

# SPEAKING FROM THE EVIDENCE

Governance, Justice  
and Development

Policy notes for the  
**2010 KABUL CONFERENCE**



**Afghanistan Research and Evaluation Unit**  
*Research for a Better Afghanistan*

## The AREU Kabul Conference Policy Notes

As Afghan and international leaders meet in Kabul, following the London Conference earlier this year, they seek to commit to strategies that can lead the people of Afghanistan to a brighter, more secure future.

These policy notes aim to inform discussion on how to proceed in areas related to justice, governance and development. Based on AREU's recent and ongoing research, they provide a timely reminder of the evidence base around some key topics of relevance to the conference.

### Contents:

1) Statement: Grounding International Engagement in Afghan Realities.....	3
2) Reflections on the Paris Declaration and Aid Effectiveness in Afghanistan .....	5
3) Democratisation and Elections .....	9
4) A Holistic Justice System for Afghanistan .....	13
5) The State of Transitional Justice in Afghanistan .....	17
6) Improving Efforts to Achieve Equitable Growth and Reduce Poverty.....	21
7) Declining Opium Poppy Cultivation: Reasons and Effects .....	25

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## GROUNDING INTERNATIONAL ENGAGEMENT IN AFGHAN REALITIES

*A statement by the Afghanistan Research And Evaluation Unit  
on the occasion of the London and Kabul Conferences on Afghanistan*

April 2010 (Version 2).

If the international community is to ensure that its aid effectively contributes to a stable, governable state, it must take a supportive role, so that Afghans can choose their own destiny. A heavily directive role is a path to dependence and resentment on the part of Afghans. If the international community listens as much as it speaks, and if it responds genuinely to Afghan needs and priorities, then the shoots of hope, already present, can grow.

AREU's basic contention is that a lasting and just peace in Afghanistan, the kind of peace that is a natural repellent to insurgency, can only come when international intervention is informed and driven by the social, economic and political realities that Afghans face. Decisions that are blind to these realities, and driven by the short-term political convenience of international leaders, are likely to fail both in their stated objectives of development, and in providing a foundation to counter terrorist threats. We observe that the international intervention in Afghanistan has become increasingly informed by "realities on the ground" and yet at the same time, such progress constantly risks being undermined by imposed ideologies and political pressures.

Many of the problems that the international community faces in Afghanistan arise from their own hastily-made decisions and short-term planning, driven by political expediency. And yet, the international community has been learning from its experiences, and from such learning there comes some renewed hope. The London and Kabul conferences on Afghanistan in early 2010 provide an important opportunity to nurture insights and further redress some of the problems created by earlier political short-sightedness. On the other hand, with impatient publics and increasing pressure for quick solutions, there is also a grave risk that the errors of the recent past will be repeated.

Since 2002, AREU has conducted numerous studies through which we have observed weaknesses characteristic in the approach of international intervention, as well as some heartening improvements. To consolidate the lessons gleaned from eight years of hard-won experience, AREU recommends that the international community pay attention to four strategic issues in shaping its engagement in Afghanistan:

- 1. Increase recognition of "on-the-ground" realities:** International intervention has often assumed Afghanistan to be a "blank slate." International engagement in Afghanistan has shown an initial, and at times willful, blindness to many of the existing informal or semi-formal mechanisms and practices that have carried Afghan society through the last few decades of upheaval and civil war. These include, for example, public administrative systems that have endured through various regimes, and informal credit systems.<sup>1</sup> Yet in each of these areas, policymakers have come to appreciate and respond to these existing systems, and have begun to use these understandings to support what is already working in Afghanistan.
- 2. Base policy on evidence rather than ideology:** Policy has often been driven by ideology or assumption rather than evidence. This is true of counter-narcotics policies that failed to recognise the great importance of opium poppy to rural livelihood security, and which inadvertently increased support for the Taliban by those who had no other means of livelihood in the face of poppy bans.<sup>2</sup> It is also true of economic policies that prioritised privatisation of national assets above more pressing structural reforms that were more likely to stimulate economic growth.<sup>3</sup> Yet again, international policymakers, along with Afghan government officials, have learnt that these policies are not working and have begun to adjust them accordingly. This is great progress.

<sup>1</sup> See for example: Hamish Nixon, *Subnational State-Building in Afghanistan* (Kabul: AREU, 2008); Paula Kantor, *From Access to Impact: Microcredit and Rural Livelihoods in Afghanistan* (Kabul: AREU, 2009).

<sup>2</sup> Adam Pain, "Let them Eat Promises": Closing the Opium Poppy Fields in Balkh and its Consequences (Kabul: AREU, 2008); David Mansfield and Adam Pain, *Counter-Narcotics in Afghanistan: The Failure of Success?* (Kabul: AREU, 2008).

<sup>3</sup> Anna Paterson and James Blewett, *Putting the Cart Before the Horse? Privatisation and Economic Reform in Afghanistan* (Kabul: AREU, 2006).

3. **Be cautious about concepts and assumptions:** The international community has often transported terms such as “democracy,” “gender equity,” and “merit-based practices” into Afghanistan without giving enough consideration to what these notions may mean in the Afghan context, and how they sit with Afghan values and culture.<sup>4</sup> The recent elections and increased international emphasis on “corruption” provide important opportunities to revisit these concepts and ask crucial questions about what they mean to Afghans, and how Afghans want to enact them. For example, recent AREU research on Afghan perceptions of democracy found that Afghans in the study supported the idea of democratic government but did not appreciate some of the western values with which democracy is often associated. They wanted an Afghan democracy within the framework of Islam.<sup>5</sup>
4. **Take the longer-term view:** The international donor community often presses for fast and visible improvements in the areas of governance, development and security in Afghanistan. Such pressure has led to unrealistic national-level goals, without adequate means of implementing them. This has also led to a sidelining of sustained capacity-building efforts in favour of bringing in well-paid technical advisors who are temporarily embedded in ministries. Creating unreachable expectations and channelling funds through institutions that cannot competently dispense them tend to weaken rather than strengthen the Afghan civil service. The drafting of subsequent national policies has seen greater Afghan involvement, but this area remains a weak point for international engagement.

This does not mean that the international community should stand by in the face of impunity and malpractice. Afghan trust in the international community has been undermined when international leaders have supported the installation of discredited Afghan leaders because it has been convenient for them to do so.<sup>6</sup> Afghan experiences with widespread malpractice in the contracting of reconstruction and development projects, often overseen by international agencies, have also contributed to scepticism about international integrity and intentions.<sup>7</sup> If Afghans are to regain trust in the international community, they must be able to see that the latter adhere to principles of fairness and justice above their own interests and conveniences.

Many nations have committed troops to Afghanistan in the hope of seeing an improvement in Afghanistan’s domestic security, and thus reducing international terrorist threats. However, international military presence cannot address the root causes of insecurity in Afghanistan. An international preoccupation with military strategy has deflected attention from building up civilian institutions and developing the economy. The outcomes of international engagement, whether military or civilian, are subject to the political dynamics that tie together the social and economic fabric of the country. Civilian development can only contribute to stability if it is defined and legitimised from the perspective of the Afghan people—otherwise it is merely a foreign imposition that will lead to growing polarisation and conflict.

The London and Kabul conferences on Afghanistan in 2010 provide an opportunity for the international community to collectively reaffirm their commitment to move forward with what works, to listen and learn from Afghans, and to support Afghans in building up public institutions that are legitimate in their own eyes. It is in building steadily on these efforts, too long neglected in preference of quick-fix and military solutions, that the greatest hope for stability and collective prosperity lies.

The Afghanistan Research and Evaluation Unit’s Mission is to inform and influence policy and practice through conducting high-quality, policy-relevant research and actively disseminating the results, and to promote a culture of research and learning. AREU was established in 2002 by the assistance community working in Afghanistan and has a board of directors with representation from donors, the United Nations and other multilateral agencies, and nongovernmental organisations. AREU publications are available for download at [www.areu.org.af](http://www.areu.org.af) and in hard copy from the AREU office:

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4 See Martine van Bijlert, *Between Discipline and Discretion: Policies Surrounding Senior Subnational Appointments* (Kabul: AREU, 2009); Anna Larson, *A Mandate to Mainstream: Promoting Gender Equality in Afghanistan* (Kabul: AREU, 2008); and Noah Coburn, *Losing Legitimacy? Some Afghan Views on the Government, the International Community, and the 2009 Elections* (Kabul: AREU, 2009).

5 Anna Larson, *Toward an Afghan Democracy? Exploring Perceptions of Democratisation in Afghanistan* (Kabul: AREU, 2009).

6 Rama Mani, *Ending Impunity and Building Justice in Afghanistan* (Kabul: AREU, 2003).

7 C. Johnson and J. Leslie, *Afghanistan: The Mirage of Peace* (London: Zed Books, 2005).





# Reflections on the Paris Declaration and Aid Effectiveness in Afghanistan

April 2010

Rebecca Roberts

## Introduction

The issue of aid effectiveness in Afghanistan is high on the agenda of the Government of Afghanistan (GoA), the international community and other development actors. Despite this, aid is widely criticised for being ineffective. Criticisms stem from perceptions that the impact of assistance has been limited, that the security situation is deteriorating, and that funding and resources are either being mismanaged or misappropriated. When development actors, particularly donors, talk about aid effectiveness, they are often referring to the 2005 Paris Declaration on Aid Effectiveness and assessing whether aid to Afghanistan complies with its principles.

The Paris Declaration refers to the effective management of aid at high levels through mechanisms agreed between the donors and the recipient government. This paper discusses its limitations and the challenges of applying the Declaration's principles for aid effectiveness in Afghanistan. It maintains that although the five principles of ownership, alignment, harmonisation, managing for results and mutual accountability should be upheld, these alone are not sufficient to achieve aid effectiveness. This is because the Declaration is technically orientated, does not take into account the political dimension of

aid, and is designed to guide development assistance and not relief and stabilisation efforts.

The Declaration has led to a focus by the international community on the processes of managing aid rather than on the impact of aid. In addition, the Paris Declaration, and other international agreements, hold development actors to processes that may not be the best approach given the challenges the Afghan context poses. These include: continued insecurity; lack of national and international capacity; multiple and often incompatible agendas; unclear goals; blurred lines between military, humanitarian and development interventions; widespread corruption; and a lack of coordination.

This note begins by briefly discussing the Paris Declaration and the challenges to initiating effective development processes in Afghanistan. To illustrate the impact of the challenges on the different aspects of aid effectiveness, the paper is organised around the five key principles of the Paris Declaration. This serves to highlight some of the challenges and limitations of the Paris Declaration framework.

## The Paris Declaration: Limitations and Challenges

The Paris Declaration specifies indicators against which donor and beneficiary countries should measure their progress in achieving the five key Declaration Principles. The 2008 Survey on Monitoring the Paris Declaration reports that Afghanistan and its donors scored low for ownership and managing for results, moderate for alignment and harmonisation, and high for mutual accountability.<sup>1</sup> However, the indicators used are narrow and bureaucratic and do not take into account the political dimensions of aid<sup>2</sup> or assess the quality of aid and its impact

This policy note summarises a discussion paper of the same name by Rebecca Roberts (Kabul: AREU, April 2009). Analysis is based on document review and data from senior international and national actors involved in the management of aid in Afghanistan. Interviews were conducted and meetings attended in Kabul in 2008 and 2009. Extracts were selected by Emily Winterbotham.

### About AREU

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<sup>1</sup> "2008 Survey on Monitoring the Paris Declaration. Effective Aid By 2010? What it Will Take," Vol. 2 Country Chapters (2008 3<sup>rd</sup> High Level Forum on Aid Effectiveness, Accra, Ghana, 2-4 September 2008).

<sup>2</sup> Stefan Meyer and Nils Sjard Schultz, *Paris to Accra: Building the Global Governance of Aid* (Madrid: Fride, August 2008), 16.

on the ground. Development efforts seem to be distracted by the processes and mechanisms. There is growing recognition that the Paris Declaration in its present form is technocratic and fails to address the complexities of aid or to demand partnerships between donor and recipient governments that are more than bureaucratic relationships.<sup>3</sup>

Another limitation of the Declaration is that the principles are intended to be applied to development aid. In Afghanistan, the complex security situation and ongoing humanitarian concerns, such as drought and food security, mean that a significant proportion of assistance is instead for stabilisation activities in insecure areas, or relief to vulnerable groups. Both need to be implemented much more quickly and differ from development in their immediate aims. Some actors argue that relief and stabilisation fall outside the development assistance umbrella and therefore outside the Paris Declaration.

Despite the limitations, many international actors in Afghanistan emphasise that the principles of the Paris Declaration should be upheld. They also believe that the Declaration has led to improvements in the management and delivery of aid and increased donor awareness of best practices. At the same time, international actors acknowledge that delivering assistance in Afghanistan is a politicised process that cannot be managed solely through applying the Paris Declaration principles. In addition, some actors state that the Paris Declaration indicators to measure aid effectiveness are not useful and do not provide a real measure for aid effectiveness. The following discussion briefly outlines some of the challenges to applying the five Paris Declaration principles.

## 1. Ownership

The Paris Declaration advocates that countries receiving development assistance should “exercise effective leadership over their development policies, and strategies and coordinate development actions.”<sup>4</sup> National ownership ensures that development interventions meet the needs of the people and are appropriate.

Ownership can mean different things to different people in different contexts. The Paris Declaration focuses on government ownership, which does not necessarily lead to national ownership, particularly if the links between the people and the government are weak. To have ownership of development processes,

so that they are planned, managed and implemented according to the country’s needs, there has to be national capacity. Lack of capacity in Afghanistan at the national level among government officials, ministries and civil servants has the greatest impact on the management of aid. This is compounded by the practice of keeping decision-making at the highest level. Consequently, senior staff are overwhelmed by their work. The unwillingness of lower-level staff to take initiative due to inexperience or fear makes this worse.

Another issue challenging national ownership is the prominence of external influences. What does it mean for national ownership when the development methods and approaches are determined externally and the international community imposes conditions on assistance? For example, to qualify as a Heavily Indebted Poor Country (HIPC) eligible for debt relief, a country must produce a Poverty Reduction Strategy Paper (PRSP). Although it was argued publicly that Afghanistan’s PRSP, the Afghanistan National Development Strategy (ANDS), was an Afghan document, there were a lot of negotiations behind the scenes as the international community tried to shape the ANDS into what it required.

## 2. Alignment

The principle of alignment in the Paris Declaration asks donors to “base their overall support on partner countries’ national development strategies, institutions and procedures.”<sup>5</sup> However, countries in receipt of development aid typically face political problems, so alignment is likely to be politicised.

In Afghanistan, international actors have to perform a delicate balancing act by trying to offer practical support at the same time as maintaining their distance and providing constructive criticism. This is difficult to achieve in governance reform. The creation of the Independent Directorate of Local Governance (IDLG) by the GoA was in response to donor demands that subnational governance structures and procedures be strengthened and clarified. However, the IDLG is increasingly perceived as a political tool of President Karzai.<sup>6</sup> By funding IDLG, international actors could be supporting the regime rather than development processes. However, by not supporting IDLG, donors are ignoring efforts by the government to improve subnational governance and are failing to align their policies.

<sup>3</sup> Meyer and Schultz, *Paris to Accra*, 16.

<sup>4</sup> *Paris Declaration on Aid Effectiveness* (High Level Forum, 2005 Paris, 28 February - 2 March 2005), 3.

<sup>5</sup> *Paris Declaration on Aid Effectiveness*, 4.

<sup>6</sup> Author interview, informed international observers, Kabul, 2008.

GoA capacity to manage large amounts of funding is perceived as weak and allegations of corruption are widespread. Donors are therefore not prepared to provide direct budget support. World Bank figures suggest that around two-thirds of development assistance is spent outside the GoA budget.<sup>7</sup> This limits government ownership and control over development funding and processes. The creation of the Afghanistan Reconstruction Trust Fund (ARTF), managed by the World Bank, offers a compromise.<sup>8</sup> However, although donors are not allowed to set conditions on funds managed through the ARTF, they are able to express preferences for how funding should be distributed. Some areas are subsequently underfunded and the Ministry of Finance's ability to manage its own budget is undermined. Consequently, levels of alignment and national ownership are reduced. The failure to address corruption in the government and public sector, and the lack of progress in public administration reform, has damaged the credibility of the GoA and donors among the Afghan population.<sup>9</sup>

### 3. Harmonisation

The Paris Declaration advocates the harmonising of donors' actions to be "collectively effective."<sup>10</sup> Currently, the GoA lacks the capacity to take responsibility for managing assistance.<sup>11</sup> According to the Declaration guidelines for delivering effective aid in fragile states, "Harmonisation is all the more crucial in the absence of strong government leadership" and donors should commit to harmonising their activities.<sup>12</sup>

Although some experienced development actors argue that the Paris Declaration has contributed to improved donor coordination, many also argue that there is still a lack of coordination, which is reducing aid effectiveness. In the absence of government leadership, the United Nations Assistance Mission in Afghanistan (UNAMA) might be expected to lead on harmonisation. Donors state they are ready to

support UNAMA, but the mission is often criticised for being weak and lacking staff and resources.<sup>13</sup> UNAMA, however, argues that it already has a central leadership and coordination role.

The lack of coordination is exacerbated by the number of actors involved in development, all with different mandates, including: the GoA, donors, the United Nations, international and national NGOs, private companies and the International Security Assistance Force (ISAF) through the Provincial Reconstruction Teams (PRTs).<sup>14</sup> Some informed observers feel that the international presence in Afghanistan has become so large and complicated that it is almost impossible for anyone to have an effective overview. In addition, there are "real political differences among the international actors in Afghanistan" about prioritisation and sequencing of activities.<sup>15</sup> This has complicated the situation, blurring the lines between humanitarian, development, political and military activities. Given the number of actors and agendas, is it possible, even with a strong coordinating body, to achieve harmonisation?

There is concern that without coordination, assistance will further fragment because the government cannot coordinate it. A trend that could lead to the fragmentation of aid is the concentration of major donor funds in their areas of military and PRT operations rather than channelling funding to Afghanistan centrally.

### 4. Managing for results

According to the Paris Declaration, "Managing for results means managing and implementing aid in a way that focuses on the desired results and uses information to improve decision-making."<sup>16</sup> The international assistance effort in Afghanistan is often not motivated purely by humanitarian concerns, but by a variety of international and domestic political and security considerations. International actors are distracted by fighting in parts of the country and the influence of regional powers. Consequently, the effective delivery of aid is often secondary to other aims. Security is needed to maximise the impact of

<sup>7</sup> World Bank Group, "World Bank Urges Improvement in the Effectiveness of Development Spending in Afghanistan" (3 June 2008).

<sup>8</sup> The Afghanistan Reconstruction Trust Fund is a multi-donor trust fund managed by the World Bank. Donor funding is pooled to finance recurrent expenditure in the Afghan government and investment projects.

<sup>9</sup> The World Bank Group, "World Bank Urges Improvement in the Effectiveness of Development Spending in Afghanistan."

<sup>10</sup> *Paris Declaration on Aid Effectiveness*.

<sup>11</sup> Author interview, Kabul, August 2008.

<sup>12</sup> *Paris Declaration on Aid Effectiveness*, 7.

<sup>13</sup> Author interviews, Kabul, 2008-2009.

<sup>14</sup> According to ISAF, PRTs are civil-military institutions which facilitate reconstruction and development activities in less secure areas of Afghanistan, HQ ISAF, "PRT Review" (July 2008).

<sup>15</sup> Helge Lurås, Niels Nagelhus Schia, Stina Torjesen and Stale Ulriksen, "From Coherent Policy to Coordinated Practice: Are We Delivering Coherently in Afghanistan" (2008 Conference, Oslo, Norwegian Institute of International Affairs, 17-18 November 2008), 3.

<sup>16</sup> *Paris Declaration on Aid Effectiveness*, 7.

aid, but currently the situation is reversed: aid is being used to support military and political objectives. Can aid be effective if assistance is not the primary aim?

Another challenge to “managing for results” is the lack of accurate information. Even basic statistics about Afghanistan, such as the size of the population, are lacking.<sup>17</sup> There is always uncertainty of real needs after conflict because there is a lack of baseline data, poor access to remote areas and limited communications and mobility. Ongoing conflict reduces confidence in the potential peace, limits access to volatile areas and creates fear and mistrust among the people. Should development actors be making greater efforts to assess the needs of the people and to manage expectations? Would a more realistic approach that takes into account the practical challenges posed by lack of information improve development impact?

## 5. Mutual Accountability

“Mutual accountability” means that donors and recipient governments are responsible for development results.<sup>18</sup> Mutual accountability is considered to be high in Afghanistan because there are mutual assessment mechanisms in place that fulfill the Paris Declaration requirements.<sup>19</sup> However, it is unclear how the GoA can be accountable when the same Paris Declaration monitoring survey scored Afghanistan low for ownership.<sup>20</sup> How can a recipient government be accountable if there is little national ownership?

The different types of development interventions also challenge mutual accountability. International actors argue that mutual accountability is not possible for humanitarian activities because they have to be undertaken rapidly and there is not time to assess situations or the information to examine the impact accurately. Is there mutual accountability in the assistance delivered through the military and the PRTs, or is that classed as assistance for stabilisation or reconstruction, and therefore not covered by the Paris Declaration?

<sup>17</sup> Thomas H. Eighmy, “Afghanistan’s Population - Settled, Nomadic, Displaced and Refugee: Their Numbers, Location and Ethnic Composition” (Boston: American Association for the Advancement of Science, Session on Afghanistan and Terrorism: World Transformation?, 16 February 2002).

<sup>18</sup> *Paris Declaration on Aid Effectiveness*.

<sup>19</sup> “2008 Survey on Monitoring the Paris Declaration, Effective Aid by 2010?,” 17.

<sup>20</sup> “2008 Survey on Monitoring the Paris Declaration, Effective Aid by 2010?,” 17.

Finally, is it possible to have true mutual accountability between multiple actors when the most important accountability relationship is between the donor governments and their taxpayers, rather than with the recipient country? Mutual accountability is praiseworthy but the complexity of achieving it in Afghanistan seems to have been overlooked.

## Conclusion

There are many factors that limit the effectiveness of aid in Afghanistan that cannot be addressed within the framework of the Paris Declaration. This paper has highlighted a few of them. The principles of the Paris Declaration provide a foundation for aid effectiveness. However, there are key issues that need to be addressed at the policy level to enhance aid effectiveness in Afghanistan:

- **Prioritise Aid Effectiveness:** Aid effectiveness will only be maximised when it is a priority. Aid effectiveness is reduced when it comes second to military or political aims.
- **Address the Political Dimensions:** The technical nature of the Paris Declaration does not help development actors negotiate the complex political environment in Afghanistan. Political challenges and the limitations of the Paris Declaration must be acknowledged and discussed openly to advance the debate on aid effectiveness and improve the impact of aid in Afghanistan.
- **Recognise the Limitations:** The Paris Declaration focuses on development aid and is not necessarily applied to relief or stabilisation efforts. The lines between development, humanitarian and military actors and their interventions have become blurred. Action is needed to address these issues to enhance aid effectiveness and advance the debate on this subject in complex situations.
- **Measure Impact:** Adherence to the Paris Declaration does not ensure the positive impact of aid. The Declaration measures only adherence to its principles and not the effectiveness of aid on the ground. To achieve greater aid effectiveness development actors must look beyond monitoring the principles of the Paris Declaration and focus on impact and not just process.
- **Improve Information and Knowledge:** The Paris Declaration can be used as a framework to guide aid effectiveness but it does not compensate for the lack of basic data on Afghanistan. To ensure improved aid effectiveness, programmes must be developed using baseline data and needs assessments.





## Democratisation and Elections

March 2010

Anna Larson

### Introduction

Democracy must be framed in Afghan terms if it is to take root in Afghanistan. It must reaffirm, rather than threaten, Afghans' identity as citizens of a sovereign, Islamic nation. Furthermore, the process of democratisation needs to be encouraged as part of a substantive, long-term commitment to political and administrative institution-building by the Afghan government and donor community.

Ongoing AREU research on representative governance is exploring perceptions of democracy among Afghans in six provinces. Initial findings demonstrate the highly contentious nature of both the word "democracy" and the values it is seen to encompass. There is a widespread concern among respondents that democracy has brought with it Western, secular values that remain for the most part alien to Afghanistan's Islamic identity. "Democracy" is widely seen as an imported system—as another foreign intervention in the political and social affairs of the country.

Democracy has also been discredited in the eyes of Afghans as a result of unmet (although sometimes unrealistic) expectations. The economic development and security anticipated by many in the post-2001 era have not materialised. Trust in government structures has also declined, with fraudulent elections in 2009 contributing to the decreasing credibility of the very institutions designed to implement democratic processes. Donors and policymakers have prioritised a short-term focus on elections, without committing to the long-term institution building necessary to ensure lasting, democratic stability.

Despite these factors, however, AREU research has found that the *prospect* of public participation in the choosing of leaders through elections is still fundamentally accepted and welcomed by many. Concerns lie not with the idea of political participation, but with the need to ensure: a commitment to the upholding of Islamic values, a level playing field on which participation can take place, a secure environment, and tangible government service provision as a result.

This policy note summarises key findings of AREU's representative governance research and presents recommendations around the following three themes:

- 1) **The concept of "democracy":** Elections and the principles of representative governance are widely welcomed and aspired toward in Afghanistan, but the word "democracy" often carries negative connotations. It cannot be assumed to be acceptable or desirable to Afghans at face value.
- 2) **Loss of faith in democracy:** High expectations remain unmet, and the subsequent loss of faith is compounded by a lack of trust in political institutions and the perception that electoral outcomes are predetermined by international players.
- 3) **Elections 2009, 2010 and beyond:** Despite these challenges, September's parliamentary elections are already invoking interest and preparation from constituents and candidates alike. While far from perfect, the electoral cycle in Afghanistan has begun to provide some sense of political stability and should be maintained. Nevertheless, significant electoral reforms are necessary.

### About the Author

Anna Larson is a researcher with the governance team at AREU, and has been working in Afghanistan on governance and gender issues since 2004. Anna has an MSc in Violence, Conflict and Development from SOAS, University of London, and is an MPhil candidate at the Post-war Recovery and Development Unit (PRDU) at York University, where she is studying democratisation processes in Afghanistan.

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## 1. The Concept of “Democracy”

“Democracy” is a value-laden concept in Afghanistan, carrying a number of negative connotations. It is widely associated with “freedom,” such as to participate in elections, but also with “excessive” freedom, which could be used to disregard cultural and religious norms and values. Urban respondents in particular discussed the concern that young people or those living in rural areas, who perhaps did not know better, were “misusing” the freedom brought by democracy to justify socially unacceptable behaviour. The word “democracy” is also often used to signify that “anything goes,” for example regarding the unregulated and chaotic driving seen in Kabul, the extortionate prices charged for goods, or women walking in public without a headscarf. “What can be done? This is a democracy.” There is a widely held opinion among respondents that there should be some form of national control of the individual freedom that democracy might mean to certain groups of people.

Related to the desire for social control is the way in which “democracy” is widely interpreted in Afghanistan as liberal or “Western” democracy, complete with its emphasis on liberal values, such as the separation of religion and state, a market economy and gender equality (as opposed to women’s rights<sup>1</sup>). This is directly compared with “Islamic democracy,” in which a democratic political system was set within the “framework of Islam.” While differing from respondent to respondent, the set of values identified as within an Islamic framework were described in such a way as to denote a lifestyle with which people identified, as opposed to a lifestyle or value-set outside the framework with which they did not.

It is the emphasis on liberal values, and not the prospect of democracy as a political system, that was considered most problematic to the majority of respondents interviewed for the study. Respondents tended to maintain that with social restrictions in place and within an “Islamic framework,” democracy was desirable in Afghanistan.

<sup>1</sup> A number of respondents emphasised the way in which women’s rights are incorporated into Islam, but the implication was often that these rights were often different to those available to men. This then can be distinguished from a liberal emphasis on gender equality, in which the same rights are pursued for both sexes. This issue will be discussed further in forthcoming AREU papers on Afghan perspectives of democracy and democratisation.

## Recommendations:

- The international community should acknowledge the contextual connotations of “democracy,” which in Afghanistan is all too often assumed by the international community to be unquestionably positive, with little consideration as to what the term may imply in the Afghan context and how it is received and interpreted by Afghans. The 2010 Kabul Conference provides an important opportunity for donors to revisit the term “democracy,” acknowledge its complex connotations in Afghanistan and look toward “Afghanising” and encouraging Government of Afghanistan (GoA) ownership of the democratisation process as far as possible. The international community should consider replacing the use of the word “democracy” with “representative government,” as a step in this direction. The Kabul Conference also provides the chance to debate the critical issue of what kind of international assistance might be appropriate and acceptable to encourage the strengthening of representative government in Afghanistan.
- The GoA should define democracy on Afghan terms: The prospect of undertaking this task is daunting, given the range of opinions and perspectives among Afghans themselves. But starting a debate—perhaps in parliament, and televised—about democratic values and their meaning in the Afghan context could be constructive in generating acceptance of democracy in general. Before this, at the Kabul Conference, the GoA needs to endorse the democratic system, but publicly encourage debate as to what this might constitute in the Afghan context. Evidently, this kind of discussion could produce outcomes that do not sit comfortably with liberal/Western democratic principles, but it is important that democracy be defined on Afghan terms in order to counter the widespread sentiment that it is an imported, and thus expendable, political system.

## 2. Unmet Expectations, Discredited Institutions

The standards set by respondents in interviews for judging the quality of Afghan democracy were often based on key characteristics of established democratic countries—for example, high levels of economic development, rule of law and checks and balances against corrupt practices. This is an understandable correlation, but demonstrates extremely high expectations of what a democratic system should

provide. Often discussed in interviews was the implausibility of having a functioning democracy without these characteristics and how widespread poverty and insecurity are compromising the value of political representation.<sup>2</sup> In this way, hallmarks of established democracies become similar to the liberal values discussed above—they become integral parts of what “democracy” means, and thus if a country does not live up to these standards it becomes a “non-democracy,” or the democratic system itself is blamed. If democracy as implemented by the Afghan government does not present an attractive or viable alternative to the parallel governance structures proposed (and implemented) by anti-government actors, support for insurgent groups may continue to increase.

A key problem for the Afghan government in this regard lies in convincing the public that its political institutions are trustworthy and credible. The 2009 elections brought into question the impartiality and capacity of the Independent Election Commission (IEC), with significant discrepancies between vote counts occurring at polling stations, provincial centres and in the final tally. Provincial council results still remain disputed in a number of provinces.<sup>3</sup> This is partly the result of a lack of GoA and donor support to the IEC and other political institutions (such as parties) in the interim period between elections. But it is also the responsibility of the IEC to ensure that their own activities are considered legitimate in the eyes of Afghans. If the transparency and reliability of key democratic processes remain questionable, it will be increasingly difficult to encourage participation and local buy-in.

Finally, the credibility of these institutions is undermined by undue international intervention in

<sup>2</sup> This concern echoes the globally debated issue of whether democratic politics bring about economic growth and/or poverty reduction, or whether growth and/or poverty reduction are preconditions for democratisation. See, for example, Adrian Leftwich, Evelyn Huber, Mustaq Khan, Jean Grugel and B He, “Debate: Democracy and Development” in *New Political Economy* 7, no. 2 (2002): 269-281; evidently other factors also prove preconditions for democratic governance—such as basic security, rule of law and literacy. Nevertheless, economic growth that transcends social divides is considered by many as a significant indicator of democracy’s chances of taking hold—see Frances Stewart and Meghan O’Sullivan, “Democracy, Conflict and Development — Three Cases” (Oxford: Queen Elizabeth House, 1998), <http://www3.qeh.ox.ac.uk/RePEc/qeh/qehwps/qehwps15.pdf>, accessed 14 August 2008.

<sup>3</sup> This was demonstrated, for example, in January 2010, when dissatisfied provincial council candidates and constituents lobbied IEC officials in the National Assembly building (research observations, 2010).

the political process. In interviews, many respondents talked about the interference of “outside” actors—neighbouring countries or donor governments—and the way in which this affected the value of their vote. This was particularly the case following the planned (and then cancelled) run-off for the presidential election. If anything, intervention compromises the legitimacy of democratic processes and consolidates fears that Afghans themselves have little part to play in determining the outcomes of their own elections.

### **Recommendations:**

- **Economic development at the local level is crucial.** There will be little incentive to support the GoA if Afghanistan’s economic development does not result in positive effects at the local level or benefit the majority of citizens. Widespread poverty compromises representation in elections and limits the extent to which people have time or taste for political participation. More focus must be placed by the donor community and GoA on ensuring that local economies can thrive across all provinces of Afghanistan, and not merely in those that are considered donor priorities. This would serve to counter the perception that aid is unequally distributed, with insecure provinces “rewarded.” A long-term commitment to providing and maintaining security in all regions is necessary.
- **Long-term institution building must be a priority for the GoA and donor community.** Elections by themselves do not comprise democratisation. A long-term commitment to the building of political and administrative institutions *between* elections is vital, and should be made at the Kabul Conference. Elections will continue to be subject to fraud and public dispute if more is not done to increase the capacity and public credibility of national political and administrative institutions.
- **The IEC must take responsibility for restoring its own credibility.** The credibility of the IEC will not be restored unless it takes substantive measures to improve its own accountability to the Afghan people. These measures should comprise more than the token expunging of contract workers—incidences of fraud taking place at the hands of permanent IEC staff at the centre must also be addressed immediately, along with issues of how its leadership is selected.
- **The donor community must refrain from undue interference in the political process.** The perception that election results in 2009 were predetermined by international actors is widespread. This had the effect of undermining



the perceived value of voting in the eyes of many Afghans.<sup>4</sup> It is naïve to propose that donor governments have no political involvement in Afghanistan's domestic affairs, but the donor community must refrain from undue intervention that might compromise the political process.

### 3. Elections in 2009, 2010 and Beyond

AREU research into voting patterns at the local level in relatively secure provinces found considerable enthusiasm for the 2009 polls, despite unmet expectations of democracy, the mistrust of institutions and the negative press generated by the 2009 elections. Reasons for public participation in both presidential and provincial council elections were highly localised. These included the need to demonstrate the strength and size of a given community, the desire to secure a government representative who was familiar enough to be held accountable for delivering services, and the use of the national and provincial electoral arenas for the playing out of local politics. Overall, there was a general expectation among respondents at the time that participating in elections could bring about positive change.

Furthermore, findings from initial research into constituent perspectives of parliamentary functions and dynamics are indicating that there is a considerable amount of anticipation among Afghans for the upcoming parliamentary elections, and that, even seven months ahead, preparations are being made in communities, for example in the drawing up of potential candidate lists. MPs themselves are mobilising voter support networks in their constituencies, and appear more willing than ever before to categorise themselves into one of three groups: pro-government, opposition, or independent (*betaraf*). These early findings demonstrate the ways in which elections are still seen as an appropriate and legitimate means of transferring power in Afghanistan, despite widespread fraud and insecurity.

#### Recommendations:

- **Parliamentary elections should take place and the electoral calendar be maintained.** All actors should be aware that while far from perfect, the electoral cycle in Afghanistan is providing a sense of stability in the political system—a stability that in previous political regimes has not lasted more than a decade. If this era of democratic

governance is to last, it is vital that a framework of elections is maintained, providing a backbone against which democratisation can take place. In the medium term, the current electoral calendar will need revisions due to the number of elections required in the Constitution and the inability of the GoA to fund them autonomously. But at present it provides essential and widely-accepted benchmarks which must be maintained.

- **Electoral reforms:** Recent electoral law reform illustrates the difficulties of creating transparency when vested political interests do not benefit from such transparency. Although changes in the IEC are undoubtedly needed, it seems unlikely that the necessary reforms will take place prior to parliamentary elections. Nevertheless, the following three observations taken from AREU research should be considered:

- 1) Many Afghans, despite criticising international intervention in domestic affairs, still favour and trust international elections observer missions. The strong presence of these missions could help to counter fraud at polling stations, should security circumstances allow them to be operational.
- 2) Linked to this, donor community-provided technical support at polling stations and counting centres might, at this stage, be the best way to encourage transparency in a relatively apolitical and inexpensive manner that would also be acceptable and perceived as legitimate activity for international actors.
- 3) Insecurity aids fraudulent practices, and thus the continued commitment to ensuring security in the run up to, during and after elections is paramount.

This policy note has briefly highlighted some of the key issues raised by respondents in AREU's ongoing study on representative governance and has given eight recommendations or points for consideration to move forward in strengthening the democratisation process. The Kabul Conference provides a prime opportunity to consider some of these recommendations in depth and incorporate them into policy. This is particularly crucial in the context of the planned 2010 parliamentary elections.

<sup>4</sup> Noah Coburn, *Losing Legitimacy? Some Afghan Views on the Government, the International Community, and the 2009 Elections* (Kabul: AREU, 2009).





# A Holistic Justice System for Afghanistan

December 2009

Deborah J. Smith and Jay Lamey

This policy note draws from AREU's community-based dispute resolution (CBDR) case studies, which provide detailed information and analysis from the research (see text box below). It provides advice to those working with the "informal justice" sector and its connections to the state, and may also prove useful to those who work more broadly on development and stabilisation issues in Afghanistan. A policy to enhance and regulate the relationship between CBDR and the state justice system is being prepared under the auspices of the Ministry of Justice, and elements of the policy's current draft are referred to.

The advice is structured around the four key themes of the CBDR research:

1. The links and relationships between the state and CBDR processes
2. The processes used to enact CBDR
3. The principles which underlie CBDR processes
4. Gender dynamics in CBDR processes

## 1. Links and relationships between CBDR and the state

### *Key findings*

- CBDR does not operate in isolation from state institutions. At district and village level, state and community actors often work together to resolve disputes and provide justice to aggrieved parties.

- There are strong relationships between CBDR actors and their *woliswal* (district governor), who: often plays a gate-keeping role when disputants want to take cases to the state justice system; may participate in CBDR processes himself; may refer cases brought to him to community elders for resolution; and sometimes receives decision documents from CBDR.
- Village residents make decisions based on experience and knowledge when choosing what approach to take when seeking dispute resolution. Because individuals face varying levels of social and practical restrictions that constrain their choices (gender-based, financial, geographic, etc), they come to different conclusions about which approach is best for them.
- CBDR actors offer local knowledge, which is particularly important when legal documents, such as land deeds, do not exist or are conflicting; this is highly valued by disputants.
- Decision-makers in CBDR usually want there to be an effective state justice system that they can refer serious criminal and civil cases to (such as murder or large land disputes). Such disputes are often harder for them to resolve and enforce, and this can subsequently undermine their authority, as well as prolong conflict. Likewise, when CBDR disputants feel the system is failing them, they want to be able to seek justice through the

### *AREU's Community-Based Dispute Resolution Case Studies*

The Afghanistan Research and Evaluation Unit conducted in-depth research on community-based dispute resolution in Nangarhar, Bamiyan, Kabul and Balkh Provinces. Of these, case studies on Nangarhar and Bamiyan are available (from [www.areu.org.af](http://www.areu.org.af) and AREU's Kabul office), with Balkh and Kabul to follow. The case studies contain descriptions of the study villages and explore: who has power in CBDR and how they exercise it; the processes and relationships that link CBDR with state justice; the practices, principles and outcomes of CBDR and how these change depending on political, social and security contexts; and gender dynamics regarding CBDR. Each case study also contains an annex of individual dispute cases that illustrate the many dimensions of CBDR in Afghanistan. These include cases that became violent, including cases of multiple revenge killings and intra-family murder; cases of disputes over engagement and divorce; large inter-tribal land disputes; resource-based conflict; and disputes which were influenced by powerful ex-mujahiddin commanders.

state. The existence of a viable alternative may also encourage CBDR forums to act within their perceived community mandate.

- In Nangarhar, corrupt practices by state actors were found to be causing corruption in CBDR; programmes working to lessen state corruption may prevent corruption in CBDR processes.
- Disputes of both a criminal and civil nature are resolved by CBDR processes. Indeed, criminal actions often have their root causes in civil disputes and it is often not possible to make a definite distinction of a dispute as either criminal or civil.

### ***Policy and programme recommendations***

- Conceptualising state justice and CBDR dichotomously as “formal” and “informal” sectors is highly problematic, potentially splitting programmes between them and preventing a holistic approach to justice sector efforts. The aim should be to design programmes and policies that recognise the different justice and dispute resolution forums that Afghans access. The goal of an efficient, fair and accessible justice system for all Afghans can be pursued most effectively by coherently working with each forum’s respective strengths and weaknesses while recognising and enhancing the links between them.
- A formal mechanism for state endorsement of CBDR outcomes would give them more weight, which is particularly important for more complex disputes or those involving powerful actors.
- While not formally part of the state justice system and unlikely to have a role under the national policy, the *woliswal* is the primary state actor who interacts with CBDR and should be recognised in programme design and implementation.
- Alongside state justice, CBDR processes are best placed to address a dispute’s cause and bring a lasting peace. The national policy is likely to be that serious criminal cases should always be handled by the state justice sector. While the state sector should be capable and resourced to provide justice to victims and punish the guilty, many serious criminal cases are rooted in civil disputes, and CBDR processes are best placed to address the underlying cause and end conflict between the different parties to the dispute. Unless an agreed process of forgiveness and/or compensation is enacted at community level, conflict may continue; in cases of murder for example, revenge killings will remain possible.

## **2. The processes used to enact community-based dispute resolution**

### ***Key findings***

- CBDR decisions are made by a *jirga*, *shura* or *jalasa* that usually consists of local, senior men. The decisions are not legally binding and depend on the cooperation of disputants.
- CBDR processes are not static and do not rest on an unchanging, imagined version of tradition and custom. They adapt to changing social relationships, political structures and emerging problems, and are practiced differently in different places, varying between province, district, village, ethnicity, and *qawm* (a tribe, subtribe or clan, the size of which can vary considerably).
- CBDR may not always or immediately resolve a dispute, but it might regulate or contain it (preventing it escalating, potentially to violence).
- CBDR processes and outcomes are often documented and these records are held by decision-makers, disputants, and sometimes the *woliswal* (who often also provides an initial letter empowering CBDR actors to pursue a solution).
- Decision-makers in CBDR are open to learning about the Afghan constitution and law.

### ***Policy and programme recommendations***

- Programmes must be as flexible and variable as the ways in which dispute resolution, justice and rule of law are conducted in Afghanistan. One model will not fit every area and programmes should be adaptable.
- Assumptions, stereotypes or badly collected data can dramatically curtail a programme’s impact, and in some cases do more harm than good. It is essential that contextual research be conducted before any programme is implemented, remembering that quantitative research and surveys using structured questionnaires are unlikely to reveal the nuances of CBDR at the local level. Qualitative research may take longer, but it serves the dual purpose of allowing crucial trust-building to occur before more refined programme implementation. It is also essential that women are spoken to as part of the knowledge-gathering process if CBDR is to be understood in a community. In many parts of Afghanistan, speaking to male elders or male community members will not reveal women’s justice needs or desires, or what roles and influence they may already have in CBDR processes.

- Programmes must recognise that CBDR actors are aware of the negative consequences of certain practices, such as is the case with *baad* (the giving or exchange of women to compensate a killing), and are also aware of their un-Islamic nature. Programmes should seek to provide alternatives beyond just explaining that an act is illegal or un-Islamic.
  - To enhance the development of alternative practices, provide opportunities for CBDR decision-makers to meet peers from other parts of the country and from different ethnic and *qawm* groups, to learn processes from each other and discuss CBDR issues.
  - The national policy is likely to recommend that all CBDR decisions be recorded. It is important to recognise the extent to which this already happens and work with the existing system. Due to their current role as gatekeeper, the *woliswal* is likely to be the best conduit for CBDR records into the state system.
  - Overall, avoid upsetting a system that is working relatively well, and work with state and CBDR actors to make improvements that are feasible within the context of that area. CBDR processes are inherently pragmatic and flexible to social circumstances; programming should be responsive to this.
- CBDR has elements of distributive justice (which seeks to address the underlying causes of conflict) and restorative justice (which places strong emphasis on the restoration of dignity, peace, and upholding relationships between offenders and victims), tools which are not generally available in state-based justice. CBDR decision-makers are usually able to employ them because they are in positions of social authority—they are expected to be knowledgeable, just, and concerned for the well-being of the entire community (although reports of corruption and bias were found in certain instances).
  - CBDR decision-makers usually participate on a voluntary basis because it is part of their accepted and expected role as elders.

#### ***Policy and programme recommendations***

- Recognise the enduring advantages of CBDR over state-based justice in certain circumstances; don't view it as stop-gap alternative.
- Don't expect allocations of money or infrastructure to automatically create positive outcomes, as CBDR systems are social. Furthermore, forms of payment such as stipends to decision-makers risk upsetting the existing rationale for CBDR.
- For those wishing to reform CBDR practices, it is essential that this is done within an Islamic framework. Islam is recognised as a guiding force in Afghan communities, whereas international human rights principles are not—and can be perceived as Western and imposed.

### **3. The principles which underlie CBDR processes**

#### ***Key findings***

- The principles underlying and used to rationalise CBDR are complex, drawing on Islamic and customary ideals, negotiation, and pragmatism.
- CBDR is a key way of maintaining peace and social cohesion within a community; “keeping the peace” is usually the primary objective of a CBDR *shura*, *jirga* or *jalasa*.
- According to custom, the power to make CBDR decisions is based on authority (given by the community) and not on coercive power.

### **4. Gender dynamics in CBDR processes**

#### ***Key findings***

- While women's access to and participation in CBDR is constrained, spaces can be found in which women do access, influence and participate.
- It is usually easier for women to access CBDR than state justice, for reasons such as restricted

#### ***The Taliban and Community-Based Dispute Resolution***

The Taliban are administering a separate justice system in some areas of Afghanistan. It is unclear how their processes work alongside CBDR, but it should be noted that Taliban-style justice does not necessarily use traditional CBDR processes. CBDR draws heavily on the Islamic concept of *Islah* (peace and social cohesion sought through negotiation and reconciliation) and is pragmatic in how this outcome can be sought. When the Taliban were in power, most prominent was their interpretation of Sharia, which prescribed harsh punishments for crimes. AREU research found that the Taliban regime undermined CBDR, as they viewed it as inconsistent with their own authority. For a range of local opinions on the Taliban justice system in the 1990s, see the Nangarhar case study.

mobility or family connections to CBDR decision-makers.

- Although their CBDR decision-making roles are very limited, women are recognised by the community as important decision-makers in disputes of a domestic nature and on rare occasions, in certain villages, in more general disputes.
- Some people in the communities studied spoke highly of women who had in the past played significant roles as decision-makers in CBDR, and many were not opposed to women playing a greater decision-making role in these processes.
- CBDR can provide recourse for women to assert their rights.
- Women's lack of access to CBDR and decisions that do not uphold their rights are not an outcome of CBDR or customary law itself, but are instead a consequence of prevailing gender roles and relations in Afghanistan.
- As discussed, there was an awareness of the un-Islamic nature and potential harm to women of the practice of *baad*, and its use was reported to be in decline.

#### **Policy and programme recommendations**

- Attention to gender dynamics in CBDR, and more specifically the justice needs of women and their unequal participation in these processes, particularly as decision-makers, should be integrated in every aspect of programme design. Do not assume that women do not or could not have a role.

- Women should not be viewed as a homogeneous group; it is unlikely that younger women participate in CBDR, but older women and particularly older widowed women may.
- The gender dynamics of a particular community should be investigated, and the urge to simply set up a women's *shura* (as has often been done) resisted until it is clear that it would benefit them.
- There exists an assumption among some actors in Afghanistan that CBDR processes always go against the interests of women. They sometimes do, but finding the cases of extreme abuse within these processes will not necessarily improve them. It is important that organisations find the spaces in which women are already influencing CBDR and build on what exists.
- Find out how those women with influence became so and whether it can serve as a model for encouraging further participation by women.
- If practical, form networks with women from different villages, or even different districts and provinces, who already participate in CBDR and allow them opportunities to share their experiences and learn from each other. AREU research has shown the capacity of travel and exchange to catalyse social change.
- As gender discrimination exists within the state justice system as well as CBDR, giving women more access to state justice will not necessarily mean better outcomes for them. Programmatic responses to gender discrimination should be provided to both state and CBDR actors.

### **About the Afghanistan Research and Evaluation Unit (AREU)**

The Afghanistan Research and Evaluation Unit's Mission is to inform and influence policy and practice through conducting high-quality, policy-relevant research and actively disseminating the results, and to promote a culture of research and learning. AREU was established in 2002 by the assistance community working in Afghanistan and has a board of directors with representation from donors, the United Nations and other multilateral agencies, and nongovernmental organisations.

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# The State of Transitional Justice in Afghanistan

April 2010

Emily Winterbotham

## Introduction

Through 30 years of conflict, the people of Afghanistan have witnessed disappearances, torture, mass executions, civil conflict, internal displacement and forced migration to Pakistan, Iran and other countries. Almost every Afghan has a story of struggle, suffering and loss to tell.<sup>1</sup>

As conflicts end, nations and international actors confront the challenge of “transitional justice” to address the legacy of large-scale wartime abuses, to ensure accountability, serve justice, reconcile former enemies and achieve lasting peace. Developments in international law reflect a growing international consensus that genocide, war crimes and crimes against humanity should not go unpunished.<sup>2</sup> Diplomats and negotiators involved in ending violent disputes acknowledge more frequently that ignoring war crimes can perpetuate a culture of impunity that can encourage future abuses.<sup>3</sup>

Despite the scale and length of the violence, there has been no accountability in Afghanistan for past crimes between any of the phases of war. Since the signing of the Bonn Agreement in 2001, no concerted efforts have been made by the Government of Afghanistan (GoA) to implement a process of transitional justice in the country. Instead, government figures and some of the most influential international actors have argued that implementing justice could disrupt the uneasy peace.<sup>4</sup>

<sup>1</sup> During nationwide consultations conducted by the Afghanistan Independent Human Rights Commission (AIHRC), nearly 70% of those interviewed said they or their immediate families had been direct victims of serious human rights violations during war. AIHRC, *A Call for Justice: National Consultation on Past Human Rights Violations in Afghanistan* (Kabul: AIHRC, 2005), 8.

<sup>2</sup> The creation by the UN of ad hoc war crimes tribunals, the establishment of the International Criminal Court (ICC), and the disposition of the judiciaries of some countries to act extraterritorially by applying universal jurisdiction creates a legal basis for acknowledging past crimes and holding people to account.

<sup>3</sup> Neil Kritz, “Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights,” in *Law and Contemporary Problems* 59, no. 127 (1996): 127.

<sup>4</sup> An International Centre for Transitional Justice (ICTJ) representative, Kabul, 23 November 2009, said: “2002 to 2005, the view among key policy actors was that any focus on justice and the rule of law would undermine security.”

Consequently, some alleged perpetrators of war crimes still dominate government structures. The short-term logic of ignoring the past to bring an end to violence can perhaps be appreciated. Nevertheless, the simple truth is that the conflict has not ended. Transitional justice is not only about addressing past crimes, but about dealing with continuing impunity, which delegitimises and hinders governance and counter-insurgency efforts.

This policy note draws on interviews conducted as part of ongoing AREU research on transitional justice, and focuses on the recent policy approaches, activities and aspirations of three key actors: the Afghan government, the international community (diplomatic and civil society), and Afghan civil society. This overview of the current policy context highlights that transitional justice issues are slipping off the political agenda in Afghanistan, without reasonable justification.

## Focusing on the people of Afghanistan

Afghan people have never experienced systematic justice for war crimes. Instead, the victims see former perpetrators of human rights violations in government, in their communities, and on television. Moreover, Afghanistan’s victims remain largely unacknowledged by the government, although civil society organisations have expressed support for an official process to commemorate the victims of conflict. For example, after

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the discovery of a mass grave in Badakhshan in 2007, President Karzai publicly promised to erect a memorial at the site. When this was created in 2008, it was a civil society initiative with no government involvement.<sup>5</sup> The creation of a War Museum in Badakhshan at the end of 2009 was also led by AIHRC and not the government.

Ignoring victims' suffering and grievances may ultimately have serious long-term consequences. In Afghanistan, some international experts argue of evidence that impunity and a lack of faith in justice institutions act as drivers of the insurgency.<sup>6</sup> If Afghanistan's victims have been forgotten, it is their voices that need to be brought into the discussion. AREU's "Legacies of Conflict in Afghanistan: Justice, Reconciliation and Ways Forward" project seeks to contribute to the fragile transitional justice process by exploring through in-depth qualitative research what people really mean by "justice," "peace" and "reconciliation." In doing so, it aims to collect ideas in order to identify strategies and mechanisms that could allow communities to move forward. Research, which began late 2009, will take place in four provinces (Kabul, Bamiyan, Badakhshan and Ghazni) and conclude by end-2011.

Preliminary findings show that Afghans, even those from a single community, have varied perceptions of and desires for justice, reconciliation and peace. The international community has often transported terms into Afghanistan without giving enough consideration to what these notions may mean in the Afghan context, and how they sit with Afghan values and culture.<sup>7</sup> Identifying ways to move forward thus requires ongoing consultation with the general Afghan population, who should be the key actors in any future accountability and reconciliation processes.

## The policy environment

Afghanistan has both a national *Action Plan for Peace, Reconciliation and Justice in Afghanistan* (2005) (the "Action Plan") and a *Law on National Reconciliation, Public Amnesty and National Stability* (2007) (the "Amnesty Law").<sup>8</sup>

<sup>5</sup> Nader Nadery, Commissioner, AIHRC.

<sup>6</sup> See Frank Ledwidge, "Justice and Counter-Insurgency in Afghanistan: A Missing Link," *RUSI Journal* 154, no. 1 (Feb 2009); and ICTJ, "Afghanistan: Submission to the Universal Periodic Review of the UN Human Rights Council Fifth Session: May 4-15" (3 November 2008).

<sup>7</sup> For example, see Anna Larson, *Toward an Afghan Democracy* (Kabul: AREU, 2009).

<sup>8</sup> Official Gazette no. 965, 3 December 2008 (SY13/09/1387). The Amnesty Law was passed in 2007 but did not appear in the Official Gazette until the end of 2009, where it is dated 2008.

Hotly debated, the Action Plan was narrowly adopted by the Cabinet, pushing transitional justice onto the political agenda of the time.<sup>9</sup> It was subsequently included in the 2006 *Afghanistan Compact* and the 2008 *Afghanistan National Development Strategy* (ANDS). To date, the Action Plan has not been implemented.<sup>10</sup> The deadline for achieving the activities outlined in it expired in March 2009 and President Karzai subsequently refused a request from the Afghanistan Independent Human Rights Commission (AIHRC) and civil society groups to extend its deadline. Moreover, AREU interviews with national and international actors demonstrated that awareness of the plan within the ministries responsible for its implementation and among some members of the international diplomatic community is weak. Nevertheless, many international and national respondents still consider that it provides a framework for civil society and the international community's support for transitional justice. As one international civil society respondent remarked, "As long as the activities are not enforced, the Action Plan is still relevant."

The Action Plan rejected amnesty, but it failed to serve as a safeguard against the passing of the Amnesty Law by Afghanistan's National Assembly in 2007.<sup>11</sup> This had enormous political significance, serving as a clear signal of the continuing power of alleged human rights violators, a message that became even clearer when the law was published in the *Official Gazette* in December 2009. The law does uphold the right of people to bring charges against individuals in court (which is unlikely given the victim/perpetrator power dynamics) but, in the absence of a complaint by a victim, Afghan authorities are prohibited from prosecuting accused war criminals. This allows the government to deflect its responsibility for investigating and prosecuting perpetrators. Moreover, as one international expert highlighted, the law complicates the implementation of transitional justice mechanisms.

<sup>9</sup> The Action Plan outlined five key activities: symbolic measures, institutional reform, truth-seeking, reconciliation and accountability measures.

<sup>10</sup> The only actions taken were the creation of the Presidential Advisory Board and Victim's Day.

<sup>11</sup> This granted amnesty to "all the political wings and hostile parties who had been in conflict before the formation of the interim administration" and "those armed people who are against the Government of Afghanistan, after the passing of this law, if they cease their objections, join the national reconciliation process, and respect the constitutional law and other regulations of Islamic Republic of Afghanistan." The official Dari version is available on the Ministry of Justice website: [http://www.moj.gov.af/OGs/OfficialGazette/Browse/Dari/OG\\_0965.htm](http://www.moj.gov.af/OGs/OfficialGazette/Browse/Dari/OG_0965.htm).

## International responsibilities and transitional justice responses

Through ratification of international human rights treaties, governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. The Afghan government has ratified a number of relevant treaties<sup>12</sup> and consequently should bear the primary responsibility for implementing transitional justice in Afghanistan. However, the deterioration of security has allowed arguments of “peace before justice” to increasingly dominate, pushing transitional justice and the Action Plan further off the political agenda. Moreover, the 2009 presidential election process entrenched the position of several alleged perpetrators of human rights abuses among the political elite. Despite approving and launching the Action Plan, President Karzai also appears increasingly reluctant to address the past (he recently called criticisms about the presence of war criminals in his government an “outdated issue,” claiming these were a conspiracy of the “enemies of Afghanistan”).<sup>13</sup> The new government therefore looks unlikely to address issues of impunity and accountability for war crimes.

Although some governments—specifically the Norwegian and Dutch—have at times used international platforms to highlight the importance of transitional justice and the Action Plan,<sup>14</sup> many of Afghanistan’s international partners remain conspicuously silent on issues of accountability for war crimes, despite previously acknowledging the dangers of doing nothing in response to war crimes and related atrocities in other countries.<sup>15</sup>

<sup>12</sup> Under the Bonn Agreement, Afghanistan is bound by the Geneva Conventions of 1949; the Genocide Convention of 1948; the Convention on Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 1968; the International Covenant on Civil and Political Rights; and the Convention Against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment of 1984. Afghanistan also ratified the Rome Statute in February 2003, and consequently falls under the jurisdiction of the International Criminal Court (ICC).

<sup>13</sup> Afghanistan Watch, Afghan Media Monitoring Newsletter No. 6, 31 September 2009, [http://www.watchafghanistan.org/files/Newsletter\\_06\\_English.pdf](http://www.watchafghanistan.org/files/Newsletter_06_English.pdf).

<sup>14</sup> At the 2009 Human Rights Council’s Universal Periodic Review, Norway, Mexico and Morocco requested that the GoA implement the Action Plan, while the Netherlands and the Czech Republic highlighted the importance of transitional justice. In October 2009, the Dutch government even withdrew its funds in support of the justice sector, citing insufficient progress on implementing the Action Plan.

<sup>15</sup> Examples can be seen in the creation of an International Criminal Tribunal for the former Yugoslavia by a UN Security Council Resolution in 1993, followed by the establishment of the International Criminal Tribunal for Rwanda in 1994.

International civil society has been working to keep the issue of transitional justice alive. Ongoing efforts in supporting processes documenting war crimes and human rights abuses and on identifying and preserving mass graves are part of policies that confront the past. An accurate accounting of past crimes can make it embarrassing and difficult for official actors to deny them, applies pressure to remove perpetrators from power, and raises awareness toward preventing future abuse.<sup>16</sup> International experts are helping build domestic capacity to document and register mass graves in an attempt to secure and investigate them, and where possible to stop the unprofessional destruction of evidence. In Badakhshan, when the mass grave presumed to date from the communist era was discovered, the local community excavated it improperly, making forensic analysis impossible.<sup>17</sup> As one international expert explained, in a country where little effort has been put into credible truth-finding, the international community is helping with the collection and preservation of evidence so it is available if and when Afghans are ready to decide what transitional justice mechanisms they want.<sup>18</sup>

International respondents explained how the politicisation and marginalisation of transitional justice by the Afghan government and its international partners prompted international energy to shift away from the government and focus primarily on Afghan civil society. A key aim of some international actors is now to build the capacity of civil society so they can push a transitional justice agenda themselves. UNAMA, the Delegation of the European Union (EU), and a range of international NGOs conduct and support a variety of workshops, discussions and training sessions designed to develop the capacity of Afghan organisations in advocacy, media awareness and transitional justice related issues. These international actors are, however, still subject to criticisms by Afghan civil society of insufficient support and transitional justice is often not high on their agendas. Their so-called “seasonal approach” is, in the opinion of one international actor, weakening civil society organisations and reducing their trust in the process.

### The new voice: Afghan civil society

The creation of a Transitional Justice Coordination Group (TJCG) in 2009, bringing together over 20 representatives of Afghan civil society organisations

<sup>16</sup> “Final Report on Civil Society,” Transitional Justice and Documentation Workshop, Kabul, 17-19 February 2009. The workshop was organised by the AIHRC and supported by ICTJ, the Open Society Institute (OSI) and the United States Institute of Peace (USIP).

<sup>17</sup> Author interview, international expert, 6 December 2009.

<sup>18</sup> Author interview, international expert, 6 December 2009.



(CSOs), has helped to strengthen the individual voices of organisations. With international support, Afghan civil society has consequently grown increasingly confident and strategic, using media and key events as a platform to raise transitional justice issues.

Several Afghan NGOs and AIHRC work to raise awareness about transitional justice, document past and present human rights violations, and try to ensure past conflict and victims' suffering are not forgotten. Victims' support networks build communities of interest, a travelling theatre elicits reflection on the legacy of impunity, and victims have related their personal stories and testimonials, which have appeared in some newspapers and been aired on radio programmes. AIHRC's recent documentation project has mapped human rights violations in Afghanistan from 1978-2001 in every province.<sup>19</sup>

Generally speaking, however, these efforts have gone unheeded by the GoA and the international diplomatic community. Afghan media also remains largely quiet about transitional justice.<sup>20</sup> Further, capacity among both media and CSOs to research, understand and inform the public about the nation's experiences during conflict remains limited. Only a few organisations have sought to develop expertise on specific issues, such as victims' mobilisation, documentation, awareness-raising and training. Moreover, some civil society respondents described how internal divisions and lack of coordination within the TJCG is weakening the effectiveness of their initiatives.

Most civil society initiatives remain restricted to Kabul and outreach to the regions has been limited, partly as a result of prevailing security concerns. According to the director of an international NGO, the significant danger that is present in the provinces means that the plan to expand transitional justice projects there is currently stalled. International actors consequently highlighted that an ongoing challenge will be for Afghan and international actors to find ways to connect regionally and in the provinces.

Of further concern is the lack of interaction between CSOs (international and Afghan) working on transitional justice and the government. To substantively address the past, political will needs to be developed and political institutions will need to be involved. It remains crucial for actors advocating a transitional justice agenda to bring the government back into the dialogue, even if it means first only putting on paper what its responsibilities are. The challenge is to find ways of doing so.

<sup>19</sup> Author interview, Nader Nadery, AIHRC.

<sup>20</sup> Afghanistan Watch's media monitoring newsletter covers issues from negotiations with the Taliban to transitional justice.

## Looking ahead: Reintegration, reconciliation and transitional justice

A current emphasis of the government and the international community is on reconciliation with the Taliban and the reintegration of its fighters. President Karzai unveiled an "effective, inclusive, transparent and sustainable national Peace and Reintegration Programme" at the January 2010 London Conference, offering work, education, pensions and land to insurgents who defect.<sup>21</sup> Representatives of the governments present in London said they would back the programme, and plans were made for a "Peace Jirga" from 2-4 May, followed by a Kabul Conference. The Amnesty Law, which appeared in the month before the London Conference, could play a key role in any deal.

What repercussions could this have for transitional justice? At present, the programme does not address the issue and, as such, fails to acknowledge the dangerous legacy of impunity in Afghanistan. It also ignores ongoing International Criminal Court enquiries into atrocities committed in Afghanistan since 2003 by the Taliban (and foreign forces). The approach could allow Taliban perpetrators of war crimes back into communities with no attempt to hold them to account and with little concern for the consequent impact on respect for the rule of law.

It is doubtful whether this type of policy should even be classified as potentially engendering reconciliation. To ensure a lasting and genuine peace, reconciliation is often recognised as transforming the behaviour and attitudes of former enemies to create new relationships based on mutual trust. Reconciliation is consequently a process that might take decades. The current policy is perhaps better explained as part of a conflict resolution strategy. It could be a *starting point* to create the conditions for peace and reconciliation, but envisaging that it could *create* reconciliation might mean the sweeping aside of longer-term policies that work toward creating mutual trust and new understandings between communities. Reconceptualising the new programme as part of an ongoing conflict resolution strategy might help build a clearer picture of what its intentions are.

The failure to address the legacy of impunity in Afghanistan is contributing to ongoing insecurity. Transitional justice needs to be brought back onto the agenda. Those supporting it need to find new ways to connect with and involve the GoA, while policymakers need to consider the implications of perpetuating impunity on the long-term stability of Afghanistan.

<sup>21</sup> London Conference communiqué, <http://afghanistan.hmg.gov.uk/en/conference/communique>.





## Improving Efforts to Achieve Equitable Growth and Reduce Poverty

April 2010

Paula Kantor

### Introduction

The poverty reduction agenda in Afghanistan has reached a critical stage. It continues to be at risk of being enacted in response to a simplistic and apolitical understanding of poverty as an individual material condition. It pays no attention to the societal factors that make and keep people poor. The Afghanistan National Development Strategy (ANDS) exemplifies this through a poverty analysis that mainly describes the condition of poverty instead of understanding how the different risks and insecurities households face—including those associated with how institutions work and who can access them—create and sustain poverty.<sup>1</sup> A more recent concern is the seeming co-optation of the poverty reduction agenda by a focus on economic growth and job creation with no attention to how the poor will benefit. The 2010 London Conference communiqué, the Government of Afghanistan’s London Conference paper on economic development, and the recent Afghanistan Rural Enterprise Development Program (AREDP) launch announcement all signal this shift, and the quote below shows how some documents go on to link these outcomes to enhancing stability.

*Sustainable economic growth, with particular attention to the creation of a large number of new jobs in the private sector, is a key priority for the GoIRA. Providing economic opportunities and sustainable livelihoods for all Afghans is critical to counter the appeal of insurgency, and reduce instability.<sup>2</sup>*

The problem with this change in focus is the emphasis on economic policy and delivery of resources with no complementary attention to how social systems influence who benefits from growth, job creation or resource access, or to how institutions such as markets and the state may work in favour of some groups over others. The assumptions seem to be

that all will benefit from growth, that job creation will automatically follow, and that there is no need to specify the type of growth required to ensure the poor benefit or to act intentionally to achieve it. Furthermore, the assumption that stability will follow economic growth and job creation lacks evidence to back it and may be less likely if distributional issues are not addressed.

These limitations lead to technically oriented interventions focusing on delivering access to resources without understanding if they are accessible to all or sufficient to address the problem at hand, given the realities of the sociocultural context. Microcredit is a case in point. Many microfinance institutions in Afghanistan operate under the assumption that access to loans will be sufficient to alleviate poverty and generate economic development. This argument does not look beyond credit to the barriers to its productive investment that, for example, lack of infrastructure or gender norms may pose. The approach of the AREDP is similarly lacking. It too focuses on providing rural entrepreneurs access to credit, business skills, technical knowledge, etc, without a concurrent focus on addressing the structural factors that may

### About the Author

Dr Paula Kantor is the Director of AREU, where she has managed a research portfolio that has included studies on microfinance, informal credit, poppy production and credit relations, household decision-making on child labour, family dynamics and family violence, and refugee and return experiences of second-generation Afghans.

### About AREU

The Afghanistan Research and Evaluation Unit’s mission is to inform and influence policy and practice through conducting high-quality, policy-relevant research and actively disseminating the results, and to promote a culture of research and learning.

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<sup>1</sup> Paula Kantor, Adam Pain et al, “Delivering on Poverty Reduction: Focusing ANDS Implementation on Pro-Poor Outcomes” (Kabul: AREU, 2009).

<sup>2</sup> London Conference on Afghanistan, “An Integrated Plan for Economic Development” (2010), p. 32.

limit the ability of these individuals to use the resources to their full capacity.

Policies informed by narrow understandings of poverty or with a focus primarily on access to economic resources have so far failed to deliver sustained improvements to livelihoods and well being. This is illustrated by the increase in Afghanistan's Human Poverty Index, which went from 59.3 to 59.8 percent between 2003 and 2007.<sup>3</sup> This policy note seeks to identify the larger societal risks and insecurities missing from these approaches. It draws from AREU's portfolio of natural resource management and livelihoods research to examine the risks prevalent in Afghanistan and the ways households adapt to them. Through providing grounding in the lived realities of rural Afghans, it adds needed complexity to the debate on how to achieve sustainable and equitable growth.

### Risks and insecurity

Many of the risks facing rural households in their efforts to access and use resources to secure their livelihoods are rooted in existing systems and structures, and associated with predictable life cycle events and geographic location. If development policy in Afghanistan cannot grapple with these risks then it will only assist households to cope with their current conditions and not to improve their socioeconomic positions. Some of the main sources of these risks are:

- **Living in remote or marginal areas:** More remote or mountainous areas—labelled “low potential” in some policy documents—face constraints in terms of agro-ecology and market access. Many rural households struggle to produce enough for subsistence given natural resource constraints, and if they produce for markets—whether crops, crafts or labour—are constrained by challenges in reaching markets (e.g. poor roads or weather) or the limited potential of local markets.
- **Chronic drought risk:** The effects of drought on agricultural productivity are especially severe for those cultivating rainfed land, but drought also affects those with irrigated lands if irrigation infrastructure has not been repaired or maintained or water is inequitably distributed. Climatic conditions, intensified by dysfunctional

resource management institutions, therefore limit the viability of agriculture-based livelihoods for many, leading to diversification into off-farm and nonfarm work.

- **Increasing land fragmentation:** Large household sizes and inheritance practices where land holdings are shared out among siblings lead to land fragmentation. Shrinking landholdings reduce the feasibility of households supporting consumption through their own production and may push them into market production. For households in more remote areas and in areas with water deficits, opium poppy cultivation may be the “best option” to support survival.
- **Limited access to land:** For the landless, accessing land for pasture or cultivation can be a source of insecurity. The politics of land ownership, at times linked to ethnic divisions, and the complexity of land registration systems over the years can lead to conflict that bars access to pasture to pursue a livestock-based livelihood. Sharecrop arrangements provide landless or land-poor farmers with access to land and often credit, but these arrangements can shift the considerable risks associated with low returns to the farmer and may be withdrawn without notice. These relationships can provide immediate security but can also sustain poverty.<sup>4</sup>
- **Physical insecurity** affects livelihoods by directly imposing financial costs such as *oshr*<sup>5</sup> payments to buy security, and by limiting mobility and therefore the ability to do one's business, whether that is accessing lands or travelling to markets to sell produce or purchase inputs. Insecurity can also limit access to schools and health services, reducing investments in human resources.
- **Unequal market power:** Rural residents view markets as sources of risk because they perceive themselves as disadvantaged by the need to access them through representatives, traders or contractors, or due to the monopolisation of some markets in the interests of local power holders. Markets are also risky because of their volatility, with poorer rural residents disadvantaged by the

<sup>4</sup> The National Risk and Vulnerability Assessment 2007/08 (Government of Afghanistan, 2009) confirms this, with the highest poverty rate (42%) found among Afghans who only cultivate land and do not own it—even compared to those without access to land (32%).

<sup>5</sup> *Oshr* is an obligatory charitable land-based tax in Islam; however, in this case it is used to mean a payment made to non-government groups in insecure areas. Non-payment may put a household at risk of violence; therefore, paying it provides a measure of security.

<sup>3</sup> UNDP Afghanistan Human Development Reports, 2004 and 2007. The Human Poverty Index is composed of the following indicators: probability at birth of not surviving to age 40; adult illiteracy rate; and the combined indicator of percent of people not using improved water sources and percent of children under five who are underweight.

need to sell goods when prices are low and buy when they are high, saturated labour markets, and by declines in global markets (such as in the carpet sector). Rural households work hard to avoid relying on markets to meet food needs due to fluctuating prices, most recently experienced in the 2008 rise in the cost of basic foodstuffs.

- **Household composition and gender norms:** The household has been a base of economic security for Afghans due to mistrust of the market's ability to provide this and the inability of the state to provide social protection. However, the composition of the household determines how well it can deliver this security. Gender norms influence who works, the types of work available and their related returns. These norms mean adult male labour is necessary for the greatest economic security and that households depending on one earner or with no male labour are highly vulnerable.
- **The high cost of marriage:** Children's marriages are expected events and represent important investments in social resources and household reproduction, but the associated economic costs are high. Better-off families can prepare for the costs but poorer households sacrifice to meet them in order to maintain their place in the community. There can be consequences to this, such as the use of exchange marriages to reduce costs, long engagements to raise the required funds, the sale of assets and rising debt levels.

### Coping responses

These risks create an environment of chronic livelihood stress with which rural residents cope with varying degrees of success. The capacity to respond varies across households and communities by the resources they have and how well they can use them. For those with limited resources and ability to use them, responses are often reactive ways of maintaining limited physical and socioeconomic security; they may require sacrificing longer term livelihood improvements for immediate survival. Those with greater ability to use their resources may do better in protecting themselves from the effects of downturns, or be able to use their power to gain from the insecurity of others. However, long-term livelihood stress, such as extended drought, can deteriorate the ability of the better resourced to provide security for themselves and those dependent on them. Some of the ways that rural respondents in AREU's research have coped with livelihood stress are described below. Efforts to reduce poverty and achieve equitable growth need to be aware of the long-term

effects of these actions to build from, strengthen or reduce reliance on them, as appropriate.

- **Social resources** are vital to household livelihoods among the poor and nonpoor, though in different ways and with varied outcomes. Among the better resourced, links to the politically powerful serve as a means to consolidate and expand economic and social position; links to patrons such as landholders, subcontractors or local commanders among the less well-off may be unequal but deliver immediate sources of economic security, such as land to sharecrop, credit or help with marriage costs. Reciprocal relationships with relatives and those in wider *qawm*<sup>6</sup> networks are particularly important for access to credit and support for life cycle events. Charitable relations provide a safety net for the destitute. These social resources, along with the household unit, have formed the backbone of social protection systems for rural Afghans during the conflict years and do so today because formal systems were or are not available or are considered less useful.
- **Asset sales**, including of land and distress sales of livestock, form a more negative means of coping with livelihood stress. This might be a response to extended drought, physical insecurity, or to pressures to raise funds to marry a son.
- **Diversification and intensification of economic activities** are other means of coping with livelihood stress for those with the necessary labour resources. For the better resourced these strategies may be accumulative while for the resource poor they may only be a means to survive. Diversification in rural areas often involves moving some available workers into off-farm and nonfarm work.
  - \* **Internal and international migration** has long been a component of livelihood diversification strategies for Afghans. Internal migration to rural and urban areas is often seasonal but has recently intensified in northern fieldsites in terms of numbers migrating and duration of stay, in response to long-term drought. International labour migration has also increased, particularly to Iran. Limited employment opportunities in Afghanistan, drought and high bride prices make the risks of being smuggled into Iran worth it for households with the male labour resources to make migration feasible.

<sup>6</sup> A *qawm* is a broad term for a subtribe or extended family network that can vary considerably in size.



- \* **Reliance on women's income generation**, including carpet weaving, wool spinning or embroidery, increases in times of livelihood stress, such as drought or physical insecurity. These activities may not provide large incomes, but they are often the only way available to access cash. They can also tide a family over while waiting for remittances from migrant male members.
- Families also **reduce the quality and variety of food consumed** to cope with events such as drought or opium cultivation bans, with consequences for nutritional and health status.
- They may also **remove children from school** to reduce related expenses and put them into work, increasing the risk of intergenerational transmission of poverty.

### Adding complexity – reflecting reality

Social norms, inequalities in power, ecological constraints, remoteness and weak state and market institutions limit economic growth and the equitable distribution of its benefits. Therefore, interventions informed by an understanding that poverty is an individual condition and that economic development can be achieved by filling gaps in access to resources or improving the regulatory environment will not succeed if broader contextual factors are not addressed. Some guiding principles for better designed policy and programmes aimed at enhancing equitable economic growth and reducing poverty include:

- **Invest in social processes:** Investing in social processes, such as group formation and social mobilisation, as ends in themselves instead of means to other ends (i.e. credit delivery or local development) can support the creation of organisations able to address the sources of social inequality that limit equitable development. Development actors must design and fund programmes with longer time horizons to enable this.
- **Avoid presumptions:** Policy language associated with economic growth is often full of presumptions about the follow-on benefits of growth. This is dangerous because it precludes careful thought and public debate about how the desired benefits of growth, such as job creation or poverty reduction, will actually be achieved and distributed. More attention must be given by all policy actors to creating the conditions for the type of growth that can provide benefits to all Afghans, and particularly the poor. This

means understanding how the social and political context interacts with economic growth to affect the equitable distribution of its benefits.

- **Question how institutions operate:** Institutions such as markets, local government structures, the family, and community structures like CDCs cannot be taken at face value and assumed to operate the same way for all people. People's characteristics (gender, ethnicity, *qawm*, etc), who they know and what they have can all affect what they get from these institutions. Efforts to enhance growth and reduce poverty that rely on these institutions must work to improve their transparency, equity and accountability.
- **Prioritise strategic impact and scale:** The need to show positive results quickly drives development actors to be project-oriented and satisfied with improved outputs. This can mean the strategic orientation and scale of development interventions do not match needs, leading to a piecemeal short-term approach enhancing immediate welfare but not improving long-term socioeconomic status. An example is cash-for-work programmes compared to investments in social and economic infrastructure, such as farmer organisations, that facilitate improved market power for marginalised groups.
- **Understand existing informal systems:** Development interventions must take into account the presence of existing informal support systems (i.e. informal credit, charitable relations), as well as their strengths and weaknesses, to avoid imposing new systems that may weaken existing social relationships without replacement, raising risks for the resource poor. This involves neither categorically maligning patron-client relations as exploitative nor romanticising existing reciprocal relations of support. Social relationships must be understood for what they can deliver and at what cost so they can be improved, removed or supported as evidence suggests.

The 2010 Kabul Conference and ongoing efforts to implement the ANDS represent opportunities to integrate the complexities of the sociocultural context into arguments around economic growth, to focus on the types of growth and distributional systems needed to ensure that the poor benefit. Not taking advantage of these opportunities risks continuing to fail to meet the expectations of Afghan citizens for improvement in their basic living standards, with consequences for the legitimacy of the Afghan state and international community.





# Declining Opium Poppy Cultivation: Reasons and Effects

April 2010

Jay Lamey

## Introduction

Counter-narcotics policy in Afghanistan must endeavour to be responsive to evidence from the ground, rather than driven by ideology or assumption. The production and trade of opium is highly adaptive and responds to multiple economic, political and environmental stimuli. Meanwhile, counter-narcotics policy is typically developed far from the field, often through a political dialogue. Therefore, although it is not static, counter-narcotics policy often trails behind the evolving realities of rural Afghanistan.

This paper, drawing on a multi-year body of research on the opium economy, including research on 2009/10 cropping decisions, presents some key findings and recommendations based on these broad arguments:

- Those making and implementing counter-narcotics policy must continually and actively seek to be evidence-based, recognising that such policy must constantly be adapted as the context shifts.
- Measures of counter-narcotics “progress” must be understood in the local context. If not, they risk misinterpretation and false attribution to specific

In recent years, AREU has released several reports annually related to the opium economy; to access them visit [www.areu.org.af](http://www.areu.org.af) or the AREU office. Many were written by David Mansfield, whose research also contributed significantly to this policy note.

### About the Author

Jay Lamey is Senior Publications Officer at AREU. He was previously a journalist and development worker based in Thailand and Cambodia, where he managed tsunami relief and income-generation programs.

### About AREU

The Afghanistan Research and Evaluation Unit’s mission is to inform and influence policy and practice through conducting high-quality, policy-relevant research and actively disseminating the results, and to promote a culture of research and learning.

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counter-narcotics measures, and their pursuit can lead to declines in opium poppy cultivation that are not sustainable.

- Counter-narcotics policy must also account for and respond to the potential negative consequences of reduced opium production, which can manifest in increased rural poverty, reduced government legitimacy and support for insurgency.

## 1. Counter-Narcotics Policy in Afghanistan

Counter-narcotics policy in Afghanistan encompasses a variety of measures, the mix and focus of which have evolved over time. Counter-narcotics is a crosscutting theme in the Afghanistan National Development Strategy, but there is still a need for closer integration of counter-narcotics policy into the broader rural development and governance paradigm, and for it not to be seen as the exclusive responsibility of the Ministry of Counter Narcotics and the drug-control community.<sup>1</sup> Some policy approaches key to ongoing developments in the sector are:

**Strengthening and diversifying legal livelihoods:** Rural development initiatives that strengthen opportunities and incentives to engage in legal agriculture, both for food security and income generation, are a vital component of counter-narcotics policy (although they do not necessarily only target those who may be involved in opium production, but generally seek to improve the economic base of rural communities). This approach has largely replaced a more narrow focus on “alternative livelihoods” approaches, which has largely sought to motivate and compensate farmers moving out of opium production on a short-term basis.

**Eradication:** The physical destruction of the crop in the ground, eradication can be undertaken after germination during the early stages of growth to serve as a demonstration effect and allow farmers to plant another winter crop (usually wheat) or later on

<sup>1</sup> David Mansfield and Adam Pain, *Counter-Narcotics in Afghanistan: The Failure of Success* (Kabul: AREU, 2008).

in the season once the plant has fully developed—at which stage there is often a stronger reaction to crop destruction because it results in greater economic losses. There is considerable debate about the efficacy of eradication, but evidence suggests that it is not a key factor determining current levels of cultivation.<sup>2</sup> US policy has moved away from eradication, which is now the preserve of Afghan authorities.

**Disruption:** A key priority of the National Drug Control Strategy is the disruption of the drugs trade by targeting traffickers and their backers and eliminating the basis for the trade. The Counter-Narcotics Police of Afghanistan is the lead law enforcement agency tasked to this. Since mid-2009, US military operations in Afghanistan have included the tactical targeting of traffickers identified as having links to the insurgency.

**Success measures:** During the last decade, the principle measures of counter-narcotics “success” were the number of hectares (ha) of opium poppy cultivated and the number eradicated. A measure of the number of “poppy-free provinces”<sup>3</sup> was introduced in 2007 by the United Nations Office on Drugs and Crime (UNODC), which encouraged a degree of geographic distinction among indicators. However, simply aiming to increase the number of “poppy-free provinces” is not a complete target in its own right, because it fails to assess the causes, impact or sustainability of reductions in opium poppy cultivation.

## 2. Opium Poppy Production Trends

Opium poppy cultivation has generally declined over the past several years in all regions of Afghanistan, including the south, where it is most concentrated. Historically, cultivation levels have fluctuated broadly, influenced by a variety of factors including official policy and action, market prices for opium resin and other crops, and security and climatic conditions. To assess the durability of the current drop in production it is important to examine its causes, impacts and the potential for changes in the overall environment affecting the opium economy.

### Strong governors

In both Balkh and Nangarhar, the provincial governors (Atta Mohammad Noor and Gul Agha Sherzai, respectively) are credited with leading and succeeding in a campaign against opium poppy cultivation. They used combinations of former mujahiddin networks,

<sup>2</sup> In Helmand, farmers were highly dismissive of government eradication threats, whereas market forces appear to have significantly influenced cultivation decisions, see Section 2.

<sup>3</sup> Defined by UNODC as having 100 ha or less of total cultivation.

patronage, relationships with elders and strongmen, arrests, threats, eradication and the promise and reward of development assistance to reduce opium cultivation from high to very low levels.

The success of these governors suggests that political will and power in key positions can be very important to reducing opium production and seems to favour the policy approach of rewarding provincial governors who achieve significant reductions in cultivation. However, such rewards can also create resentment amongst populations who feel the brunt of livelihoods loss but do not benefit from any compensation. This can actually reduce the legitimacy of the government in the eyes of the people. Coupled with the fact that such reductions may not be sustainable if and when a particular governor’s political fortunes shift, this means that gains made through such an approach are fragile.

### Wheat, markets and food security

Helmand, where up to half of Afghanistan’s opium is produced, is a good example of how market forces and expectations affect cultivation levels. From 2008 to 2009, overall opium poppy cultivation dropped while large tracts of wheat were planted in areas opened up for cultivation by high rainfall. Poppy cultivation dropped in areas where the provincial government exerts some control and where it does not.

Recent high food prices were a key factor in farmers’ decisions to grow less opium poppy. When wheat reached 35 Afs per kilogram in 2008, with the price of dry opium simultaneously very low, many opium farmers had difficulty purchasing enough grain for their families’ consumption. Farmers responded by growing more wheat, but for consumption rather than to take advantage of high prices at market (few farmers can produce a marketable wheat surplus).<sup>4</sup> Farmers made similar choices for the 2009/10 season, despite wheat falling to as low as 15.5 Afs per kg, because many expected that insecurity in Pakistan (the traditional source of wheat imports) will drive the price back up and anticipated that opium prices would remain low for the foreseeable future. However, the durability of this shift to wheat is far from certain because it is not a profitable crop; a stable wheat price and a rise in the price of opium might encourage increased opium poppy cultivation (and there are, in fact, already signs that the price of opium is beginning to rise in the eastern and southern regions).

<sup>4</sup> Hector Maletta, “The Grain and the Chaff: Crop Residues and the Cost of Production of Wheat in Afghanistan in a Farming System Perspective” (Unpublished, 2004).

Market-driven reductions in opium poppy cultivation are potentially more lasting in some other provinces. For example, in the central province of Ghor, it was only while opium prices were high during the middle of the last decade that opium poppy cultivation became attractive. When prices dropped along with yields (for climatic reasons), most farmers abandoned it in favour of other crops.<sup>5</sup>

### Insecurity and market access

Although insecurity in Pakistan is believed to have contributed to rises in wheat prices and has thus encouraged its cultivation in southern Afghanistan for household consumption, local insecurity tends to discourage the production of licit crops for market, leaving opium as the only viable cash crop. When roads are dangerous to travel, farmers often find it difficult to access sales points and traders have difficulty visiting villages. Opium then becomes a more attractive option for farmers: they can more easily access credit to grow it, they can sell it from the farm-gate and it can be easily stored without spoiling. For farmers in such conditions, growing opium poppy is a choice often taken in the absence of other possibilities.

## 3. Counter-Narcotics, Counter-Insurgency and Government Legitimacy

The ISAF counter-insurgency strategy declares that “victory is achieved when the populace consents to the government’s legitimacy and stops actively and passively supporting the insurgency.”<sup>6</sup> Counter-narcotics does not feature prominently in counter-insurgency strategy documents, but counter-narcotics policy is highly relevant to counter-insurgency objectives in Afghanistan. In the long term, a strong, legitimate government and a secure environment will be conducive to lasting reductions in opium poppy cultivation and trafficking. In the short term, however, tensions can exist between efforts to reduce opium cultivation and efforts to build government legitimacy and win the support of the population. This is a particular risk as opium-growing areas in the south are brought under military or government control, but also in more secure provinces.

**Corruption and targeting:** Counter-insurgency strategy in Afghanistan aims to suppress both the “narco-insurgent-criminal nexus” and the “confluence

of narco-Afghan government corruption.”<sup>7</sup> The likelihood is that more weight will be given to the targeting of insurgent-linked traffickers (given that over 50 have been put on the international military “capture or kill” list<sup>8</sup>), which is at odds with a growing impression in the south that government officials are more involved in the drug’s trade than the Taliban.<sup>9</sup> Active targeting of insurgency-linked trafficking could have the unintended effect of “taking out the competition” and strengthening government-linked players, or at least creating the perception of doing so. This could be counter-productive at a time when increasing the perceived legitimacy of the Afghan government is a key counter-insurgency goal. Narcotics-related counter-insurgency efforts must be balanced and include a focus on government-linked actors.

**Eradication:** Eradication efforts could also potentially undermine government legitimacy in the eyes of Afghans, particularly if the prime targets are those who do not have the necessary connections or money to protect their crop from eradication, and there is evidence of this occurring.<sup>10</sup> Popular support for the government could be further undermined in situations where crop destruction is the primary encounter between rural communities and the government.

**Poppy Free Provinces:** Government legitimacy also risks being undermined by aggressive eradication or other counter-narcotics actions taken to achieve “poppy-free” status in provinces with already low levels of opium poppy cultivation. Some provinces will only be declared “poppy free” this year by the UNODC if “timely elimination activities are implemented” against residual poppy crops; this is the case for Badakhshan, Baghlan, Faryab, Kabul, Kunar, Laghman, Nangarhar and Sari-Pul.<sup>11</sup> But the areas of these provinces where opium poppy cultivation persists are often the most insecure or agriculturally marginal. The adding of a few provinces to the “poppy free” list could come at the cost of

<sup>7</sup> Commander of the NATO International Security Assistance Force/US Forces Afghanistan, *ISAF Campaign Plan*, November 2009, Slide 12. Abbreviations in original have been expanded.

<sup>8</sup> Imre Karacs, “Opium Barons at Top of Kill or Capture List as US Targets the Taleban,” *Times Online*, 11 August 2009.

<sup>9</sup> David Mansfield, “Responding to Risk and Uncertainty: Understanding the Nature of Change in the Rural Livelihoods of Opium Poppy Growing Households in the 2007/08 Growing Season. A Report for the Afghan Drugs Inter Departmental Unit of the UK Government” (June 2008).

<sup>10</sup> David Mansfield, “Drivers 2009/10 Growing Season: Initial Brief” (London, 2010).

<sup>11</sup> “Afghanistan Opium Survey 2010: Winter Rapid Assessment” (Kabul: United Nations Office on Drugs and Crime/Ministry of Counter-Narcotics, 2010).

<sup>5</sup> David Mansfield, “‘Poppy Free’ Provinces,” Ghor chapter.

<sup>6</sup> ISAF, “Tactical Pocket Reference: Understanding Counter-insurgency” (October 2009).



alienating communities from the Afghan government—communities in which the absence of viable alternatives means that the decreases in cultivation levels would be both painful and hard to sustain.

**Reductions based on coercion:** Tensions in Nangarhar demonstrate that reductions based on coercion, as opposed to the successful shift to legal livelihoods, can further entrench poverty and inequity and reduce popular support for government. Diversification of on-farm, off-farm and non-farm incomes in Nangarhar have largely been beneficial in districts closest to the capital, Jalalabad. However, some more marginal areas where there is not a viable alternative winter cash crop, such as the districts of Achin, Khogiani and upper Shinwar in the Spinghar piedmont, have struggled to maintain their livelihood standards. Combined with recent high food prices (2008 in particular), the opium ban has caused significant hardship and this has dented government legitimacy in these areas.<sup>12</sup>

#### 4. Conclusion and Policy Implications

Although opium poppy cultivation is down in Afghanistan for the third straight year, there is no guarantee that this trend will continue. Cultivation choices depend on a variety of factors, some of which are difficult for policymakers to influence, including complications resulting from the unstable security environment. Attention must be paid to the reasons behind declines in opium poppy cultivation—only those that are based on sustainable legal livelihoods are likely to be lasting. To facilitate and maintain such transitions out of opium poppy production, efforts must continue in the delivery of rural development initiatives as well as toward creating an overall environment conducive to licit agriculture. This includes improvements in governance and security. Understanding counter-narcotics as part of these processes will reduce the potential for counter-narcotics actions to harm rural livelihoods and government legitimacy, and will focus resources where they are most likely to be effective.

Moving forward, research findings on current opium poppy cultivation in Afghanistan suggest six general recommendations for counter-narcotics policy:

- 1) **Conceptualise counter-narcotics more broadly:** To facilitate sustainable reductions in opium poppy cultivation, counter-narcotics must be understood as part of a broader framework of rural development, good governance and security.

- 2) **Area-based measures are not enough:** Area-based measures, be they overall opium poppy hectareage or the number of “poppy free” provinces, are insufficient measures of counter-narcotics “success.” Efforts to reduce opium poppy production without considering the broader context and consequences risk being unsustainable, causing hardship for rural families and creating resentment of the government.
- 3) **Don’t needlessly harm the weak or poor:** Eradication targeted at farmers producing small amounts of opium poppy with few alternatives, or at villages or farmers without the necessary resources or connections to prevent it, may result in unsustainable reductions in cultivation and significant hardship. Likewise, rewards and development assistance should be delivered to those most in need.
- 4) **Consider who and what are behind cultivation decisions:** Attention must be placed on the causes and impacts of decreases in opium cultivation. Trends out of opium cultivation based on coercion or market prices are often unstable and short term, and don’t necessarily reflect improved living standards or best use of land.
- 5) **Prioritise rural development with substantial long-term commitment:** Overall improvements in rural development in Afghanistan are vital for the achievement of sustained reductions in opium poppy cultivation. Particularly in the south, rural assistance remains primarily short term and narrowly targeted, with limited potential to contribute to lasting change. Only when farmers are secure in legal livelihoods are declines in cultivation likely to be lasting.
- 6) **Consider the wider impacts of counter-narcotics actions on counter-insurgency and government legitimacy:** Opium poppy eradication or suppression can undermine efforts to “win hearts and minds” and increase government legitimacy. Likewise, other counter-narcotics actions can damage government legitimacy, contradicting counter-insurgency goals (as has occurred in Nangarhar). While both counter-insurgency and counter-narcotics could be said to share the same vision of a secure, licit rural sector, efforts should be made to manage any tensions that exist between them in the short term. Ultimately, improvements in the security situation would facilitate other agricultural markets and cultivation options, thus allowing for reductions in opium poppy cultivation.

<sup>12</sup> David Mansfield, “‘Poppy Free’ Provinces: A Measure or a Target” (Kabul: AREU, 2009), Nangarhar chapter.