials for accountability purposes, after due coordination with their offices regarding the issue under review. The Agenda of the Plenary Sessions of both Houses may review government activities (including bills, resolutions and proposals introduced on behalf of the government by the Minister for Parliamentary Affairs in accordance with the Constitution) or House activities.



*President Hamid Karzai addresses Members of Parliament*

<sup>72</sup> The Members are elected through a Single Non-Transferable Vote (SNTV) system. SNTV as a system weakens political party-based electoral system. Its implementation at the provincial level has weakened the relations between the electorate and elected Parliament members by undermining equity in service delivery: Parliamentarians may push for the interests of a specific place rather than the entire province.

## 4.5 Non-Governmental Organizations

NGOs have assisted programme development and implementation as independent contractors, internally-recruited staff and community-based organizations that are supported for both programme and operations by international organizations. In all cases, they replace the government where needed and when possible, and facilitate public service delivery or even directly deliver services. Although the post-2001 period in Afghanistan witnessed the mushrooming growth of NGOs, development shuras have existed since the early-1980s<sup>73</sup> with the most recent model being that of the Community Development Councils (CDCs) of the National Solidarity Programme (NSP). However, the international community has preferred to work with NGOs and not with customary forms of local organizations, considering them unreliable and unrepresentative of marginalized communities such as women,<sup>74</sup> despite being more participatory and representative in nature.<sup>75</sup> NGOs are of two types: NGOs (more than 2,000 registered with the MoEC) and Social Organizations (more than 4,000 registered with the MoJ).<sup>76</sup>

## 4.6 Political Parties and Electoral Machinery

Political Parties are empowered by Article 35 of the Constitution which provides for the right of citizens to form political parties, but disempowered by the Single Non-Transferable Vote (SNTV) System.<sup>77</sup> There were 65 registered parties as of March 2013.<sup>78</sup> The Independent Election Commission (IEC) and the Election Complaints Commission (ECC) administer elections in Afghanistan. The ECC cannot have any foreign members.

## 4.7 Customary Governance

Customary governance is the strongest, most widely used and primary source of order in most of rural Afghanistan, overshadowing the writ of the government in most places unless formal governance mechanisms have developed good relations with them. Represented by a village malik and mullah, the values of customs and religion are upheld by these institutions.<sup>79</sup> The role of religious leaders is very strong, given that the Constitution declares Afghanistan a Muslim State and Sharia to be the basis of all laws in the country with no law ever to violate Islam (Article 3). For a majority of the population, the separation of religion and State is meaningless and possibly un-Islamic. The mullah or head of the mosque, the centre of community and religious life in rural areas, is present in every community and plays a significant role in orienting mass opinion on all social, economic, family and political issues. Most mosques are not registered in Afghanistan,<sup>80</sup>

73 Newberg, Paula R. 'Politics at the Heart: The Architecture of Humanitarian Assistance to Afghanistan', Carnegie Endowment for International Peace, 1999

74 Boesen, I.W. 'From Subjects to Citizens: Local Participation in the National Solidarity Programme', AREU Working Paper Series. 2004, 2

75 Boege, Brown and Clements, 2009

76 Information taken from websites of Ministry of Justice and Ministry of Economy (accessed 28 December 2013).

77 'Afghanistan's Parties in Transition', Policy Brief, International Crisis Group, 26 June 2013, <http://www.crisisgroup.org/~media/Files/asia/south-asia/afghanistan/b141-afghanistans-parties-in-transition.pdf>

78 Information taken from <http://moj.gov.af/Content/files/Table%20of%20political%20parties%20registered.pdf> (accessed on 23 December 2013)

79 Brick, Jennifer, 'The Political Economy of Customary Village Organizations in Rural Afghanistan', Central Eurasian Studies Society, Georgetown University, Washington, DC, September 2008

80 "There are believed to be about 120,000 mosques in Afghanistan, but only 3,200 are registered on the government payroll – just 2.6%."

Mujib Mashal, 'Missed Opportunity in Afghanistan: We Forgot to Pay the Preachers', TIME, <http://world.time.com/2013/02/27/missed-opportunity-in-afghanistan-we-forgot-to-pay-the-preachers/#ixzz2qRKTYGe5>

and many have been used for strong anti-government propaganda<sup>81</sup>--something that could have been avoided had the international community sufficiently engaged with this cohort.<sup>82</sup> Given the mullah's traditional economic dependence on the community, the source of economic dependence determines the content of the pre- and post-prayer speeches of the mullah. Over the past 12 years, "all of the important Islamic actors — Al Azhar (the 1,000-year old fount of Islamic learning in Cairo), the Saudi Wahabis, the Iranian Shi'a, the Deobandi (the type of Sunni Islam that dominates in South Asia), the Turkish — have invested heavily to promote their brand of Islam in Afghanistan."<sup>83</sup>

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81 Sadaf Shinwari, 'Concerns over Anti-Government Propaganda in Afghan Mosques', Khaama Press, 28 April 2012, <https://www.khaama.com/concerns-over-anti-government-propaganda-in-afghan-mosques-820>

82 Davod Moradian, Director Afghanistan Institute for Strategic Studies, quoted in 'Missed Opportunity in Afghanistan: We Forgot to Pay the Preachers', TIME, <http://world.time.com/2013/02/27/missed-opportunity-in-afghanistan-we-forgot-to-pay-the-preachers/#ixzz2qRKTYGe5>

83 Ibid.

## 5. Outline of Policy Frameworks and Status of Implementation

### 5.1 The Bonn Process (2001)

The Bonn Conference was held in December 2001, leading to the Bonn Process aimed at establishing a stable and democratic government in Afghanistan. Its benchmarks included the Emergency Loya Jirga, the establishment of the Afghan Interim Administration, the adoption of a new Constitution in January 2004, and the holding of Presidential Elections in 2004 and Parliamentary and Provincial Council Elections in 2005 that formally marked the successful end of the Bonn Process.

### 5.2 Afghanistan Compact (2006)

The successor to the Bonn Agreement, the Afghanistan Compact, was the outcome of the 2006 London Conference on Afghanistan aimed at establishing a framework for international cooperation for the next five years and marked by an increased reliance on Afghan institutions. Launched on 31 January 2006, the Afghanistan Compact marked the formal end of the Bonn Process. The Compact identified Governance, Rule of Law and Human Rights as the three critical pillars of activity. It was agreed that merit-based recruitment of competent and credible professionals, coordinated establishment of functional institutions with effective, transparent, accountable administration at all levels of Government with “appropriate legal frameworks and appointment procedures, trained staff, and adequate remuneration, infrastructure and auditing capacity,” reforming the justice system and the protection and promotion of human rights would be priorities for the Afghan government and its international partners. The Afghanistan Compact set “ambitious”<sup>84</sup> goals for comprehensive state-building with clear and time-bound benchmarks in the governance,<sup>85</sup> security and development sectors. The deadline for most of the benchmarks was the end of 2010, but work on the implementation of most continues to this day. Following the 2006 promulgation of the Interim Afghanistan Development Strategy (I-ANDS), ANDS in 2008 observed that “weak public sector capacity, lack of resources and unsustainable fiscal outcomes, restrictive legislative environment for private sector activity, limited legislative oversight and representational experience of public figures, extensive corruption, excessive centralization, lack of coordinated decision-making across Government, limited female participation in the Government, limited direct accountability to citizens, and state capture by illicit power-holders”<sup>86</sup> are the governance sector’s major problems. This list makes evident that not much had been achieved in terms of the Afghanistan Compact benchmarks two years into its launch.

#### 5.2.1 National Action Plan for the Women of Afghanistan (NAPWA) (2007 - 2017)

NAPWA is a 10-year (2007-2017) Afghan government action plan on the implementation of its commitments to gender equality, confirmed in the Constitution and ratified international treaties and conventions such as the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). The purpose of NAPWA is to “ensure

<sup>84</sup> Afghanistan National Development Strategy, 2.

<sup>85</sup> Governance benchmarks included the areas of public administration reform, anti-corruption, statistics and census, strengthening the legislature and electoral system, gender equality, rule of law, land registration, counter-narcotics and human rights.

<sup>86</sup> Afghanistan National Development Strategy, 62.

continuity and consistency in government efforts to project women's rights in the Afghan society through equality and empowerment."<sup>87</sup> Its vision is to "build a peaceful and progressive Afghanistan where women and men both enjoy security, equal rights and opportunities in all aspects of life." NAPWA focuses on the six sectors of security, legal protection and human rights, leadership and political participation, economy, work and poverty, and health and education. Despite several on-paper commitments, the government's capacity to implement NAPWA remains weak. Afghanistan remains heavily patriarchal and gender inequalities persist<sup>88</sup> as most Afghan governance institutions remain gender-blind. Attention to women's issues has grown due to international influence and pressure,<sup>89</sup> as is the case with regard to the general democratization process of the past 12 years despite the strengthening of predatory elite rule.<sup>90</sup> There are some achievements in the education and health sectors, but women remain marginalized from politics and the economic wheels of the country. Women's role in the governance sector is undermined, making up less than 10 percent of the entire subnational governance machinery of more than 20,000 civil servants.<sup>91</sup> Cases of harassment in the workplace are widespread, leading to IDLG's initiative to develop Afghanistan's first ever, yet to be implemented, Anti-Harassment Policy Guideline. After seven years of attempting to implement NAPWA, concerns have grown regarding its compatibility with the Afghan cultural context as it is often viewed as being based on Western institutional and policy frameworks which are distinct from, and thus incompatible with, collectivist visions of the role of women in traditional Islamic societies.<sup>92</sup> A recent regional conference on women's empowerment organized by the Afghanistan Human Rights and Development Organization (AHRDO) built upon this perspective and called on civil society organizations to explore other, and more contextually apt, approaches to women's empowerment used and practised in South and Central Asian countries as opposed to those pertaining to highly-developed Western societies.<sup>93</sup>

### 5.3 Afghanistan National Development Strategy (2008)

Launched in 2008 for a five-year period (until 2013) and building on the Bonn Process, the Afghanistan Compact and the I-ANDS/ANDS provided a comprehensive and integrated strategy reflective of Afghan conditions in 2008 and laying out national development priorities: "reduce poverty, improve the lives of the Afghan people, and create the foundation for a secure and stable country."<sup>94</sup> ANDS represented a joint commitment by the government of Afghanistan and its international partners to address governance problems such as multiple and parallel structures of state and non-state governance, ambiguous national-subnational administrative and fiscal relations, a weak public administration system at the national and subnational levels, corruption, financial dependency, weak legislation, law and human rights enforcement capacity, weak political and civic participation and oversight capacity, and gender inequality. The Governance, Rule of Law and Human Rights Pillar's goal was to "strengthen democratic processes and

87 Available at <http://sgdatabse.unwomen.org/uploads/National%20Action%20Plan%20for%20the%20Women%20of%20Afghanistan%202007%20to%202017.pdf>

88 Afghanistan was ranked 139/145 on UNDP's Gender Inequality Index in 2011.

89 25% increase in numbers and propensity of cases of violence against women between March and September 2013 is said to be due to the departure of PRTs and international troops. Dr. Sima Samar in interview with Reuters, 4 January 2014 <http://www.voanews.com/content/reu-violence-against-afghan-women-more-frequent-in-2013/1823405.html>

90 Verkoren and Kamphuis, 2013

91 Information taken from IDLG's Tashkeel and Gender Unit's database.

92 KII Sarabi

93 First Regional Conference on Women's Rights Held, Kabul Times, November 27, 2013, <http://thekabultimes.wordpress.com/2013/11/27/first-regional-conference-on-womens-rights-held/>

94 Afghanistan National Development Strategy, 5.

institutions, human rights, the rule of law, delivery of public services and government accountability.”<sup>95</sup>The document made clear that without good governance (accountable, transparent, participatory) and rule of law, ANDS and its development strategy will fail, obliging the government to focus on improving governance and creating a space for the private sector in the provision of goods and services. It underlined the Afghan ownership of the process, placing the donor community in a support role. The implementation of ANDS depends on the national budget and the streamlining of functions of national government institutions along the ANDS sector strategies, an exercise that kept the government busy for over two years (NPP development began in 2010). Policy implementation, particularly decision-making processes, rule of law and delivery of justice, is influenced by the power dynamics of individuals and groups that want to control and have access to resources. The implementation of ANDS could not remain apart from these power dynamics at the national and subnational levels.<sup>96</sup>

### 5.3.1 Sub-National Governance Policy (2010)

One of the ANDS commitments,<sup>97</sup> Afghanistan’s first ever Sub-National Governance Policy (SNGP), was developed and approved in 2010. More than 400 pages in length, this policy introduced noteworthy institutional, legal and policy clarity to subnational governance (provinces, districts, villages and municipalities). Led by the newly-established IDLG (September, 2007), the process involved all government ministries, agencies, high offices and independent directorates and commissions. The policy was to be implemented over three years (2010-2013) through developing new, and amending existing, legislation, regulations and procedures, and making additional institutional arrangements. The international community was asked to create a single, multi-donor support mechanism to support the policy’s implementation process. That implementation was to come under comprehensive review in 2013 followed by any necessary modifications. However, things did not go as planned. The general international response consisted of objections to the policy’s length, ambitious objectives and lack of prioritization.<sup>98</sup>The IDLG responded with another exercise aimed at prioritizing the SNGP in 2011, followed by the development of the NPP on Local Governance (NPPLG) in 2012. Thus, most of the time that should have gone into SNGP implementation was spent developing further plans for implementation. Today, the implementation of SNGP is a dead letter. The NPPLG is the document on which the IDLG, the lead agency on subnational governance, reports to the government.

## 5.4 National Priority Plans - Governance Cluster (2010 - 2013)

The Kabul Process was initiated through the London Conference of 28 January 2010 and the Kabul Conference of 20 July 2010. This process outlined the need for result-based NPPs covering all of Afghanistan, designed and owned by the Government to ensure maximum positive impact on the lives of the people. The Tokyo Mutual Accountability Framework (TMAF) that evolved out of the Tokyo Conference of 8 July 2012 aimed at facilitating Afghanistan’s transition to self-reliance and enhanced the London and Kabul Conference commitments by linking the achievement of TMAF indicators to the implementation of the 22 NPPs. The NPPs built upon previous successful initiatives aimed at delivering results during the Transition process (2012-2014), including a strong accountability

<sup>95</sup> Ibid, 61

<sup>96</sup> Robert Lamb and Brooke Shawn, ‘Political Governance and Strategy in Afghanistan’, Centre for Strategic and International Studies, April 2012, 2.

<sup>97</sup> Afghanistan National Development Strategy, 91

<sup>98</sup> Dr Douglas Saltmarsh and Abhilash Medhi, ‘Local Governance in Afghanistan: A view from the Ground’, AREU, June 2011, 1.

mechanism with progress reports generated every 100 days.<sup>99</sup>The NPPs incorporate three principal approaches of prioritized reform initiatives, selected institution-building and direct delivery of services to the people, and are based on a reflection of local needs and perspectives through locally-conducted assessments and provincial plans. The Government of Afghanistan submitted its first report on progress made against TMAF indicators at the Kabul Conference of 3 July 2013. The Governance, Rule of Law and Human Rights Cluster includes six NPPs of which NPP2—National Transparency and Accountability Programme—is still being developed.

#### 5.4.1 NPP1: Financial and Economic Reforms - Public Financial Management (July 2010)

With the goal of strengthening public financial management systems, reducing the risk of corruption, improving budget execution and developing a financing strategy for development, the Public Financial Management Road Map identified three key indicators—strengthening the Medium Term Fiscal Framework, budget execution capacity and Afghanistan’s rating in the Open Budget Index—to measure the implementation rate. NPP1 builds upon the existing legal framework (PFEML and Procurement Law), the Afghanistan Financial Management Information System available in all primary budgetary units in Kabul and provincial *mustofiats*, annual budgeting within a medium term fiscal framework, and accounting and financial reporting. Furthermore, NPP1 highlights the weaknesses of the public financial management system, such as low capacity, incomplete coverage, overly optimistic plans with poor short-term forecasts, weak coordination and communication mechanisms, and unclear budgetary and financial relations between the central budgetary units and their provincial offices which impede speedy implementation. The three components of NPP1 include: 1) Budget-strengthening in driving effective delivery of key priority outcomes (aid management, medium term fiscal strategy and programme budgeting); 2) improving budget execution (provincial budgeting, procurement and performance monitoring); and 3) increasing accountability and transparency (communication, internal and external audit capacity).<sup>100</sup>Two major achievements were noted in the 29 January 2014 Joint Monitoring and Coordination Board Meeting and Afghan Government’s report at the Senior Officials Meeting of 3 July 2013: the submission of the provincial budgeting policy draft to the Cabinet for approval and the improved budget execution capacity, increasing from 39 percent in the Fiscal Year (FY) 1389 (2010-2011) to 49 percent in FY 1390 (2011-2012) and further increasing to 50 percent for the first nine months of FY 1391 (2012-2013) which, if adjusted for the full 12-month period, takes budget execution to 66.7 percent - a 17 percentage point increase.<sup>101</sup>

#### 5.4.2 NPP3: Efficient and Effective Government (January 2012)

Building on the lessons learned from the first round of PAR implementation (administrative, staffing, and pay and grading reforms), NPP3 aims at improving government efficiency and effectiveness. A three-year project, NPP3 has four components: 1) to strengthen policy, legal and regulatory frameworks governing civil service and public administration reform; 2) to increase civil service and public administration operational efficiency and effectiveness at the central, ministry and subnational levels of government; 3) to

<sup>99</sup> Initially MoF managed reporting mechanisms. Later this responsibility was moved to the Ministry of Economy. Today, the most updated report available on the NPP implementation is dated November 2011. “No reports have been generated after this date,” except for IDLG’s internal reports on NPPLG.

<sup>100</sup> Public Financial Management Road Map/NPP1, 8.

<sup>101</sup> Senior Officials Meeting Joint Report, 3 July 2013, 11.

develop a longer-term vision and strategy for reform of public administration that will meet the future needs of a self-sufficient Afghanistan; and 4) to strengthen IARCSC's performance and its subsidiary bodies through focused capacity development in policy analysis, planning, management, service delivery, facilitation and oversight.<sup>102</sup> Except for ongoing planning toward the development of the Next Generation Public Administration Reform (NGPAR) strategy—a process that will take up to two years and will result in a 10-year strategy—there is not much to report on the implementation of this NPP.<sup>103</sup>

#### 5.4.3 NPP4: Local Governance (May 2012)

With the goal of “understanding and removing the primary obstacles to effective, participatory and accountable” governance, NPPLG is driven by the principle of government-led, and not donor-led, programme design and implementation. The four components of the NPPLG are based on its four priorities, namely: national basis for local governance, provincial and district administration, municipal administration and local representation, and accountability and transparency. IDLG reports an overall 65 percent progress on the NPPLG implementation since its endorsement in May 2012.<sup>104</sup>

#### 5.4.4 NPP5: Law and Justice for All (June 2013)

Developed by the Supreme Court, Ministry of Justice, Attorney General's Office and the Afghanistan Independent Bar Association (AIBA), NPP5 aims at “restoring the trust of Afghan citizens in the ability of the justice system to protect and defend their personal, economic, social and national interests through its demonstrated and faithful adherence to the rule of law.” In alignment with the ANDS, NPP5 consists of the five components of 1) legal reform and legislative effectiveness; 2) enhancing efficiency of the justice sector; 3) increasing meaningful access to justice; 4) building institutional capacity to strengthen justice delivery; and 5) increasing physical assets to improve justice delivery systems. Finalized in June 2013, there is not much to report on the implementation status of this NPP.<sup>105</sup>

#### 5.4.5 NPP6: Human Rights and Civic Responsibilities (October 2011)

With the goal of protecting and promoting Human Rights, a key cross-cutting<sup>106</sup> issue, NPP6 aims at “raising awareness and a sense of civic duty in Afghans in relation to their inherent and constitutional responsibilities for contributing to the development of Afghan democratic practices and institutions.” Special attention is to be paid to promoting respect and recognition of the rights of the disadvantaged, including women, children, persons with disabilities, and the ethnic communities.” Partnering with the Human Rights Support Unit (HRSU) in the MoJ and Afghan civil society organizations, the Programme intends to establish new human rights units in the Ministry of Education

<sup>102</sup> National Priority Plan on Effective and Efficient Government, 3.

<sup>103</sup> The most updated Government report on the implementation of NPP3 is dated July 2011, reporting 55% implementation rate, available at <http://www.thekabulprocess.gov.af/index.php/monitoring/archive/forth-quarter-report/government-q-4> (accessed 14 January 2014).

<sup>104</sup> For NPP4, the research relied on IDLG's internal reports. Details given in the Annual Report 1392 (2013)

<sup>105</sup> Ministry of Finance's Kabul Process website has five quarterly progress reports on the implementation of Governance Cluster NPPs, the last of which is dated November 2011 showing 78% implementation rate, while NPP5 was finalized in June 2013. These reports are available at <http://www.thekabulprocess.gov.af/index.php/monitoring/archive/fifth-quarter-report/government-q-5> (accessed 14 January 2014).

<sup>106</sup> AIHRC, MoJ, MoND, IDLG, MRRD, IEC, HOO, MoE, MoHE and MoIC are institutional partners for NPP6.



and Attorney General's Office. The six components of NPP6 are to: 1) strengthen Afghan state institutions through mainstreaming human rights, supporting human rights accountability, and promoting civic responsibilities across state institutions; 2) raise awareness among the general Afghan population; 3) strengthen the independence and sustainability of Afghanistan's national, constitutional and other specialized institutions; 4) support the contribution of Afghanistan's traditional and local institutions; 5) ensure effective measures are in place to establish justice and end impunity; and 6) hold individuals, national and international institutions, and the Government accountable for the protection, observance and fulfilment of their human rights obligations.<sup>107</sup> Initially presented at the July 2010 Conference in Kabul, NPP6 was implemented immediately after its endorsement in October 2011. The most recent Government update reports 72 percent progress in the last quarter of the year 2011.<sup>108</sup>

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107 National Priority Programme for Human Rights and Civic Responsibilities, 10.

108 NPP6, 5<sup>th</sup> Quarter Quality Assessment, November 2011, <http://www.thekabulprocess.gov.af/index.php/monitoring/archive/fifth-quarter-report/government-q-5> (accessed 14 January 2014).

## 6. 2013 - Developments and Achievements

Afghanistan presented a road map toward achieving economic self-reliance by 2024 at the Tokyo Conference in July 2012.<sup>109</sup> The international community committed US\$16 billion through 2015, dependent upon the Afghan Government's capacity to deliver on its commitments. The first follow-up meeting was held on 3 July 2013 in Kabul with the aim of reviewing progress made by the Government on a set of long-term indicators and monitoring progress made against mutually-agreed indicators set in April 2013. The United States' National Intelligence Estimate,<sup>110</sup> rebutted by many<sup>111</sup>, counted the improved capacity of the ANP and Afghan National Army (ANA), an Afghan Presidential race with candidates the US, Pakistan and other regional countries "can live with," and Karzai's then positive attitude towards the USA, as Afghanistan's three major achievements for 2013.<sup>112</sup> Below is a brief overview of the developments in the year 2013.

### 6.1 Legal Front

Two of the Sub-National Laws—the Local Administration Law and the Provincial Councils Law—made it to Parliament. They were drafted three years ago.<sup>113</sup>

The controversy over the EAW Law subsided without any major losses.<sup>114</sup>

The Election Law and the Law on the Structure, Duties and Authorities of the IEC were passed in July 2013.<sup>115</sup>

The New Mining Law was approved by the Cabinet in May 2013 and was, as of early 2014, in Parliament.

The Law on Salaries and Judicial Benefits of Judges was passed in 2013, to be implemented in 2014.<sup>116</sup>

The Associations Law was signed by the President and published in the Official Gazette on 1 September 2013.

109 The government presented its Strategy Paper "Towards Self-Reliance: Strategic Vision for the Transformation Decade" at the Tokyo Conference on 8 July 2012. The Strategy is to be implemented through 22 National Priority Programmes.

110 Reported by Washington Post on 29 December 2013, [http://www.washingtonpost.com/world/national-security/afghanistan-gains-will-be-lost-quickly-after-drawdown-us-intelligence-estimate-warns/2013/12/28/ac609f90-6f32-11e3-aecc-85cb037b7236\\_story.html](http://www.washingtonpost.com/world/national-security/afghanistan-gains-will-be-lost-quickly-after-drawdown-us-intelligence-estimate-warns/2013/12/28/ac609f90-6f32-11e3-aecc-85cb037b7236_story.html)

111 David Sydney, in his letter to the editor of Washington post, published on 4 January 2014 wrote "U.S. intelligence missed the implications of Afghanistan's massive rural-urban population shift over the past decade and has little insight into Afghanistan's burgeoning youth population." [http://www.washingtonpost.com/opinions/us-intelligence-is-too-pessimistic-about-afghanistan/2014/01/02/eacde5a6-719b-11e3-9389-09ef9944065e\\_story.html](http://www.washingtonpost.com/opinions/us-intelligence-is-too-pessimistic-about-afghanistan/2014/01/02/eacde5a6-719b-11e3-9389-09ef9944065e_story.html)

112 The article said that declining number of US troops, Afghan forces' capacity to take lead in operations for the first time in 2013 show good record. Naming Dr. Ghani and Abdullah as favourable candidates to the West, it based its argument on Karzai's perceived desperation of the United States for enduring bases in Afghanistan.

113 IDLG, Third Quarterly Report, July-September 2013.

114 The Parliament never approved EAW Law. It was passed by a Presidential Decree and remains enforced. Fouzia Kofi, a female member of the Parliament re-introduced the bill despite serious opposition from most women's rights activists, for reasons of heavy opposition to the law coming from strong conservative elements in the Parliament. Political pressure was used to take the law off the Parliament agenda and stop its annulment.

115 Matthew Rosenberg, 'With New Law Afghanistan Moves Closer to Elections', New York Times, 16 July 2013, <http://www.nytimes.com/2013/07/18/world/asia/with-new-law-afghanistan-moves-closer-to-an-election.html>

116 KII, Attiqullah Raofi, Director Secretariat of the High Council of Supreme Court, 6 January 2014

## 6.2 Policy Front

Based on Article 19 of the Civil Servants Law, Afghanistan's first ever Anti-Harassment Policy Guideline was developed, launched and endorsed by the IDLG and is applicable to 20,000 civil servants at the provincial, district, municipality and local councils levels.<sup>117</sup>

The Provincial Budgeting Policy was drafted, facilitating fiscal de-concentration for the provincial administration.<sup>118</sup>

NPP5—Law and Justice for All—was endorsed in June 2013.

The IDLG and MRRD developed the Policy for Improving Governance and Development in Districts and Villages which was finalized in April 2013 and aimed at contributing to democratic decision-making at the subnational level.<sup>119</sup>

The IDLG and MRRD developed the Terms of Reference for the Establishment and Operation of District Coordination Councils in April 2013 to facilitate smooth transition to elected district councils in accordance with the SNGP.<sup>120</sup>

## 6.3 Implementation Front

The new Chair of the IEC, the IEC and the ECC Commissioners were appointed.<sup>121</sup>

New AIHRC Commissioners were appointed in June 2013, although the appointments were criticized by OHCHR because of their perceived lack of independence and questionable commitment to international human rights principles.<sup>122</sup>

The 2014 Presidential and Provincial Council Elections date (5 April 2013) and candidate nomination period was finalized with voter registration commencing on 26 May 2013.

The Independent Joint Anti-Corruption Monitoring and Evaluation Committee was established with a full mandate.

The IDLG conducted a Provincial Council and PC office functional review in November 2013, contributing to the outcome of Sub-Component 19 of the NPPLG.<sup>123</sup>

As of 8 January 2014, the Municipal Advisory Board (MAB) was established in 28 of 34 Provincial Municipalities. The MAB comprises elected representatives of all social sectors, including the private sector, civil society, youth and women's groups, media,

117 Mujib Mashal, 'How Afghanistan is Beginning to Deal with Workplace Sexual Harassment', 29 March 2013, <http://world.time.com/2013/03/29/how-afghanistan-is-beginning-to-deal-with-workplace-sexual-harassment/>

118 Senior Officials Meeting Joint Report, 3 July 2013, 11.

119 Second Quarterly Report, April-June 2013

120 Ibid.

121 Gran Hewad, Martine van Bijlert and Thomas Ruttig, 'A Hasty Process: New IEC Announced', Afghanistan Analysts Network, 30 July 2013, <http://www.afghanistan-analysts.org/a-process-fast-and-patchy-new-independent-elections-commission-announced>

122 "The High Commissioner for Human Rights, Navi Pillay, warned on June 28 2013 that recent appointments to the Afghanistan Independent Human Rights Commission (AIHRC) compromise its independence and effectiveness and undermine its high standing with the public and international partners." <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13495&LangID=E>

123 "By the end of 2014, all 34 of the country's PCs will have the structures, relationships, systems, skills and resources needed for them to discharge their roles in generating accountability and transparency, as described in section II.1 of the SNGP (120-125)".

elders, the disabled, etc.<sup>124</sup> Forty District Municipalities were planned for 1393 (2014). This development contributes to Component 3 of the NPPLG.

As of 8 January 2014, the city boundaries of 16 provinces have been demarcated, with official endorsement of 10 subnational governance institutions, the MoUD, Central Statistics Organization (CSO), Geodesy and Cartography Office, and IDLG.<sup>125</sup> This development contributes to Component 3 of the NPPLG.

Registration of 520,000 residential and industrial components and 120,000 illegal residential components completed in the four major cities of Mazar-e Sharif, Kandahar, Herat and Jalalabad.<sup>126</sup> This means granting poor people residential security, as well as empowering the provincial municipality. This development contributes to Component 3 of the NPPLG.

The security transition has been completed, with the Afghan National Army and the Afghan National Police holding their ground in areas under their control.<sup>127</sup>

The IDLG reports an overall 60 percent progress on the implementation of the NPPLG in 2013. The IDLG undertook a legal analysis of laws affecting subnational governance, leading to the Legal Framework for Provincial Governors and Provincial Councils, which contributes to the deliverables of Component 1 of the NPPLG. Also, the IDLG developed its media and communications strategy in September 2013 contributing to Component 1 of NPPLG.<sup>128</sup>

124 Mayors and Municipal Councils must be elected through free and fair elections as per the Constitution. However, IEC has not been able to hold these elections so far and the President continues to appoint Mayors. IEC's reasons are non-identification of city boundaries and non-estimation of city population (Central Statistics Organization) and is pending since two years, Municipal Law in the Cabinet. KII, Abdul Baqi Popal, Director General Municipal Affairs, IDLG, 8 January 2014

125 This is to help move forward towards population estimation and then pilot Municipal elections in one or two provinces, though the issue of identity cards remains challenging. KII Popal

126 Ibid.

127 National Intelligence Estimate 2013, Reported by Washington Post on 29 December 2013, [http://www.washingtonpost.com/world/national-security/afghanistan-gains-will-be-lost-quickly-after-drawdown-us-intelligence-estimate-warns/2013/12/28/ac609f90-6f32-11e3-aecc-85cb037b7236\\_story.html](http://www.washingtonpost.com/world/national-security/afghanistan-gains-will-be-lost-quickly-after-drawdown-us-intelligence-estimate-warns/2013/12/28/ac609f90-6f32-11e3-aecc-85cb037b7236_story.html)

128 IDLG's Third Quarterly Report, July-September 2013

## 7. Linkages, Cross-Cutting Themes and Other Donor Supported Interventions

### 7.1 Linkages between Administration and Justice

Linkages between administration and justice are realized in the body of the Constitution and the Law on the Basic Structure of State. Article 60 of the Constitution authorizes the President to head all three branches of the State. The President, therefore, is an embodiment of the organic link between administration and justice at the highest level of national governance. Governance institutions at the subnational level do not have this capacity—i.e. the Provincial and District Governor do not represent such a link.<sup>129</sup> By virtue of the Constitutional powers, the manner in which the President carries out his authority determines the strength of the connection between administration and justice, or lack thereof. At present, the oversized and over-attended executive branch leaves the judiciary and legislative branch with little real power, thus establishing a weak connection between the two.<sup>130</sup>

Article 132 of the Constitution and Article 23 of the Law on the Organization and Authority of the Courts establishes the second most critical interlink between administration and justice, one that is only on paper so far. This article provides for the establishment of the General Administration Office of the Judiciary responsible for managing the Court's administrative affairs. The Article's objective is to ensure that judges spend their time only on facilitating the delivery of justice. At present, 80 percent of judges' time is spent managing the administrative affairs of the judiciary, contributing to a systemic disconnect between administration and justice. Article 118 of the Constitution requires judges of the Supreme Court to have sufficient judicial experience and expertise, a requirement violated in practice since almost none of the current judges of the Supreme Court fully meet these requirements.<sup>131</sup>

Other laws governing Afghanistan's system of local governance outline an elaborate system of checks and balances that are frequently violated in practice.<sup>132</sup> For example, the President appoints provincial governors whose capacity and authority are severely limited by the power of national institutions. The draft Law on Local Administration renders the Provincial Chief of Police accountable to the Provincial Governor but, in reality, the PG has limited oversight capacity of police performance. The same law requires the Attorney General's Office (AGO) and judiciary to keep the Provincial Governor in the loop of affairs while the Constitution renders the judiciary independent in all its affairs. Provincial Councils are mandated to oversee executive performance delivery and ensure the provision of public services, including justice, but low individual and institutional<sup>133</sup> capacity, widespread corruption and limited accountability mechanisms requiring them to report to the same executive that they must oversee, impede the PCs' performance in their oversight role.<sup>134</sup> These institutional contradictions contribute to an on-the-ground disconnect between administration and justice.

<sup>129</sup> Sub National Governance Policy, 102.

<sup>130</sup> KII Hamidi

<sup>131</sup> KII, Anonymous, Justice Sector Affiliate and Senior Civil Servant, Judiciary

<sup>132</sup> 'Afghanistan Looking Ahead: Challenges for Governance and Community Welfare', Research Brief for the 2011 Bonn Conference, AREU, December 2011, 3. And KII Lewal.

<sup>133</sup> Andrew Beath, Fotini Christia, Ruben Enikolopov, 'Do Elected Councils Improve Governance?' September 2013, 3

<sup>134</sup> PCs fall under the General Directorate of Local Councils, one of IDLG's directorates, that reports to the Deputy Minister Policy and Technical, who eventually reports to the executive. The draft Provincial Council Law is currently pending with the Legislature for reasons of disagreement over PC's oversight role. Besides, the salaries of PC members are signed and released by the Provincial Governor, whom they are supposed to supervise and monitor.

The existence of organic interlinks between administration and justice, as complementing parts of one machine rather than independent and competitive systems, requires a clearly defined role for public administration with prioritized plans, clearly-defined objectives, structures with clear institutional function-assignment, legal, policy and regulatory frameworks connecting plans with structures in a binding way, and capable, visionary and committed professionals placed in leadership positions. Today, Afghanistan appears to have most of the above elements: the NPPs are prioritized with clearly-defined objectives; national and subnational governance institutions exist; a legal and policy framework body orients plan implementation; and Afghanistan's young generation has unprecedented professional capacity and commitment.<sup>135</sup> However, the Afghan system of governance does not function as one coherent entity because the system's structure has yet to make the transition from paper to practice.<sup>136</sup>

## 7.2 Cross-Cutting Issues

Progress on cross-cutting issues such as gender and corruption assumes a basic understanding of the concept of cross-cutting and the process of streamlining functions. Lacking clarity on the role of lead institutions, Afghanistan has yet to embrace the purpose of promoting cross-cutting in governance institutions.<sup>137</sup> In addition, weak linkages between security and the justice sector have hindered the development of an effective cross-cutting approach on critical issues, including gender.<sup>138</sup>

### 7.2.1 Gender Equality - NAPWA: Linking NPP3 and TMAF on Gender

Despite concerns regarding NAPWA's compatibility with Afghan culture, it is seen as an embodiment of institutional commitment to improved governance and gender equality. The meaningful participation of women in governance, their level of access to justice and the extent to which government institutions are gender-equal determine the strength of the gender mainstreaming capacity of governance institutions. No doubt, women have joined the workforce in the public, private and civil society sectors in greater numbers since 2001.<sup>139</sup> But this participation is largely symbolic.<sup>140</sup> Despite clear data on demographics and cultural barriers limiting male access to households and, therefore, making female officers an asset, women make up less than one percent of the police force (1,551 of 157,000 police officers as of July 2013).<sup>141</sup> Sexual harassment in the workplace,<sup>142</sup> impunity for abuse against female officers, lack of promotion and cultural

135 KII Hashimi.

136 KII Lewal.

137 KII Dr. Bhatija.

138 Wardak, Ali, 'Rule of Law in Afghanistan: An Overview', in Petersberg papers on Afghanistan and the region (Wolfgang Danspeckgruber ed.) 2009.

139 There are also historic numbers of women present in both houses of the Parliament, leadership of some Kabul based public institutions (Dr. Sima Samar heads the Afghanistan Independent Human Rights Commission and Najla Habibyar leads the Export Promotion Agency of Afghanistan,) and until recently in the leadership of subnational governance (Afghanistan has one female Mayor and one female District Governor at the moment. The only female Provincial Governor resigned recently to join the ticket of a presidential ticket as vice-presidential nominee. One of the two female mayors never returned from a visit to Europe.)

140 Survey of non-agricultural economic activity in Afghanistan, 2009: "women make 56% of the education sector, but only 18% in the health and social work sectors."

141 Women and the Afghan Police, September 2013, <http://www.oxfam.org/sites/www.oxfam.org/files/bp-173-afghanistan-women-police-100913-en.pdf>

142 Implementing the Women, Peace and Security Agenda in Afghanistan, Liechtenstein Institute on Self-Determination, Jan 2012, Sexual violence is not limited to women though. Sexual abuse of boys locally referred to as bacha bazi is widespread and goes unchecked in most cases. Information taken from [http://www.thestar.com/news/world/2013/07/15/child\\_sex\\_abuse\\_rampant\\_in\\_afghanistan\\_documentary\\_shows.html](http://www.thestar.com/news/world/2013/07/15/child_sex_abuse_rampant_in_afghanistan_documentary_shows.html) and documentary by Ben John Anderson

norms and beliefs about the subordination of women, high level of acceptance among women of the dominance of their male counterparts, and the belief that violence against women is unquestionably the right of men<sup>143</sup> are cited as some of the major reasons keeping women out of the security forces.<sup>144</sup> The fact that women who join the police force know that their first enemy might be their own colleague speaks volumes about the dysfunctionality of Afghanistan's governance machinery both in terms of administration and justice.<sup>145</sup> By NAPWA's definition, no woman is secure in Afghanistan.<sup>146</sup>

At an institutional level, the gender gap in governance comes down to two simple yet critical challenges: the lack of understanding of "gender" and "cross-cutting", and a lack of political will to bring institutions on board."<sup>147</sup> Unlike most reports that cite the establishment of the Ministry of Women's Affairs (MoWA) and its subsequent Gender Units in each Ministry as an achievement, an increasing number of public and civil society sector representatives believe it to have done a disservice to the cause of mainstreaming gender equality because, in practice, it has meant that most of the government agencies that ought to be involved have ducked responsibility, depending instead on MoWA or their internal Gender Units to do what needs to be done.<sup>148</sup> This is despite the fact that ANDS specifically emphasized the cross-cutting nature of this theme.<sup>149</sup> MoWA and the ministerial Gender Units have not performed as expected due to lack of capacity or because the administration, senior leadership and most men working at various government agencies have dismissed their efforts, thereby weakening institutional commitment to gender-equality reform.<sup>150</sup>

One may argue that a structural misplacement that has left the Gender Units under the Office of the Deputy Minister for Administration and Finance, as opposed to the Deputy Minister for Policy and Technical, contributed to the low performance of the Units. This decision may have been based on MoWA's policy development focus that conceived Gender Units as mere implementation extensions, or on the ministerial organizational structure combining organizational development, employee welfare and capacity development under a general directorate of human resources reporting to the Office of the Deputy Minister for Administration and Finance. To propose a relocation, however, is only to distract attention from the main issue which may not have anything to do with their reporting lines but the mere necessity of the Units'—and MoWA's—existence. In a country where women have secondary status, a government agency dedicated to women's affairs cannot but have a secondary status, and thus be ineffective.

The lack of accurate understanding of the Afghan social fabric and socially acceptable avenues for women's empowerment is another factor. Decision-makers in women's organizations have lacked a deep understanding of the Afghan context where women

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<http://www.youtube.com/watch?v=Ja5Q75hf6QI> (accessed 29 December 2013)

143 Afghanistan Multiple Indicator Cluster Survey 2010-2011, Central Statistics Organization and UNICEF, June 2012 <http://cso.gov.af/Content/files/AMICS-Jun24-2012-FINAL.pdf>

144 Human Rights Watch: Female Afghan police officers face sexual harassment, <http://www.khaama.com/female-afghan-police-officers-face-sexual-harassment-hrw-1639>

145 Human Rights Watch, 'Afghanistan: Urgent Need for Safe Facilities for Female Police', 25 April 2013

146 "For women, security means being free from intimidation, threats, and violence in both the public and domestic spheres of life, allowing them to freely exercise their rights, and pursue activities that will develop their capacities and lead a full and satisfying life." NAPWA

147 Anna Wordsworth, 'Moving to the Mainstream: Integrating Gender in Afghan National Policy', AREU, February 2008, 22.

148 Findings of the Regional Conference on Women, organized by Afghanistan Human Rights and Democracy Organization, November 2013.

149 Afghanistan National Development Strategy, 176.

150 Based upon personal observations of senior leadership meetings at a government institution.

serve as the foundations of the family, and anything that seems to threaten this core belief sends shockwaves all the way down to local communities. For example, suggesting divorce as a means to prevent or curb domestic violence or as a solution to forced marriages threatens the family foundation, and encourages misogynist elements to justify their opposition towards women's rights as a concept.<sup>151</sup> On the other hand, building women's economic capacity as a means of empowerment that transcends conservative social and cultural boundaries has been largely neglected. Women are one of the primary victims of the country-wide lack of access to justice,<sup>152</sup> a situation made worse by "post-conflict" assumptions about Afghanistan. State authorities have either lacked the capacity, the tools or the will to investigate cases of violence against women.<sup>153</sup>

Stakeholders who are meant to be concerned with gender equality include not only the government but the international community and civil society organizations as well. The over-politicized concept of women's empowerment remains detached from the social and cultural realities of Afghanistan because the post-9/11 global intervention in Afghanistan helped shape a misguided assumption: that the Taliban initiated the oppression of women and with its demise it would end. As a result, today's women's movement is urban, overly intellectual for the majority of Afghan women and isolated from the country's mainstream socio-political conversations such as the peace and reconciliation process. Lack of capacity to prioritize and to focus on the major needs and priorities of Afghan women, not just the elite's, has given rise to a women's movement that is not ready to share the burden of loss as Afghanistan attempts to transition toward peace—which may involve giving up certain liberties such as the freedom to paint nails, wear heels or not wear head coverings for the greater good of the entire country. At the institutional level, MoWA and its ministerial Gender Units represent a reflection of this misdiagnosis and thus the failure in communicating the meaning of gender equality to the majority of the population, let alone facilitating women's participation in mainstream social, political and economic conversations at the national and subnational levels.

## 7.2.2 Anti-Corruption

One of the major costs associated with post-2001 development in Afghanistan is the loss of institutional legitimacy by virtue of individual patterns of behaviour.<sup>154</sup> Corruption has weakened governance and weak governance has encouraged corruption. Given the strong top-down decision-making system, patterns of corruption are similar at the national and subnational levels.<sup>155</sup> Afghan government officials who lack a stake in the country's development<sup>156</sup> have recruited friends, relatives and affiliates with no or minimal technical capacity as "advisers" on high salaries, and thus display an informed corrupt behaviour.<sup>157</sup> Subnational government officials have developed plans that are little more than politically-influenced shopping lists to favour themselves or their relatives.<sup>158</sup> Afghans are seriously concerned about the extent of corruption<sup>159</sup> but see it

151 KII Sarabi.

152 United Nations General Assembly Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/17/28/Add.6, 27 May 2011

153 UNAMA and OHCHR, "Harmful traditional practices and implementation of the law on elimination of violence against women in Afghanistan", Kabul, 9 December 2010.

154 KII Hamidi.

155 KII, Lewal.

156 KII Mansoor.

157 "A senior leadership was assigned to visit Bamian. As the Provincial Governor, I required him to show me his TOR or his work plan, none of which he could produce." KII Sarabi.

158 KII Qarizada

159 Afghanistan's results on Global Corruption Barometer of Transparency International <http://www.transparency.org/>



as the government's problem that just happens to affect them.<sup>160</sup> There is no national discourse on the cultural and social roots of corruption and the public's role in, and responsibility for, stopping it. Unfortunately, justice sector reform has led to increased corruption.<sup>161</sup> The lack of coordination among the donor community in the justice sector is a strong factor affecting the implementation of anti-corruption policies.<sup>162</sup>

There are many proposals for addressing corruption, although the head of the High Office of Anti-Corruption and Oversight (HOO) believes that people should not expect strong political will from the leadership of the Afghan government in the fight against corruption.<sup>163</sup> Among the most commonly cited recommendations is to address political patronage, develop coherent anti-corruption policies, build strong anti-corruption institutions, legislate anti-corruption laws, and ensure law enforcement. All of this is true. But any effort aiming to address these must involve more than just the Afghan authorities. It must involve the people as well as a process that helps them engage with this challenge as a cultural and social force that runs deeper than what a law, policy or national priority plan can fix. Released in 2013, the National Corruption Survey conducted by Integrity Watch Afghanistan (IWA) suggested that Afghans paid \$1.25 billion in bribes in 2012 compared to \$1.07 billion in 2010.<sup>164</sup> UNODC's 2013 report quoted an even higher figure of \$3.9 billion (roughly equal to the international community's commitment for the post-2014 era) in bribes for public services, and the percentage of people who bribed a teacher increased from 16 percent in 2009 to 51 percent in 2012.<sup>165</sup> These numbers speak of people's clear role in corruption and, thus, their equally vital role in the fight against it. Strategies addressing corruption as a political crisis alone have not worked because corruption is also a cultural crisis.

The role of government institutions remains important though. The unitary system of government and the concentration of decision-making power in the hands of one man and his family have fuelled corruption even more.<sup>166</sup> Currently, five justices, including the Chief Justice, are active despite their appointments having expired in 2010, all because they have very high-level support in the Executive.<sup>167</sup> That the last NPP—the Transparency and Accountability NPP<sup>168</sup>—remains incomplete and thus unimplemented reflects a failure on the part of the responsible institutions, something that led the UN Secretary General to express his concern.<sup>169</sup> But mere endorsement of NPPs will not be sufficient. Enabling the law enforcement agencies to prosecute corrupt politicians and businessmen, educating subnational government officials on how to understand, use and build upon the NPPs, allowing the HOO to target even those who have influential

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[gcb2013/country/?country=afghanistan](http://gcb2013/country/?country=afghanistan) (accessed 1 January 2014)

160 Corruption is cited as one of the top three problems in Afghanistan with 25% of the population rating it as their first, essentially equal to security (28%) and employment (27%) as given by the Asia Foundation (2012), 5.

161 Wilder, A. 'Cops or Robbers? The Struggle to Reform the Afghan National Police', Issues Paper Series, AREU, 2007. [http://www.areu.org.af/index.php?option=com\\_docman&Itemid=&task=doc\\_download&gid=52](http://www.areu.org.af/index.php?option=com_docman&Itemid=&task=doc_download&gid=52)

162 Stone, C. et al. 'Supporting Security, Justice and Development: Lessons for a New Era', Vera Institute of Justice, New York, 2005, <http://www.gsdrc.org/docs/open/CON24.pdf>

163 Ghulam Hussain Fakhri, Head of the High Office of Anti-Corruption and Oversight, in interview with BBC Dari, "Genuine fight against corruption is not possible in Afghanistan." 30 December 2013, [http://www.bbc.co.uk/persian/afghanistan/2013/12/131231\\_k04\\_anti\\_corruption\\_campaign.shtml](http://www.bbc.co.uk/persian/afghanistan/2013/12/131231_k04_anti_corruption_campaign.shtml)

164 Integrity Watch Afghanistan, National Corruption Survey 2012, summary available at <http://ncs.iwaweb.org>, last accessed 24 February 2014.

165 UNODC, Corruption in Afghanistan, Recent Patterns and Trends, Summary Findings, 2013.

166 "The culprits responsible for the Kabul Bank Financial disaster remain unaccountable due to their close relations to the President and the First Vice President." KII Mansoor.

167 Ibid.

168 KII Qarizada.

169 UN Secretary General, 'The situation in Afghanistan and its Implication for International Peace and Security', 13 September 2013, 11.

political links,<sup>170</sup> reforming the National Audit Law that guarantees the independence of the National Audit Office (NAO) and tightening appointment and nomination conditions for senior positions such as Ministers, Members of Parliament, governors and heads of independent agencies<sup>171</sup> are some of the critical steps to be taken without delay.<sup>172</sup>

There is a direct link between the system's capacity to fight corrupt practices—at least as much as it relates to the role of the Parliament and the degree of influence that Members of Parliament exert on the bureaucracy—and the need to strengthen the political party system, which necessitates reforming the electoral system from SNTV to Political Representation (PR). In the absence of such a reform, an independent political party system is not possible, and elected representatives of the people remain undisciplined and unprofessional, and continue to abuse their access and authority to bully the bureaucracy with political pressure. As per the reformed system, the government may, based on the number of seats each party wins in the Lower House of the Parliament, allocate a budget for political parties, monitor their expenses,<sup>173</sup> regulate their interactions with foreign dignitaries through the Ministry of Foreign Affairs and restrict entry to Parliament to the winning of at least five seats.<sup>174</sup> This will eventually strengthen the political party system by reducing the number of credible political parties who can contest elections, win seats and remain accountable as a collective.

### 7.2.3 Budget Implementation

The Afghan government's budget execution capacity has improved,<sup>175</sup> reaching 50 percent in 2012. Yet it is still far from where it should be in proportion to the needs of the people. During the review of the 1393 (2013-2014) budget, a group of civil society organizations arrived at the conclusion that ministries do not take into account the provincial breakdown of the budget and do not involve provincial departments as budget appropriations, object codes and projects are ascertained. "There is no such mechanism in place in line ministries to develop and/or justify provincial allocations of their budget, who conclude provincial allocations based on the statistical information, their personal relations with provincial officials, influence of Members of Parliament and influential and powerful officials at the national and subnational levels."<sup>176</sup>

The lack of financial management and procurement capacity, serious corruption in both these sectors, lack of planning capacity and a culture of time-bound planning exercises<sup>177</sup> are some of the factors contributing to the Afghan government's failure to make good use of the resources at its disposal. The situation is not so different at the subnational

170 Special Inspector General for Afghanistan Reconstruction (SIGAR) 2013, Quarterly Report to the US Congress, 30 July, p. 136.

171 "74% of civil servants at the Ministry of Justice are high school graduates." KII Jami. "Shamefully low qualifications of Members of Parliament renders them unable to own the legislative process and effectively participate, creating a vacuum which is then filled by corrupt practices targeting Ministers." KII Mansoor

172 At this point, neither the NAO nor the MOF can audit ministries; the internal audit units of each ministry have this authority alone.

173 'Political Parties in Afghanistan: A Review of the State of Political Parties', NDI, June 2011, 42.

174 KII Mansoor.

175 Conducted by International Budget Partnership, Open Budget Survey 2012-2013, which assesses countries with a score of 1-100 on timeliness and comprehensiveness of publically available budget information placed Afghanistan's budget preparation procedures, higher than all other South Asian countries except India.

176 Independent Review of Afghanistan 1393 National Budget, Equality for Peace and Development & Afghan Coalition for Transparency and Accountability, December 2013

177 The Public Financial Management Law requires ministries to initiate planning, budgeting and even procurement contract development at the moment the budget goes to the Cabinet. But in practice ministries wait and do nothing until the final approval of the budget by the Parliament, causing at least 2 months delay in implementation each year. KII Qarizada.

level where, in addition to the above problems, monitoring systems are weak. The past 12 years went into building urban capacity while the foundations remained neglected at the provincial and district levels. Today, subnational capacity is weak and trained experts do not want to work at the local level due to serious security threats.<sup>178</sup>

However, the story may run deeper than a mere lack of fiscal management capacity. The rentier nature of the state seems to contribute to weak programme implementation and budget execution because bureaucracy in such a state is largely used to manage the resource distribution processes and merit-based recruitment systems do not, therefore, represent much more than incentive mechanisms for the predatory elite. Thus, continuing to provide off-budget, direct and unmonitored aid that targets fiscal capacity-building efforts in a system of governance in which corruption is endemic may not be helpful.<sup>179</sup>

Furthermore, weak budget execution may be linked to a legal contradiction. Article 10 of the Constitution obliges to the State to “encourage and protect private capital investments and enterprises based on the market economy and guarantee their protection in accordance with the provisions of law.” Article 137 of the Constitution preserves the principle of centralism, with delegation of “certain authorities to local administration units.” Considering the fact that budget execution has a direct relationship with improved public service delivery capacity, particularly at the subnational level,<sup>180</sup> the inherent contradiction between these two articles explains the delayed finalization and implementation of the provincial budgeting policy. In addition, the centralized nature of Afghanistan’s government affects budget preparation and execution, and promotion of consensus between the parties involved—government, civil society and the international community—to implement provincial budgeting policy.

### 7.3 Relevant Donor Supported Interventions

DFID’s vision for 2011-2015 is “to see progress towards a viable Afghan state, for example a more stable and growing economy, a sustainable political settlement leading to greater political stability and government delivering key basic services at all levels.” DFID’s operations focus on supporting peace, security and stability through increased public participation, promoting economic stability through large-scale infrastructure, agriculture, community infrastructure and improving conditions for private investment, particularly in the key minerals sector, and building the State’s public service delivery capacity by reducing corruption and improving public financial management.<sup>181</sup> Strengthening democratic governance is one of the focal areas of CIDA’s development contribution, including projects on anti-corruption, decentralization, democratic participation and civil society, elections, legal and judicial development, legislature and political parties, media and free-flow of information, public financial management, public policy and administration and statistical capacity building.<sup>182</sup> With a focus on rule of law and corruption, governance, elections and political competition, civil society and independent media, USAID helps develop the capacity of key institutions including the IEC, Parliament, Supreme Court, IDLG and IARCSC. USAID also provides training to civil

178 KII Qarizada.

179 For a detailed historical pattern of rentierism in Afghanistan, Willemijn Verkoren and Bertine Kamphuis, ‘State Building in a Rentier State: How Development Policies Fail to Promote Democracy in Afghanistan’, International Institute of Social Studies, 2013

180 Building an Effective State: Priorities for PAR, World Bank, 2008, 17.

181 Operational Plan 2011-2015, DFID, last updated June 2012 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/67417/afghanistan-2011.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67417/afghanistan-2011.pdf) (accessed 30 December 2013)

182 Information taken from <http://www.acdi-cida.gc.ca/cidaweb/cpo.nsf/fWebCSAZEn?ReadForm&idx=00&CC=AF> (accessed 29 December 2013)

society organizations to advocate for society-led reforms.<sup>183</sup>

The EU supports the NPPs and promotes donor coordination. Governance, as the focal area, received €227 million from 2007 to 2010, and €246 million between 2011 and 2013.<sup>184</sup> The World Bank has been assisting Afghanistan manage the security transition with a commitment of about \$150 million per year and with the Afghanistan Reconstruction Trust Fund (ARTF) of up to \$800 million per year going to projects that strengthen central and subnational government administration, public financial management, public administration, and law and justice.<sup>185</sup> France contributes to strengthening democratic governance through French NGOs, providing support for the establishment of the Parliament, training justice officials of the Supreme Court, training police officers and providing direct support to subnational governance by providing training for the merit-based appointments of deputy provincial governors.<sup>186</sup> With a commitment of \$125 million, at least until 2017, Norway has selected good governance as one of the three main focus areas for its development aid to Afghanistan. "Norwegian aid is channelled through the UN, the World Bank and Norwegian and international NGOs."<sup>187</sup> Sweden focuses on democratization, gender equality, education, private sector development and human rights, treating anti-corruption as an area that permeates all areas of work.<sup>188</sup>



*Afghan woman casting her vote in Presidential election in 2009*

183 Information taken from <http://www.usaid.gov/afghanistan/democracy-governance> (accessed 29 December 2013)

184 Information taken from [http://ec.europa.eu/europeaid/where/asia/country-cooperation/afghanistan/0-0-0-afghanistan\\_en.htm](http://ec.europa.eu/europeaid/where/asia/country-cooperation/afghanistan/0-0-0-afghanistan_en.htm) (accessed 29 December 2013)

185 Information taken from [http://www.worldbank.org/en/country/afghanistan/projects/all?qterm=&lang\\_exact=English&srst=status&order=asc](http://www.worldbank.org/en/country/afghanistan/projects/all?qterm=&lang_exact=English&srst=status&order=asc) (accessed 29 December 2013)

186 Information taken from <http://www.franceonu.org/france-at-the-united-nations/un-express-922/article/france-s-commitment-in-afghanistan> (accessed 31 December 2013)

187 Evaluation of Norwegian Development Cooperation with Afghanistan 2001-2011, Norad Evaluation Department, March 2012, <http://www.oecd.org/countries/afghanistan/50586740.pdf> (accessed 29 December 2013)

188 Information taken from <http://www.sida.se/English/Countries-and-regions/Asia/Afghanistan/Programmes-and-projects1/> (accessed 30 December 2013)

The **Netherlands Development Cooperation** focuses on gender-mainstreamed security, rule of law and human/women's rights for the 2014-2017 cycle, and contributes to the UN Women Special Fund for the Elimination of Violence against Women (EVAW) and specifically the Programme "Preventing Violence against women and girls and expanding access to victim/survivor services." "The budget for development cooperation for Afghanistan amounts to approximately €50-60 million annually. Part of this budget is spent through Multi-Donor Trust Funds such as the Afghanistan Reconstruction Trust Fund (ARTF), administered by the World Bank.; a smaller part of the budget is used for funding bilateral projects and Programmes."<sup>189</sup>

**Italy**, with a commitment of €370 million, is the focal point for justice and rule of law. Focusing on seven provinces including Baghlan, Italy has contributed to strengthening public administration (technical assistance and trainings), justice sector reform (training of personnel of the MoJ, the Attorney General's Office and the Supreme Court, with focus on women and children) and providing institutional support to MoWA.<sup>190</sup> Governance, human rights and rule of law are the major areas of focus for **Finland**, which supports the ARTF, LOTFA, AIHRC and a project on developing cooperation between prosecutors and police.<sup>191</sup> **Australia's** focus has remained in the areas of health, education, agriculture and rural development through the provision of technical assistance and trainings.<sup>192</sup> **Japan** has contributed US\$4.797 billion of assistance since 2001 and has committed to provide another US\$3 billion between 2012-2017 in the areas of socio-economic development and building security capacity.<sup>193</sup> The **Swiss Development Cooperation** has contributed to the AIHRC, LOTFA, UNDP and ANP, in particular to the recruitment and training of policewomen.<sup>194</sup>

**UNDP** is the Afghan government's major partner in implementing governance reform. With funding from most major donors, UNDP implements four major projects in the sector: 1) Making Budgets and Aid Work (MBAW) in partnership with MoF - this project contributes to the development of institutional capacity for improved budget planning and management, policy and strategy development including aid coordination, all aimed at improved service delivery. The project strengthens the link between the ANDS, the NPPs and the national budget; 2) Afghanistan Sub-National Governance Programme (ASGP) in partnership with IDLG and all 34 PGOs - this project is fully aligned with the SNGP and the NPPLG; 3) National Institution Building Project (NIBP) in partnership with the AIRCSC - this project supports capacity-building in 15 government ministries; and 4) Enhancing Legal and Electoral Capacity for Tomorrow (ELECT II) in partnership with the IEC - ELECT II offers technical and operational support to electoral processes.

189 Information taken from <http://afghanistan.nlembassy.org/organization/rebuilding-and-development-cooperation> (accessed 29 December 2013)

190 Information taken from <http://www.afghanistan.cooperazione.esteri.it/utlafghanistan/EN/Italia/Intro.html> and [http://www.coopitafghanistan.org/?page\\_id=386](http://www.coopitafghanistan.org/?page_id=386) (accessed 1 January 2014)

191 Information taken from <http://www.finland.org.af/public/default.aspx?nodeid=38579&contentlan=2&culture=en-US> and <http://formin.finland.fi/public/default.aspx?contentid=185099&contentlan=2&culture=en-US> (accessed 29 December 2013)

192 Phil Sparrow, 'In it for the Long Haul: Delivering Australian Aid to Afghanistan', July 2010, <http://www.acfid.asn.au/resources-publications/publications/acfid-research-in-development-series/in-it-for-the-long-haul-delivering-aid-to-afghanistan> (accessed 29 December 2013)

193 Information taken from [http://www.eastwestcenter.org/sites/default/files/private/apb206\\_0.pdf](http://www.eastwestcenter.org/sites/default/files/private/apb206_0.pdf), [http://www.mofa.go.jp/region/middle\\_e/afghanistan/pdfs/japan\\_assistance.pdf](http://www.mofa.go.jp/region/middle_e/afghanistan/pdfs/japan_assistance.pdf) and [http://www.mofa.go.jp/region/middle\\_e/afghanistan/pamph0703.pdf](http://www.mofa.go.jp/region/middle_e/afghanistan/pamph0703.pdf) (accessed 28 December 2013)

194 Swiss Cooperation Strategy 2012-2014, <http://www.swiss-cooperation.admin.ch/afghanistan/> (accessed 27 December 2013)

## 8. Conclusion

In the post-9/11 era, development in Afghanistan was marked by a sudden inflow of financial resources unevenly distributed over sectors and stakeholders,<sup>195</sup> the mushrooming growth of non-state actors, insufficient emphasis on bottom-up accountability and the failure of national institutions to define the Afghan development agenda based on the accurate identification of Afghan priorities, thereby leading to foreign-dependent development practices. In the same era, the international development presence was characterized by competition, lack of coordination, strong emphasis on accountability to donors,<sup>196</sup> inaccurate analysis of national absorption capacity for resources and an inability to allow, let alone facilitate, Afghan ownership of development interventions in which the international community had invested money, lives and prestige. The post-2014 era is going to be marked by the withdrawal of international combat troops and reduced development aid, which may prove positive<sup>197</sup> in helping Afghanistan make a sustained transition towards a more accountable governance system.

The future of Afghan governance may benefit from increased focus on economic development, extended development coverage to include rural population and engage with informal governance structures, serious reconsideration of the challenge analysis lens to help generate accurate reflection of the complexity of the context, and stricter commitment to on-budget monitored funding to the Afghan government. Other recommendations include adopting a long-term approach to reform implementation and change, supporting the civil society sector not as a parallel service delivery mechanism but as both the people's friend and the government's partner, building partnership development capacity at all levels and between all stakeholders including the international community, public, private and civil society sector and, last but not the least, enforcing the law and implementing current and upcoming reforms. But above all, and most importantly, this future depends on the Afghan governance capacity, with the support of international partners, to transition from paper to practice.

### 8.1 Challenges

In 2008, Afghanistan faced the challenges of "inadequate infrastructure, weak institutional and human resource capacity, weak economic governance, disrupted regional and international commercial connections, weak private sector and under-developed markets for land and finance, deteriorating security and high population growth."<sup>198</sup> In 2012, NPP3 identified four major governance challenges for the next 3-5 years which included: weak legislative and policy frameworks, weak functional capacities and operational performance at the national and subnational levels, absence of a long term public administration reform vision and weak capacity and leadership of the IARCSC.<sup>199</sup> Today, despite all of the above problems, Afghanistan has come a long way. There has been progress as well as failure.<sup>200</sup> The international community remains committed to Afghanistan's decade of transformation (2014-2024) in a context characterized by the following major challenges:

<sup>195</sup> Byrd, William A, Gary Milante, and Kenneth Anye, 'A New Approach to Understanding Afghanistan's Transition: Comparisons with International Post Conflict Experience', USIP, 2013

<sup>196</sup> From Fragility to Resilience: Concepts and Dilemmas of Statebuilding in Fragile States, OECD, 2007.

<sup>197</sup> KII Dr. Bhatija

<sup>198</sup> Afghanistan National Development Strategy, 4.

<sup>199</sup> NPP3: Effective and Efficient Government, 7.

<sup>200</sup> Martine van Biljert, 'Fear, Hope and Determination: Afghanistan and the 2014 Syndrome', 10 January 2014, <http://www.afghanistan-analysts.org/fear-hope-and-determination-afghanistan-and-the-2014-syndrome>

**Failure of Legislature:** Despite focus on legislative reform, the basic organizational structure of the State and its units at the national and subnational level has remained the same,<sup>201</sup> mainly due to a legislative failure. The revised version of Afghanistan’s Law on Basic Organization of the State, originally developed in 1965, has been pending with the legislature since 2008<sup>202</sup> mainly due to political decisions on the number of ministries, provinces and districts.<sup>203</sup> The absence of a strong and up-to-date legal framework that clarifies the structure and functions of major institutions of public administration is a major challenge to improving national and subnational governance. Absence of this law has created, among many, a serious ambiguity on the Constitutional interpretation of the relationship between the Supreme Court and the Supervisory Commission on the Implementation of the Constitution. There is also need for urgent review of the Civil Servants law, Law on Basic Organization of the State and the Administrative Procedures Law.<sup>204</sup> Another casualty of this gap is the National Directorate of Security’s (NDS) claim to have a “secret” Law, while as per the Constitution no law can be secret. Article 134 of the Constitution clarifies the role of the Afghan National Police and the Attorney General’s Office in crime identification and investigation, while NDS engages in crime identification and investigation without any other entity having the mandate to monitor the process, which is a situation that encourages violations of human rights.<sup>205</sup>

**Weak Legal Analysis and Research Capacity:** In addition to a weak work culture reflected in a lack of specialization and focus on conducting legal analysis of legal drafts,<sup>206</sup> the Directorate of Taqneen at the Ministry of Justice lacks legal analysis and research capacity. Ministerial legal departments develop poorly-translated legal drafts from drafts originally developed in English, which overburdens the already low capacity of the Taqneen Directorate. The obvious consequence of this challenge is contradictory content within legal documents, and even in the Constitution itself.<sup>207</sup>

**Lack of a Whole-of-Government Approach to Public Administration:** Article 50 of the Constitution obliges the State to adopt necessary measures to create a strong and sound public administration system. The function of overseeing and monitoring the establishment of such a system of public administration is assigned to the IARCSC. This understanding, however, is not yet internalized by the Government bureaucracy, by the international community or even by the general public,<sup>208</sup> leading to unhelpful partnerships developed with central or subnational administrative units—instead of AIRCSC—that have neither the mandate nor the capacity to deliver on PAR implementation.<sup>209</sup>

**Political Patronage and Governance:** Efficient systems, effective and committed leadership, and transparency-enabled public participation are going to determine the strength of democratic governance in Afghanistan. The Afghan government’s national and subnational cadre on development policy poses a huge challenge to governance

201 KII Hamidi.

202 The Lower House of the Parliament approved the revised law of 6 chapters and 59 articles in September 2007. The Upper House of the Parliament returned the law back to the Lower House in Feb 2008. <http://mosharekat.wahdat.net/?num=230&id=4095> and <http://www.meshran.com/pvd/showdoc.aspx?id=1075>

203 KII Hashimi

204 NPP3: Effective and Efficient Government, 7.

205 KII Hamidi

206 KII Hamidi.

207 KII Jami and Hashimi.

208 “People still approach the Provincial or District Governor for justice, a demonstration of their lack of understanding of judiciary’s independence.” KII Hamidi.

209 KII Hashimi

as a whole.<sup>210</sup> The mega-pattern of political patronage and social patrimony has crippled the Afghan civil service system, where government positions are treated as shares to be distributed amongst warlords and their “chosen” “new generation technocrats.”<sup>211</sup> The obvious consequence in the civil service cadre is the lack of allegiance to institutional progress and reform implementation, loyalty to political sources of support, and a crippled system made of sectors uncooperative with each other with each striving to run on its own, and thus a severe lack of capacity to operate as parts of one machinery serving one joint sense of purpose.<sup>212</sup> In such a context, even the most technically equipped civil servants have to do more to save their position and to return the favours of warlords, than to push for substantive governance reform. With the political transition approaching, on-going patterns of political influence on technical appointments endangering the future of NPPs and the TMAF commitments, remain a serious concern.<sup>213</sup> Given that the major political contenders cannot work as a team, the chances that their “chosen” technocrats can demonstrate the capacity for teamwork and refuse to please ideological backers, is slim.<sup>214</sup> This may consequently mean that the Afghan government is going to pose more of a problem than a solution, a statement that is backed by the 2014 report of the Special Inspector General on Afghan Reconstruction<sup>215</sup> as well as by the lack of reliable data indicating otherwise.<sup>216</sup>

**Divided Civil Service System:** By virtue of a flawed civil service reform system including the CBR model,<sup>217</sup> Afghanistan has a civil service, and thus a bureaucracy, that is divided from within. Given the rentier nature of the state which reduces the bureaucracy to little more than the “gatekeepers”<sup>218</sup> of state resource distribution processes, programmes like CBR have served as exclusive reward mechanisms for the powerful few. The initiatives of the past 12 years have remained unsuccessful in creating a synergy between the two generations of civil servants torn apart by huge differences in salary scales, access to information, capacity to reach out, communicate and connect with outside stakeholders.<sup>219</sup> The older civil servant generation’s in-depth knowledge of the Afghan context and civil service experience is missing among the newer generation, thereby leading to conflict. Today, the two generations battle it out within the bureaucracy, literally on a daily basis. This vacuum of synergy between age-old experience and young energy, access and talent is crippling the civil service system from within, making reform implementation very difficult if not impossible. Nationwide implementation of Presidential Decree No. 635, which authorized the development of the National Technical Assistance (NTA) Remuneration Policy, aimed at harmonizing the salary scale of national staff inside or outside of Tashkeel, including Externally Funded Staff (EFS) funded by donors in May 2013,<sup>220</sup> would mark the first institutional initiative aimed at addressing this gap in part. Reducing the procurement rate of international advisers would mark the second.

210 Sarah Parkinson, ‘Means to What End: Policy Making and State Building in Afghanistan’, AREU, November 2010, 36.

211 KII Lewal.

212 Ibid.

213 KII Qarizada.

214 KII Sarabi.

215 SIGAR, Direct Assistance: USAID Has Taken Positive Action to Assess Afghan Ministries’ Ability to Manage Donor Funds, but Concerns Remain, January 2014 <http://www.sigar.mil/pdf/Audits/SIGAR-14-32-AR.pdf>

216 Byrd, William A, Gary Milante, and Kenneth Anye. ‘A New Approach to Understanding Afghanistan’s Transition: Comparisons with International Post Conflict Experience’, USIP, 2013

217 KII, Dr. Sigatullah, Adviser to the Deputy Minister Policy and Technical, IDLG, 14 January 2014. “The civil service Kankoor initiative was a big failure, given CSC’s capacity. They have not been able to recruit 364 District Governors in 2 years, how could they possibly, develop, administer and score tests for 30-40,000 graduates” KII Anonymous, Senior Civil Servant Finance.

218 Sarah Lister, ‘Moving Forward? Assessing PAR in Afghanistan’, AREU, September 2006, <http://www.areu.org.af/Uploads/EditionPdfs/629E-Moving%20Forward-BP-web.pdf>

219 KII Lewal.

220 National Technical Assistance Remuneration Policy, Government of Afghanistan, [http://www.budgetmof.gov.af/images/stories/DGB/Reports\\_publication/NTA%20Remuneration%20Guidelines.pdf](http://www.budgetmof.gov.af/images/stories/DGB/Reports_publication/NTA%20Remuneration%20Guidelines.pdf) (accessed Jan 28 2014)



**Priorities and Prioritization:** The international community came to Afghanistan with its own priorities which still form the basis of their continued practical engagement. The weak capacity of Afghans to systematically prioritize, communicate those priorities and strongly push for them provided an easy context for foreign-led prioritization processes. Given Afghanistan's dependence on the international community<sup>221</sup>, Afghans, as partners of Afghan development, hardly conducted a genuine and practical cost-benefit analysis with regard to the international presence and technical and financial contributions, a weakness that has impeded Afghan capacity to engage in a strategic dialogue with the international community. Given the heavy reliance on international expertise, both Afghan expertise and Afghan experts were neglected, and highly expensive advisory and technical services were procured from outside which is a pattern that continues. While recent development literature is full of the jargon of Afghan ownership, Afghan leadership and Afghan priorities,<sup>222</sup> in practice little has changed.<sup>223</sup>

**The Love of Planning and Fear of Implementation:** A mega-pattern characterizing the work of the past 12 years has been the planning and policy development tendency of the Afghan government<sup>224</sup> as well as of the international community. It started with the ANDS and seemed to end with the NPPs, only to cause disappointment again. Another "planning" exercise has reportedly<sup>225</sup> been initiated by the MoEC to cover the 1392-1395 planning cycle, an exercise that may take a couple of years if taken forward and thus lead to failed NPP implementation.

**Absence of a Cross-Sectoral National Economic Vision:**<sup>226</sup> Strengthened democracy and improved governance, especially self-sufficient governance, is dependent on sustainable economic growth which necessitates an economic vision.<sup>227</sup> For some, "Afghanistan's Economic Policy"—a "shopping list"<sup>228</sup> developed by the Ministry of Economy and MoF and titled "Towards Self Reliance" and which was presented at the Tokyo Conference of July 2012—represents some form of economic plan,<sup>229</sup> but the fact remains that Afghanistan lacks a cohesive cross-sectoral national economic vision, the absence of which has rendered Afghanistan's capacity to absorb resources weak and its talent to spend resources unexplored, and thus a golden opportunity abused. The decade of transformation will not be any different unless efforts are oriented towards building absorption capacity, creating spending talent and developing a national economic vision.

**The Governance Dilemma-Urban and Disconnected:** Governance is generally understood as urban governance; rural governance is predominantly customary and has been largely neglected over the past 12 years though for all the wrong reasons, since areas such as gender insensitivity is a characteristic equally observed in formal structures of governance.<sup>230</sup> Governance reform of the past decade has focused on the

221 Dr Douglas Saltmarshe and Abhilash Medhi, 'Local Governance in Afghanistan: A view from the Ground', AREU, June 2011, 3.

222 Robert Lamb and Brooke Shawn, 'Political Governance and Strategy in Afghanistan', Centre for Strategic and International Studies, April 2012, 40.

223 KII Lewal.

224 "Afghanistan's first ever Sub National Governance Policy was not taken seriously by the national government, despite the two years and huge resources that went into its development and endorsement." KII, Barna Karimi, Former Deputy Minister Policy at IDLG and Former Afghan Ambassador to Canada, 7 January 2014

225 KII Anonymous, Senior Civil Servant Finance.

226 KII Dr. Bhatija

227 Verkoren and Kamphuis, 2013

228 KII Anonymous, Senior Civil Servant Finance.

229 KII Qarizada.

230 KII Lewal.

appearance of governance<sup>231</sup> in urban areas, ignoring the majority of rural areas. As a result, cities have expanded in an artificial way, causing urban inflation and creating a serious socio-politico-economic divide between urban and rural areas. It is not just about government offices, barricades or even services. Today, the government's civic presence cannot be felt in the villages of Afghanistan and, as discussed earlier, formal subnational governance remains very weak.<sup>232</sup> As a result, villages hold a grudge against cities which is exacerbated by media projections of unrealistic sums of resources spent in Afghanistan. The lack of village capacity to feel, see, hear and breathe subnational governance, coupled with a lack of access to information and capacity to analyse, gives birth to a perceived serious sense of injustice and frustration among villagers, fuelling insecurity and insurgency. The rural-urban population shift seems meaningless in the face of the rural-urban divide, eroding what is left of people's confidence in the government.

**The Question of Intention and the Capacity-Building Assumption:** Afghan governance structures appear dysfunctional and in need of institutional and individual capacity-building due to poor performance. But this is inaccurate. Systems function. They preserve the interests of elites who pretend to implement reform, but actually do not.<sup>233</sup> This is more widespread in "independent" institutions perceived by their leadership as "unaccountable,"<sup>234</sup> although it is equally rampant in elected institutions such as the Parliament which has not only failed at timely legislation processing but has also severely underperformed on the function of parliamentary oversight. Increasing rates of corruption in the system<sup>235</sup>, and involvement of the highest possible layers of decision-making<sup>236</sup> in corrupt practices at the same time as capacity-building costs are increased, confirm this theory. Here, governance institutions demonstrate the age-old, rent-seeking behaviour, and financial resources allocated to capacity-building fuel this pattern. In such a situation, even addressing the disasters of capacity-building by avoiding duplication, ensuring consistency in technical capacity of participants, following-up on trainings with on-the-job training mechanisms, addressing the incentivized nature of trainings through per diem allocation and bringing in well-experienced and knowledgeable trainers,<sup>237</sup> may not have a lasting impact.

**Insecurity:** Governance is interlinked with security and service delivery. For governance to improve, public service delivery to become efficient, and effective and decision-making mechanisms to be brought closer to the people, security is a prerequisite. IDLG's attempts at increasing government presence at the district level through the District Development Plan (DDP) have not been successful because of a lack of access and restrictions on movement.<sup>238</sup> The justice sector is also heavily affected by this challenge with 45 non-functional Huqoq Offices at the District Level.<sup>239</sup>

231 KII Qarizada.

232 KII Lewal.

233 IARCSC must redo almost all of the recruitment that has taken place and is labelled as merit based, while in reality it is nothing close to merit based." KII, Dr.Sibghatullah

234 Ibid.

235 7/9 Members of the High Council of the Supreme Court take bribes. Supreme Court blocked the publication of a UNAMA Report that would have identified corrupt benches of the Supreme Court. The Chief Justice's term expired over two years ago yet he continues to remain on the bench. There is no way this is happening without the consent of the President. KII Anonymous, Justice Sector Affiliate.

236 "Even the 2<sup>nd</sup> Vice President complains of warlords in the cabinet meetings, perplexing any observer as to who then these violators are." KII Anonymous, Senior Civil Servant, Urban Governance.

237 KII, Saeeq Shajjan, Former Justice Sector Affiliate, Attorney at Law and Managing Partner at Shajjan Associates, 7 January 2014

238 KII Karimi.

239 KII Jami.

**Inefficient Urban Governance:** Unlike countries with a strong private sector, improvement in urban governance in Afghanistan is dependent on the capacity of the public sector to regulate urbanization, the work of which is impeded by failures in efficient planning and legislation. Municipalities regulated by the General Directorate of Municipal Affairs (GDMA) at IDLG (except Kabul Municipality that reports directly to the President) and MoUD are supposed to work together toward improved urban governance. GDMA relies on the MoUD for Detailed Urban Plans that must follow Master Plan Development and Strategic Plan Development stages, of which MoUD has only been through one so far.<sup>240</sup> The Municipal Law has been pending with the Cabinet for over two years. The Constitution provides for elected Mayors and Municipal Councils which the IEC has not been able to facilitate so far because of the pending Municipal Law, undefined city boundaries, unknown city population estimates and the lack of an effective national identity card system. Mayors remain political appointees and unaccountable to the people, with no attention paid to devising alternatives to elected Municipal Councils, until recently.<sup>241</sup> Given the unique capacity of the municipalities to generate and retain revenues, the failure of municipal legislation, lack of mechanisms for bottom-up accountability and public supervision—through Mayoral and Municipal Council elections—the possibility of increased levels of corruption in the urban governance sector is high.<sup>242</sup>

## 8.2 Recommendations

A policy paper is generally expected to offer recommendations and solutions. For a policy paper to not comply is to submit to technical self-de-authorization in the least and to rid the context of hope at the most, and in order to escape either scenario a number of major avenues for intervention are identified in the following pages. But to return to the problem of the complexity of the Afghan context and the nature of challenges this society faces, the problem of poor governance must be understood as a combination of technical and adaptive challenges. Identified above are most likely some of the challenges faced by this sector, and many may still remain hidden. Likewise, offered below could be helpful ways, with more to be discovered, studied and understood over time through a collective process that involves not just the Afghan government and the international community but also the Afghan people who, in the real sense of change and responsible reform, carry the problem in them, with them and, therefore, must engage with it to find a way out.

Easier said than done, yet one strong recommendation may be to accept the potentially violent consequences of the international military withdrawal and reduced development aid in the post-2014 scenario and consider it an opportunity for Afghans to build internal legitimacy.<sup>243</sup> This is particularly true since the goal of improving governance in Afghanistan, from a technical perspective, has boiled down to dealing with the major impediment: corruption and political control by a predatory elite, which is a classic example of an adaptive challenge that requires the system to not only find what reforms can still benefit despite rampant corruption and be accepted by the corrupt senior leadership, but also creatively build new capacity and thus evolve into something it has not been so far – something new. In this context, a better role for the international community willing to invest time and technical and financial resources, is a support role that enhances Afghan capacity for bottom-up change, a process that must come through

240 KII Anonymous, Senior Civil Servant, Urban Governance.

241 GDMA is working on establishing Municipal Advisory Boards in all Municipalities. KII Popal.

242 KII Popal.

243 KII, Dr. Bhatija and Astri Suhrke's 'Statebuilding in Afghanistan: a Contradictory Engagement' implies adopting a positive attitude towards post-2014 transition.

a great deal of unlearning social and political habits. Helping this society's intellectual transition toward unlearning entrenched behaviours related to authority and leadership may be one of most useful and sustainable ways to engage with Afghanistan.

**The Challenge Analysis Lens:** Development in Afghanistan should be approached in a systemic way, distinguishing between three major kinds of challenges the country faces: Technical challenges (where problem and solution both are defined and the system is equipped with the capacity to address the challenge with existing skills sets); Adaptive challenges (where the problem is defined but the solution is not, or both are not defined and the system needs to evolve or completely change in order to acquire the capacity to address the challenge,); and a combination of both. To ignore this complexity is to choose to fail. Given that governance reform concerns human beings, the likelihood that most challenges are either totally adaptive in nature or a combination of both is very high, underlining the need to adopt an overall long-term approach toward progress in Afghanistan. For example, to pin hopes on the 2014 and 2015 Presidential, Provincial Council and Parliamentary Elections and overestimate the importance of "Afghanistan's first real transfer of political power from one elected President to another" would only lead to disappointment. Real and genuine change will come, but in decades not years. Dealing with a context as complex as Afghanistan's requires the actors to question long-held assumptions, to adopt a long-term learning approach and to view interventions as experiments. This can help keep frustration at bay, hope alive and the capacity to question one's own approach thriving.

**Understand Afghan Priorities and Cultural Context:** The international community should understand the Afghan context and cultural sensitivities, and respect Afghan priorities.<sup>244</sup> Development interventions should not ignite negative reactions. Even minor negligence can cause hurt, such as the logo of a Red Cross on flour sacks which is seen as a symbol of Christianity can mar the good work the Red Cross does. Today, people have grown sensitive even to polio vaccinations, buying into rumours about their capacity to destroy faith or induce infertility.<sup>245</sup> Afghan priorities, for example in judicial sector reform, revolve around the need to build judicial infrastructure<sup>246</sup>, computerize the system<sup>247</sup>, and engage with all four relevant entities of Ministry of Interior, Office of the Attorney General, Courts and MoJ at the same time.<sup>248</sup> Afghan priorities aimed at strengthening and institutionalizing democratization can be targeted, for example, at the design, facilitation and roll-out of a public system of education that instills democratic and human rights values in children and prepares them for the country's future.

**Whole-of-Government Approach and Capacity-Building:** There can be two potential avenues for continued capacity-building efforts aimed at improving the system of public administration without compromising the whole-of-government approach. On the one hand, the institution mandated for PAR implementation is the AIRCSC, which includes the Afghanistan Civil Service Institute (ACSI) mandated to build capacity in the public administration system. On the other hand, the organizational structure of government authorizes the establishment of a Directorate or Office of Capacity-Building under the General Directorate of Human Resources in each ministry, tasked with facilitating capacity-building. However, in practice this division of labour is not very clear, leading

244 Borchgrevink, K. & Suhrke, A. 'Negotiating justice sector reform in Afghanistan', *Crime, Law and Social Change*, Vol. 50, Issue 3, 2008

245 KII Lewal.

246 KII Raofi.

247 There is need for a computerized Judicial Information System (JIS), widely used in many countries. KII Dr. Sibghatullah

248 KII Shajjan.

to a hybrid and confusing system of capacity-building. Clarifying institutional roles can address this confusion. This could be done by centralizing capacity-building in the AIRCSC's ACSI completely, allowing and strengthening it to design, facilitate and deliver capacity-building services for core/common tasks (procurement, public financial management, human resource management, administration, office management) as well as defining (sector specific technical) functions throughout government institutions uniformly. Alternatively, a clear red line could be drawn between core/common functions assigned to AIRCSC's ACSI and defining functions that would be given to ministerial Capacity-Building Directorates/Offices. Under the first option, ministerial capacity-building offices would provide input to ACSI on the design of capacity-building programmes, while under the second option both ACSI and ministerial capacity-building offices would be independent in their respective programme design, facilitation and delivery. Under both options, uniformity of content for core/common as well as defining functions would be maintained, and coordination of efforts would continue to be required between ACSI and ministries. The current practice of parallel and competing capacity-building programmes delivered by both ACSI and ministerial Capacity -Building Directorates needs to stop.

**Smart Investments:** A nation driven by a survivalist instinct cannot effectively participate and hold to account its governance system. The public's stake in governance is defined on the basis of their contribution to and benefit derived from the cycle of economic growth. Governance in Afghanistan will not improve unless the Afghan economy is strengthened and the agricultural sector is industrialized, allowing some degree of economic self-sufficiency and thus the luxury, stake and interest of improved participation in governance. This is going to require smart investments of time, and human and financial resources for economic development in the agricultural sector. For example, a good agricultural programme includes not only investment in agriculture but also in marketing methodologies, transport and cold storage facilities. A well-intended investment in Helmand led to the loss of 50,000 out of 60,000 tonnes of watermelon yield due to a miscalculated local absorption capacity and absence of mechanisms for marketing, storage and transportation. Another well-intended investment has equipped the Jamhoriyat Hospital in Kabul with heavy machinery that can only run on a sustained high power supply, which simply is not practical. Useful justice sector reform should include, for instance, investment in establishing a vibrant connection between academia and the practice of judiciary, reflected in the roles of a judge, defence attorney, judicial/legal adviser and judicial manager.<sup>249</sup> Contributions aimed at improving the public administration system through PAR implementation should, for example, be focused on the leading PAR agency - AIRCSC - based on a whole-of-government approach toward public administration.

**Long-term Approach to Anti-Corruption - Promote Organized Associations:** Political patronage may persist for some time to come. Senior technical appointments may remain highly and thus dangerously influenced by political decisions. Corruption, particularly in the public sector, may continue to increase or at least remain as rampant as today. Considering this context and the need to build capacity among elected representatives and strengthen anti-corruption efforts, individual capacity-building initiatives may find a replacement which, for instance, may take the form of support extended to organized professional and value-based associations within and outside the government that work to end corrupt practices within the ranks and by the members of the association. Strong political and social organizational discipline is the only useful tool to help build institutional capacity and target corrupt practices and behaviour patterns. No one is born corrupt. Corruption as a behaviour pattern is a social learning, and anything

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249 KII Hamidi.

socially-learned or adopted over time as a habit can be gradually unlearned too. Independent political parties - contributing to the cohort of elected officials such as Members of Parliament and Provincial Councils - professional unions of civil servants or private sector employees, and social organizations can offer internally-controlled and externally-monitored professional citizens, and thus enhance public capacity to monitor the Executive, to strengthen bottom-up accountability to beneficiaries and to aid anti-corruption efforts in the long run.<sup>250</sup>

**Short-term Approach to Anti-Corruption - Strengthen Law Enforcement:** Corruption may remain as deep-seated as it is today, partly because weak or non-existent law enforcement provides the safest environment for criminal abuse of the system. The fact that a corrupt Afghan official would exhibit added care in a society with serious law enforcement capacity confirms the power of the law and law enforcement as a means to control and suppress corrupt behaviour and practices. Political will within the Afghan Government leadership is going to be a critical prerequisite for effective law enforcement and rule of law, an outcome that can be expected through a few decades of generational change in leadership and the positive evolution of public expectations of their figures of authority in exchange for the services they offer. At this point, corruption runs through the fibre of the political system, connecting government institutions to each other. Law enforcement must become the future form of an organic linkage between institutions of governance at national and subnational levels.

**Bridge the Rural-Urban Divide:** Strengthening central state institutions is important but not at the cost of ignoring local societies. Engaging with communities and non-state informal institutions is equally important.<sup>251</sup> Creating a synergy between the formal and informal governance mechanisms, understanding the role of traditional figureheads such as mullahs<sup>252</sup> in inducing bottom-up reform, mobilizing people to own, lead and orient the process of change<sup>253</sup> rather than depend on intellectuals or the international community to drive the reform process, re-orienting financial resources to villages to create employment opportunities at that level, thereby increasing security and effectively communicating the good work carried out at the village level<sup>254</sup> are some of the ways the rural-urban gap could be bridged. Furthermore, to achieve the goal of improved governance, economic development programmes should embark on two exercises simultaneously: organizing existing resources and creating new resources.<sup>255</sup> Building canals can create hundreds of hectares of cultivatable land, thus creating a new resource. One good example has been a canal-building project funded by Japan in Kunar Province. The 25-kilometre canal waters 36,000 hectares of land and 63,000 trees on either side of the canal. Orienting financial resources to villages to create new resources in this way can help build the village economy, create local employment, prevent harmful urban inflation, help connect villages to the cities and ensure greater and more effective participatory governance, and with it a bottom-up as opposed to top-down reform implementation.

250 KII Mansoor.

251 Boege, Brown and Clements, 2009

252 "Mullahs played a key role in mobilizing village people to protect their water pumps and repair them in case of damage." KII Lewal.

253 "A woman walked 14 kilometers to vaccinate her child in Logar. Young women are no longer given in return for a dispute settlement in many villages of eastern Afghanistan." KII Lewal.

254 KII Bhatija.

255 KII Lewal.

**People Resist Loss, Not Reform:** Change disturbs the status quo, thus reformers often speak of the public's unwillingness to change. This is not correct. Winning a million-dollar lottery introduces huge changes to the lucky winner's life and is usually welcomed. People do not resist reform for its own sake; they resist it because they fear they will lose something in the process. Identifying and acknowledging the loss associated with reform and creating a strong environment within which people can grapple with that loss must be understood as pre-requisites for any reform process.<sup>256</sup> The off-budget, direct funding to government institutions and local warlords increased insecurity and corruption, and widened the gap between urban and rural areas on the one hand and within the civil service system on the other. These are among some of the prominent faces of "reform" over most of the past decade that have not just represented but have actually caused real losses to basic rights and interests, and goes a long way toward explaining why people remain doubtful as to what "reform" and "progress" mean. Increased access and capacity to analyse information through responsible media reporting, genuine civil society representation and accountable elected representatives can contribute to accurate identification and acknowledgement of the losses associated with reform.

**Build the Capacity of Civil Society:** Article 128 of the Constitution renders Court proceedings public, facilitating easy access to and monitoring of judicial processes by the public and their elected or appointed representatives, such as civil society organizations and the media. However, as there is no tradition of monitoring court proceedings by civil society organizations or the media, court proceedings are held in the office of a judge. As a result, the judiciary is not monitored and thus does not work on improving its procedures, and civil society and media entities lack judicial reporting capacity.<sup>257</sup> Not that the public sector is completely inert when it comes to progressive reform, but civil society needs to become the driving force behind sustainable change in Afghanistan, as the people's friend and the government's partner, creating a new generation of leaders worthy of investment and support from the international community. As the people's friend, civil society should build understanding of the relationship between service delivery and the process of authorization—such as through voting to elect officials—in order to help shape public expectations in a constructive way. As the government's partner, its role is to oversee service delivery and ensure the public sector can enable public access to information, thereby ensuring bottom-up accountability. There is need, however, to help build understanding of this dual role in civil society and its capacity to transition between these roles on a constant basis.

<sup>256</sup> This analysis is based on the framework of Adaptive Leadership. For more please see Heifetz, Ronald, *Leadership Without Easy Answers*, Cambridge: Belknap/Harvard University Press, 1994.

<sup>257</sup> KII Hamidi.

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