

The International Community's Engagement in Afghanistan beyond 2014

1. INTRODUCTION

What has become clear in the past ten years of international engagement is that the reality of rebuilding and stabilising Afghanistan is both complex and complicated and that what seems to be a solution in one field can cause further disruption and fragmentation in another. The continuous search for 'silver bullets' throughout the various rotations of generals, diplomats and policy makers – in the shape of a new plan, strategy or approach – has often only redirected resources and led to renewed pressure to report progress where there was little. This paper, therefore, does not contain many illusions: it does not present a new plan or come up with new solutions or advice, and it does not claim to be comprehensive. It does, however, reiterate some of the things that have been long known to those following Afghanistan's trajectory over time with regard to what needs to be done to address the root causes of Afghanistan's instability. This comes as an addition to the discussions that are being held as transition progresses and in anticipation of the international conference on Afghanistan on 5 December 2011 in Bonn, which is considered, by its hosts, as the last chance to translate international attention to Afghanistan into assurances that Afghanistan is not left on its own again after 2014.

This paper¹ is based on the premise that although changes are likely to be gradual, 2014 nevertheless constitutes a watershed, as the next presidential elections are due that year. It is also the target date for the withdrawal of most of the international forces and for the shift in focus from combat to mentoring and training for the remainder of international involvement. The declining presence of the international community in Afghanistan and the expected drop in development funding will have major economic impact (loss of external resources and of jobs). These factors will obviously influence the course of events in Afghanistan. Given that the country's structural problems are grave and complex, addressing them meaningfully will require sustained international engagement far beyond 2014 and on a higher level than in the average 'third world' country.

¹ This paper is based on a concept note that was commissioned by the European Union in Afghanistan in May 2011 to inform internal policy debates. The drafting of the paper was led by Thomas Ruttig, co-Director of the Afghanistan Analysts Network (AAN), with thematic contributions from Doris Buddenberg (economic sustainability), Tom Gregg (regional cooperation), Sari Kouvo (human rights), Thomas Ruttig (political framework and reconciliation), Barbara Stapleton (security) and Martine van Bijlert (governance).

A number of key considerations underlie the argument of the paper. First, there is the assumption that during the transition period, there will be no radical shift in Afghan government or governance structures (no collapse of government or *coup d'état*) and that the security situation will not deteriorate to an extent that precludes substantive international engagement on political reforms, institution-building, governance, rule of law and security sector reform. Second, there is the understanding that not all targets set during the Kabul process will be met by the planned handover in 2014 and that a limited set of realistic priorities for the three years following 2011 will increase the chances of stability and continued constructive engagement. These priorities lie in the field of government reform, donor discipline and a genuinely inclusive political settlement, with explicit support to non-violent civil society and other actors. Third, there is the acknowledgement that institutional reform and continued institution building beyond the security sector remain key for the stabilisation of Afghanistan. It is, however, unrealistic to expect that a drive for reform will emanate from the current government. This demands a continued active political role of the international community both during and after transition. It would also demand engaging Afghan society more broadly in defining the future of the country and ensuring that the Afghan political and institutional structure supports a pluralist Afghanistan.

This paper draws on analysis, as well as international discussions within the Afghanistan Analysts Network conducted over the course of 2011. The analysis and recommendations hold relevance for the upcoming Bonn conference and for the transition. However, it is important to note that to the extent this report puts forth concrete policy recommendations, the recommendations do not function in a vacuum but are dependent on the Afghan government and the international community jointly seeking to address the root causes of stability in Afghanistan and doing so in ways that are as inclusive as possible.

2. SECURITY AND SECURITY SECTOR REFORM

2.1 The Role of NATO and the Afghanistan National Security Forces

The transition process revolves around putting in place the security conditions that will enable the withdrawal of the bulk of NATO's forces and a transition of responsibility for security, governance

and development to the Afghan government and its security forces. Related to this the Afghan government has sought guarantees over a long-term partnership with the international community on bilateral and multilateral levels. However, major dilemmas confront the question of security guarantees – not least because this implies that there is a stable environment to guarantee, which is not the case in Afghanistan. For this reason, the government of Afghanistan has sought to secure binding agreements with the US and NATO with regard to post-2014 security, in an attempt to ensure long-lasting support and an on-going (limited) military presence that can afford it protection in view of perceived regional threats. The overriding risk however – given limited Afghan support for and legitimacy of the current Afghan government – is whether international guarantors will be providing military and financial support to one side in a potential and possibly widening civil war. Marked improvements in security and governance conditions should be a pre-requisite for any international moves towards the provision of formal security guarantees to the Afghan government.

The global financial crisis is now a major factor. It is not clear (beyond the US elections in 2012) which international actor/s will foot the onerous burden of ANSF salaries, estimated at more than US\$6-8 billion a year. The cost of maintaining training and equipping the ANSF will also require significant international support post-2014. It is clear that, in the context of the Afghan government's limited domestic revenues, the continuation of the ANSF, in terms of salaries and resources will depend on external financial assistance for a considerable time to come.² Given that US-led deliberations regarding the size of the ANSF are conducted within the context of international force withdrawal over the next few years, and the handover of the management of the insurgency to the Afghan government in the near future a significant reduction in ANSF numbers in the short-term is unlikely. In terms of supporting the existing status quo, the payment of ANSF salaries will be of primary importance. In the longer run, the size of the ANSF will have to be tailored to the financial capabilities of the government of Afghanistan. Planning for a phased reduction in numbers over a ten-year period would reduce the financial burden

² There is an historical precedent for what the outcome of a possible cessation of financial aid could look like: The Soviet/Russian decision in 1991 to end military and financial support was the death knell for Najibullah's regime.

and enable the Afghan government to sustain a smaller ANSF in the future.

The 'Declaration on an Enduring Partnership', signed by the Afghan government and NATO member-states at the Alliance's summit in Lisbon in November 2010, represented a political signal of reassurance from NATO that it will remain practically and politically engaged in Afghanistan, in much more limited ways, over the longer term. This essentially means NATO support for training and mentoring the ANSF post-2014 and provides Afghanistan with access to NATO's Partnership for Peace (PFP) toolbox; this includes civil emergency planning, air traffic management and access to training in PFP centres. However, the basis of limited cooperation between NATO and the Afghan government over time envisaged in the declaration is predicated on the success of the transition process. NATO representatives stressed the mutuality of a relationship in which the Afghan government makes demands and NATO judges its response to them. In light of the fragile status quo, this relatively limited role for NATO engagement should be re-evaluated, and planning for a more comprehensive approach, with resources identified, made where necessary and possible. NATO should prioritise assistance to the reform of Afghan security ministries, and discussions and (future) international commitments on 'enablers' for the ANSF should be predicated on progress made by the Afghan government in reforming security organs (Ministry of Interior, Ministry of Defense, National Directorate of Security and National Security Council). The most pressing challenges to be overcome include ending the trade in senior security posts, protection of and involvement in the illicit economy, and prisoner abuses.

The process of the security transition was agreed upon at the London and Kabul conferences, and the Lisbon NATO Summit formally began in July 2011 with completion country-wide planned by the end of 2014. The transition is being increasingly presented by NATO and politicians in western capitals as an inevitable process, with decreasing reference made to transition being 'conditions-based'. Notwithstanding significant security incidents this year, including the mob attack against the UN Assistance Mission in Afghanistan (UNAMA) office in Mazar-e Sharif in April, the Taliban prison break-out in Kandahar, the Taliban (failed) attempt to take over in Kandahar in May and a number of high-profile attacks in the capital over summer and autumn, the International Security Assistance Force (ISAF) continues to

assure the international community that transition is on track. As yet, there are no signs for, or expectations of, any delays to the transition timetable that has been set at political levels by leading NATO member states and which ISAF remains confident can be met. The logic of transition means that the international community will lose much of its ability to influence the Afghan government, for example, on appointments, with negative impacts on security and governance. Afghan realities – both in terms of the security/governance situation and the actual state of ANSF capabilities – may necessitate a change to NATO/ISAF's calculations with regard to the viability of a full handover to the Afghan government as the end of 2014 approaches. Planning for such an eventuality should be factored into capitals' calculations sooner rather than later. The 'conditions based' constraint to transition is closely linked to the process being 'irreversible', but conditions are becoming more minimalistic with governance and development seen as supporting rather than primary lines of endeavour by NATO. The official timetable may need to be revised to allow adequate time to fully assess the security situation in all phases of the process. While the first phase of transition has been completed and the second one is about to start, problems emerging from the transition process are being deliberately brought forward by including more problematic areas in the second tranche of the transition to avoid problems erupting towards the end of the process. Conditionalities should be imposed on future NATO and other international development assistance in order to prevent or be able to respond to Afghan governmental attempts to reinsert malign actors at provincial levels.

The resilience of the insurgency has been repeatedly recognised. But although gains are routinely described as 'fragile and reversible' in mid-2011, the NATO narrative has since changed, suggesting that the insurgency has been decisively weakened and may be militarily overcome. Though governance has been widely recognised as the other side of the security coin and as a key internal factor driving the insurgency, in practice NATO/ISAF's focus is on the security aspects of the transition and in particular reducing the insurgency and building up the ANSF. Limited approaches to governance and development, which are to be 'good enough' to enable the security transition, dominate the discourse in and beyond NATO. 'Good enough' is, however, not a strategy for sustainable stability. Signs are already apparent that the processes of transition and possible

political reconciliation are subjecting the political status quo in Afghanistan to additional stress along factional and ethnic fault-lines. The possibility of the ANSF fracturing along ethnic/factional lines post-2014 can therefore not be discounted.

The challenge of establishing a balanced representation of ethnicities in the security forces and especially in the officer class is tied to the need for reform of the security sector. Low rates of Pashtun recruitment (particularly of southern Pashtuns) indicate the levels of fear, and in some cases disaffection, militating against joining the Afghan National Army (ANA) in particular; a change of trend would require an improvement of security in Pashtun areas.

Although the details of a US-Afghan strategic partnership still have to be agreed upon, the Traditional Loya Jirga held in November 2011 in Kabul has generally clarified that the Afghan government seeks and supports a US-troops military presence in the country beyond 2014. It is anticipated that these troops will be offered the temporary use of ANSF bases.³ The continued presence of US military after 2014 – with a likely focus on counter-terrorism and special forces operations – will boost Taliban propaganda that international forces are ‘occupiers’ rather than allies and may negatively impact the reconciliation processes. The bases will be prime targets for Afghan opponents of US presence, supported by regional states that also oppose the ongoing presence of US bases (for further discussion, see Chapter 8) and will probably require a continued dependence of the international military on private and quasi-governmental security forces.

2.2 Police Reform

The failure of the Security Sector Reform (SSR) process engendered under the 2001 Bonn agreement is apparent in continuing problems over police reform, the difficulties in achieving a representative ethnic balance in the army, the failure to disband illegal armed groups and a flourishing narcotics trade. This failure has been compounded by a short-term approach to security – driven by the need for local responses to fighting the insurgency and by the international community’s need to show ‘progress’ in the war in the short term due to domestic political considerations. The Afghan Local Police (ALP) programme and the focus by the international

³ Some US bases in western European countries are also of temporary character but have been used for decades.

community on the development of a paramilitary police force form examples of this short-term approach.

This necessitates a reform agenda in which there is a fundamental shift towards viewing the security sector as an important component of the political situation in Afghanistan, instead of mainly a counterinsurgency tool. A revived SSR process should include the dismantlement of illegal armed groups, and police and army appointments made on merit. The independence of the judiciary and the ability of the police to act against criminal powerbrokers in government are crucial for a functioning state. Without this the government will simply be supporting entrenched power structures. Security needs to be seen as an element of the rule of law, not the other way around. Security forces, including international forces, need to operate within the rule of law and be held accountable by Afghan and international institutions as relevant. This includes accountability for the misuse of security forces by political actors. A comprehensive SSR assessment and analysis of what is needed should be done as part of transition; it should include verifying Afghan National Police (ANP) numbers in the field and planning for long-term sustainability of the ANSF. The continued involvement of ISAF, NATO Training Mission Afghanistan (NTM-A) and European Union Police (EUPOL) can still play an important role in this regard in the coming years.

3. ECONOMIC SUSTAINABILITY⁴

3.1 The Afghan Economy and Its Incomes

The income of the Afghan government is dependent on donors, although there are improvements in tax collection. Afghanistan is a net importer of goods and services.⁵ Of the estimated 29.8 million inhabitants, it is estimated that 36 per cent live below the poverty line. Per capita income for 2010–11 is estimated variously between US\$466 (UN Data country profile), US\$609 (World Bank) and US\$1000 (CIA).⁶

⁴ Economic data on Afghanistan is unreliable. Therefore, figures quoted should be understood as informed estimates only.

⁵ In 2009, the GDP of Afghanistan was estimated at about US\$14.5 billion with agriculture accounting for up to 50% and the export of goods and services 16%. In 2008, imports amounted to 48% of GDP.

⁶ CIA World Fact Book on Afghanistan, available at www.cia.gov/library/publications/the-world-factbook/geos/af.html. The diversity of estimates may

Afghanistan's economy is dominated by the informal (including illicit activities) sector, which accounts for 80-90 per cent of the total economic activity.⁷ Accounting for this sector is difficult, since data are non-available or very limited, yet it is this sector that largely determines the real income of Afghan households.

An overview of important monetary flows, most of them unaccounted for in the formal economy (except the official development assistance), illustrates important aspects of the situation: net Official Development Assistance (ODA) received for 2009 was US\$6 billion according to the World Bank. Military support contracts to Afghan nationals issued by the US Department of Defence (DoD) for linguistic services, transport, logistics and construction were the same sum, US\$6 billion for 2010.⁸ The value of the opiates produced and exported from Afghanistan is estimated to have been US\$1.2 billion for 2010 at the Afghan border; down from US\$2.3 billion in 2009 due to plant diseases. Remittances from Afghan expatriate workers amounted to an estimated US\$3.3 billion in 2006.⁹

The incomplete data characterize the economy: plentiful liquidity but limited sustainability of the cash flow. Since economic sustainability depends on the activities of the majority of Afghans, and not on those of the few newly-rich, a look at the mainstay for survival and income distribution is necessary to establish sustainable activities for an uncertain future. Indigenous factors – especially after 2014 – will increasingly be the only guarantee for survival.

At the same time, the licit and illicit economic interests of Afghanistan's elites will be one of the determining factors for the country's future stability. Economic interests may serve to keep all-out violence at bay, but they could equally become the source of violent clashes as the resources over which to compete decrease. The siphoning-off of resources by current economic and political power-

depend on how much of the informal economy of Afghanistan is accounted for therein.

⁷ William A. Byrd, *Responding to Afghanistan's Development Challenge. An Assessment of Experience During 2002–2007 and Issues and Priorities for the Future*, World Bank, October 2007.

⁸ Moshe Schwartz and Joyprada Swain, 'Department of Defense Contractors in Afghanistan and Iraq: Background and Analysis', Congressional Research Service 13 May 2011, available at www.fas.org/sgp/crs/natsec/R40764.pdf.

⁹ International Fund for Agricultural Development, Rome 2006.

holders obviously also has profound effects on the stability and economic development of the country.

Accessing the gains of the high-level opiate traders would need a coordinated effort by the international community and, above all, the cooperation of the banking sector. This can be discounted on the basis of experience to date.

Large-scale law enforcement measures to reduce poppy cultivation have been unsuccessful, in Afghanistan and elsewhere in the world. As long as demand for narcotics remains high, poppy will be cultivated and opiates exported. On the basis of this experience, the international community needs to re-think its approach. Investment in narcotics law enforcement needs to be reviewed and redirected towards support to mainstream economic development.

3.2 Aspects of Income and Income Distribution

Sectors with trickle-down effects will be important for Afghanistan's economy. One example remains the opium economy. Though it disproportionately enriches the higher echelons of the pyramid of traders, the opium economy also benefits small farmers, seasonal labourers, transporters and small traders. Of the estimated US\$1.2-1.4 billion export value of the crop, accruing to high-level traders, the farmers had an estimated overall income of US\$605 million in 2010.

In spring 2011, according to the UN Office on Drugs and Crime (UNODC), the north and northeast region will increase opium production strongly; but, with production in the south expected to reduce, nationally a slight decrease is expected.¹⁰ It is probable that the ease with which opium poppy cultivation is re-started – or ended, lies in market push factors as exerted by the main indigenous trading networks. Given that the husbandry techniques for sowing and harvesting opium poppy are known throughout Afghanistan, switching in and out of opium production can easily be achieved.

Another important area for trickle-down effects is contracting. According to the Department of Defense (DoD), about US\$6 billion was spent for contracts to nationals in Afghanistan in the 2010

¹⁰ UNODC Afghanistan Opium Survey 2011. Winter Rapid Assessment.

financial year.¹¹ The data is not differentiated according to the services provided but include logistics, construction, linguistic services and transportation. The issue here is what trickle-down effect can be expected from these funds and what will remain of this form of income after the international troop withdrawal, specifically US troops. A further issue is whether the main beneficiaries of these contracts will invest in Afghanistan, which seems unlikely given their past record.

Afghanistan is beginning to offer new resources for exploitation beyond investment for security, military goods and services. After the initial news of huge potential mineral resources broke in 2009, the Afghan government has tendered signature deposits, or is in the process of doing so (copper at Aynak; iron and coal at Hajigak; natural gas at Sar-e Pol). Although it has taken steps to join the Extractive Industries Transparency Initiative, the objections raised in 2010 still hold: the lack of infrastructure, pervasive insecurity and, above all, corruption remain obstacles for direct foreign investment.

It is also doubtful that the mineral wealth of Afghanistan will be shared and that the Afghan population in general will benefit. It is likely that even the trickle-down effect will be minimal, given the lack of local professional skills suited to such a specialized industry. For the immediate and mid-term future, therefore, the mining wealth is unlikely to contribute much to general Afghan well-being.

Given that approximately 20-25 per cent of Afghan nationals live and work abroad, remittances form a substantial part of household income in Afghanistan. The top destinations for Afghan workers include Iran, Pakistan, Germany, Netherlands, Canada, Britain, Saudi Arabia, Australia, Turkey and India. In 2006 Afghanistan received US\$3.3 billion in remittances from expatriate Afghans.¹² Up to 90 per cent of remittances are spent on basic needs: food, clothing, shelter, health and education.¹³ After 2014, remittances will remain available and will become increasingly important as other external sources of income decline.

Due to strict banking regulations and the restrictions on various international banks dealing

with Afghan banks, a large number of overseas Afghans use the informal *hawala* system (an informal value transfer system) to send money home. This is a rational response given the widespread mistrust of the formal banking system and more than justified in view of the recent events surrounding the Kabul Bank from which more than US\$580 million (900 million according to some reports) went missing.

3.3 Net Official Development Assistance (ODA)

In 2009, Afghanistan received US\$6 billion of Official Development Assistance (net ODA received),¹⁴ up from US\$4.8 billion in 2008. The fiscal report of the government for year 1387 (2008–09), referring to the US\$4.8 billion for 2008, shows the following distribution: 48 per cent for security sector, 12 per cent for good governance, rule of law and human rights, 13 per cent for infrastructure and natural resources, and 10 per cent for agriculture and rural development.¹⁵ Despite improvements in tax collection, Afghanistan will remain dependent on donors.¹⁶

Aid effectiveness remains a concern. Apart from coordination and communication problems among the donors themselves and between the donors and the Afghan government, a major point of contention is the fact that an estimated 40 per cent of aid goes back to donor countries in corporate profits and consultant salaries, and over half of aid is tied, requiring the procurement of donor country goods and services.¹⁷

Despite manifest inefficiencies, ODA does contribute to the livelihoods of ordinary Afghans who have extremely limited opportunities. The donor community, including the World Bank, is making some effort to improve the livelihoods of

¹⁴ World Bank, World Development Indicators 2009. The most recent figures released by the World Bank and the Afghan Ministry of Finance indicate that the total amount of aid in 2010–11 amounted to approximately US\$15.7 billion.

¹⁵ Islamic Republic of Afghanistan. 'Afghanistan National Development Strategy. First Annual Report 1387 (2008–09)', August 2009, p 20.

¹⁶ Regarding donor dependency of the GoA household see also the latest report by the World Bank: *Transition in Afghanistan: Looking Beyond 2014*, published 18 November 2011, available at siteresources.worldbank.org/AFGHANISTANEXTN/Resources/305984-1297184305854/AFTransition.pdf.

¹⁷ ACBAR Advocacy Series. 'Falling Short. Aid Effectiveness in Afghanistan', 25 March 2008, available at reliefweb.int/node/260552.

¹¹ Schwartz and Swain, 'Department of Defense Contractors' (see FN 8).

¹² International Fund for Agricultural Development, co-authored Inter-American Development Bank.

¹³ www.ruralpovertyportal.org.

low-income groups. Despite the widespread, and largely accurate, perception among Afghans that development has not achieved as much as desirable or possible, the contribution of the donors to increase income in rural and poor areas is significant, and the withdrawal or substantial decrease of such assistance would leave Afghans brutally exposed to their own leaders.

Further factors which may complicate the development of the country after the withdrawal of foreign troops, most of the foreign civilians and much of the ODA include the following:

- A renewed flow of refugees to neighbouring countries;
- A further brain drain of limited human capital;
- Continuing capital flight;
- The collapse of the limited private sector which currently largely services expatriates and the Afghan elite;
- The departure of newly rich and educated elites to safe havens.

The opportunities remaining for those staying in Afghanistan are likely to be limited largely to the remains of the commercial sector, the drug sector, the licit smallholder agricultural sector and remittances.¹⁸

In these circumstances, ODA will have a crucial role to play, particularly in assisting the smallholder agricultural sector to improve food security. It remains to be seen whether those donors who choose to remain in Afghanistan will develop this approach, alongside supporting infrastructure, education and health.

3.4 What Remains is Agriculture

The agricultural sector contributes about half of the GDP (excluding the opium economy). More than 75 per cent of Afghans live in rural areas, where agriculture continues to be the main economic activity. The average size of landholdings is small, however, and as a result agriculture is rarely the main source of food or household income.¹⁹

¹⁸ Commerce and trade, especially in urban areas, is largely linked to the current war economy with limited sustainability.

¹⁹ While there is a high regard for land ownership in Afghanistan, the contribution of income from land is and will continue to be limited. Household income is derived from a diversity of sources, including services, employment and remittances and does not depend on agriculture alone. See IFAD report at www.ruralpovertyportal.org.

Between 20-25 per cent of the population is currently food-insecure, and many others are highly vulnerable to food price fluctuations that may push millions more into high-risk food insecurity. Taking the latter into account, the UN Food and Agriculture Organization (FAO) estimates that up to 70 per cent of Afghans may become food insecure, with as much as 50 per cent of children aged five or under suffering from chronic malnutrition. Large areas of Afghanistan chronically suffer from water shortages and are frequently drought-stricken. Drought and flooding add to food-insecurity.

The main staple is wheat, which is grown in both irrigated and rain-fed areas. Dependency on weather conditions, especially timely rainfall, accounts for the fluctuations in wheat production.²⁰ The US Department of Agriculture had forecasted a 2010–011 wheat production in Afghanistan of 3.7 million tons, 13 per cent below 2009's record level, but 18 per cent above average.²¹ In the current year, the harvest is down again, due to a drought effecting 14 provinces, and food shortages are expected for the coming months.

In times of need and when external cash flows, whether ODA or contractor services, are reduced to low levels, land will return to being crucial for the survival of families, especially women and children, who do not benefit much from increased external cash flows.

Expecting ODA to decrease, and given the donor fatigue that results – apart from security and governance concerns – from widespread corruption and lack of accountability by government institutions, the need for a functioning agricultural sector remains.

This is not to argue that Afghanistan should put great efforts into becoming an exporter of (licit) agricultural produce. Market prices, poor market access and quality will remain obstacles for successful export. The primary purpose of improving the agriculture sector remains to increase food security for the majority of Afghans.

The international community should therefore prioritise support to sustainable economic sectors, above all agriculture and food security, building on

²⁰ In 2007–08, the north and northeast, where 75% of the wheat crop is rain-fed, provided more than 50% of the wheat for Afghanistan. US Department of Agriculture, 'Commodity Intelligence Report', June 2009.

²¹ US Department of Agriculture, 'Afghanistan: Above-Average Wheat Outlook for 2010-2011', 11 May 2010, available at reliefweb.int/node/354135.

current activities such as the National Solidarity Programme (NSP), expanding geographical coverage and involving Afghan institutions and experience. Support should focus on assisting villages' ability to sustain their livelihoods.

A reduction of ODA will have serious consequences not only for the economic survival of Afghans, but also for income distribution. The war economy of the past decade has created a new class of super-rich, who have invested outside the country, and a group of well-armed and exploitive warlords resulting in severely skewed income distribution. This situation is in part the result of donor activity, which will need to be modified if the situation is not to deteriorate further. With more limited resources, the international community needs to refocus its perspective.

4. POLITICAL FRAMEWORK

4.1 Political Landscape

Functioning and mutually balancing political institutions are a prerequisite for a stable state. But Afghanistan's post-2001 institutions remain weak, imbalanced and ineffective and are instrumentalised by a legally strong executive. The political system is over-centralised and therefore inflexible. The balance of power – between the executive, the legislative and the judiciary – is strongly unhinged. The executive dominates and often manipulates the legislative and judicial branches. The 2010–11 parliamentary crisis has deepened these defects, by further undermining the reputation of the Wolesi Jirga as an institution and by exposing the judiciary as an instrument of the executive.

Apart from a few exceptions, the institutions do not meet the basic needs of the general population. Many office-holders are unable to respond to the demands of an increasingly modern organised state. This is not the result of corruption and a lack of capacities alone; it combines with some underlying organisational principles of Afghanistan's post-2014 statehood, including the fact that governmental and administrative posts are part of the ruling patronage system, have become a commodity to be traded and are, therefore, not filled on the basis of merit and competence. In this context, the 'Karzai camp' that entered the political scene as reformers has morphed into a quasi-faction itself, with semi-legal armed forces (that are sometimes made up of legal police, sometimes of private security companies)

and strong economic interests.²² Afghanistan's executive is thus a body that rules effectively in terms of protecting its power but underperforms in terms of governing.

In this environment, political inclusiveness is limited rather than furthered, and participation is viewed as jeopardising power rather than strengthening governance. Civil society has been 'NGO-icised', in that it has become dependent on donor-driven programme financing, reactive rather than visionary, and process oriented in its advocacy and policy engagements. (Only the past months have seen a trend towards higher political awareness and attempts for better coordination.) Political parties have been further delegitimised and marginalised by the executive's rejection of them and by the ban of political factions in parliament and on party lists during elections. This has led to a double polarisation in the political system: first, between the government and the insurgents; secondly – within the Kabul-centred political set-up – between the 'Karzai camp' and the 'opposition' made up by former Mujahedin leaders. Institutions, where political opposition would normally crystallise, are fragmented: both the political party landscape, in general, as well as, in particular, its hitherto strongest force (the various parties, movements and alliances emerging from Jamiat-e Islami), as well as the party-less parliament.

An in-transparent, small inner circle of former warlords (Jihadi leaders) and presidential advisers have become the core of consultation and decision-making. This group itself is part of an evolving neo-oligarchy, comprised of various political-cum-business networks. Those networks transcend ethno-political lines, prey on the in-flows of external resources, preside over a deepening social gap and concentrate more and more political, armed and economic power on themselves. These actors have much to lose, so they are not interested in a new civil war. But they are also not interested in power-sharing and are highly fragmented (there are at least 20 political parties that emerged from the eight major former Mujahedin organisations), which

²² See references to the quasi-militias linked to former and current governors as well as to Karzai's assassinated brother Ahmad Wali and other local strongmen. An example is described in Matthieu Aikins, 'The Master of Spin Boldak', *Harper's Magazine* December 2009, available at www.harpers.org/archive/2009/12/0082754. On the economic side, see Dexter Filkins, 'The Afghan Bank Heist', *The New Yorker* 14 February 2011, available at www.newyorker.com/reporting/2011/02/14/110214fa_fact_filkins.

makes them volatile. A perception of marginalisation or being disadvantaged in the distribution of spoils might trigger armed conflict that can escalate, particularly when the stabilising role of the Western forces is substantially weakened after 2014.

4.2 Reform of the Political Institutions: Separation of Powers, Checks and Balances

Reforms of the current political system and other key political issues must be discussed in a genuinely inclusive country-wide process of consultations and decided by Afghan institutions, possibly by another (Emergency) Loya Jirga. An important future role of the international community in this process should be to ensure that a conducive framework for this is set and respected, rather than determining its outcome. This would allow all Afghan social and political groups to participate in decision-making, preventing these consultations from being dominated by the government or factions that are still armed and guaranteeing the equal rights and safety of all participants. Exactly because this level playing field does not exist, and cannot be created by Afghans alone, the international community needs to play the role of an arbiter. A free and active media will be of central importance in this and other processes. This, in turn, necessitates a close watch – and support – of the freedoms of speech, organisation and press and its organisations by the international community.

The symptoms of Afghanistan's current system failure are clear, however, and focuses of this necessary debate can already be identified. A greater independence of the legislative and the judiciary (as well as of the existing 'independent' commissions) – on the basis of existing law – would counter the increasing monopolisation of power by the executive and make it more responsive and accountable vis-à-vis the Afghan population. At a minimum, the role of parliament in approving the members of the Supreme Court needs to be implemented. In terms of institutional reform, crucial elements include a devolution of responsibilities in administration, planning and budgetary issues from the centre (which does not mean 'federalism') as well as necessary supportive adjustments in the legal and political system and improving the electoral system. The international community should further urge and assist the executive to establish an efficient and accountable presidential office.

4.2 The Role of Civil Society and Independent Media

Civil society and the various representative bodies have a crucial double function in this: that of watchdogs to signal crisis to the international community in cases of need, and that of a counter-weight against radical/Islamist forces that are likely to increase their political weight, even if there is no political accommodation with the armed insurgents. Given the weakness of Afghanistan's current elected bodies, civil society is the most logical actor to kick-start a political debate and to develop pressure for reform; but it needs international protection as well as encouragement and support. For this purpose, Afghan civil society needs to better organise itself and be supported in this by the international community.

Agreements between international donors and the Afghan government should include the stipulation that progress on crucial reforms is regularly reviewed in mixed Afghan/international bodies and that Afghan elected bodies and civil society are integrated into these reviews.

Such joint Afghan-international mechanisms could include the UN and other multilateral governmental and non-governmental bodies, with this function integrated into the mandate of the relevant UN organisations. The oversight mechanisms should be institutionalised in the form of regular hearings in Afghan-international coordination bodies, in parliament and in public. This necessitates core funding to crucial (umbrella) organisations and mechanisms, as currently given to the Afghanistan Independent Human Rights Commission (AIHRC) or the Free & Fair Election Foundation of Afghanistan (FEFA), as well as to relevant international organizations (select INGOs and foundations) that can support the watchdog function of Afghan civil society and media.

In order to be able to carry out this function, civil society has to regain its voice as a legitimate force that expresses the interest of parts of the population that are not represented by the currently dominant political forces. The organisations in its diverse sectors (youth, women, professionals, local *shuras* (councils), etc, both in the 'modern' and the 'traditional' spheres) should be encouraged and supported in order to enhance consultation and cooperation, both within the various sectors and between them, and to strengthen advocacy on societal issues that are neglected by the Afghan government (rights issues, poverty, etc). Afghan civil society should be

encouraged and supported to strengthen mechanisms that support such functions, like the current contact group of (umbrella) organisations, possibly in the direction of a 'civil society parliament' or standing assembly. At the same time, inclusiveness demands going beyond the current, often Kabul-centric, civil society networks and finding innovative ways of supporting those who do or are able to mobilize at local levels. Last but not least, Afghan civil society organisations need to develop their own vision and plan for their survival after 2014.

In order to be able to continue to cooperate with civil society and media institutions and to continue to support them *after* the transition, the international community needs to help strengthen them *before* the planned completion of the responsibility hand-over.

In the media sector, apart from supporting key independent media, particularly radio, the international community should revive its political and financial efforts to develop Radio TV Afghanistan (RTA) into a public broadcasting agency and not allow it to remain the government's mouthpiece.

4.3 Electoral System and Political Parties

Building a robust and transparent system of electoral institutions in Afghanistan that is able to hold elections that meet international standards remains a key area in need of reform. With a new election cycle not commencing before 2014, the major emphasis on adjustments of the electoral system, however, needs to be – and can be – put into the pre-2014 period, with political and financial support for key institutions kept up post-transition. Because the Afghan government alone will not be able to fund and organise meaningful elections, this opens up a role for the international community to stay involved politically, including serving as a guarantor that the laws are implemented. Before transition ends, the international community should help set up political and funding mechanisms that increase and guarantee the independence of crucial electoral bodies – the Independent Election Commission (IEC) and the Electoral Complaints Commission (ECC) – as well as that of functioning independent Afghan observer organisations like FEFA. Their budgetary sustainability needs to be preserved in the post-transition time. The international community must insist that sufficiently staffed international observer missions are able to attend all future elections.

In the same period, the rights of political parties enshrined in the constitution, the political parties law and the electoral law must be fully implemented: their right to participate as visible bodies in all parts of the electoral process, including the right to field individual or lists of candidates and to form political factions in parliament. The absence of political party activity leaves a fragmented legislative open to manipulation and undermines its role as a check and balance for the executive.

Since elections currently are prone to manipulation by the armed and powerful, the international community needs to support independent Afghan mechanisms that can ensure that links between political parties and illegal armed are monitored and sanctioned. It should push for a transfer of election-related Disbandment of Illegal Armed Groups (DIAG) functions and political party registration to a *reformed* IEC.

The international community should openly support a broader array of political parties, politically and morally, that subscribe to a certain set of democratic values, like non-violence (ie, not maintaining or relying on armed groups), pluralism, multi-ethnicity and mutual tolerance. Parties that violate these rules should strictly be exempted from cooperation. Infrastructural and technical support should be given to those parties that currently lack the most basic facilities, due to a legal system that in practice favours parties with access to illegitimate resources. This can be done through self-governed 'political party resource centres' or 'houses of understanding' in the regional centres, combined with strict external technical and financial supervision in order to prevent misuse. Such a system could be supported through a consortium of political foundations/NGOs from different countries. Governments should encourage parties and other national institutions to develop direct contacts and exchanges with key Afghan political parties, with a priority on those based, in practice, on democratic values but not excluding former 'Mujahedin' parties, here with a focus on supporting them in their internal democratisation.

The international community needs to assist the Afghan government, in collaboration with parliament and the political parties, to move from the current voting system – the Single non-transferable vote (SNTV) system – to, at least, a system of mixed proportional representation (open for party lists and independent candidates) as demanded by almost all political parties in the

country, preferably combined with single-seat constituencies. SNTV, with multi-seat constituencies and in combination with the dominance of armed factions, has contributed to a misrepresentation of the electorate. A mixed system will only work and not lead to 'election overload' when the electoral calendar is straightened, divergent legislative periods are streamlined and elections are not concentrated on a single day; the latter will give more time to the individual voter to make her/his choice.

Parliament and the provincial (and still to be elected district) councils, need to be sufficiently empowered before the next election cycle commences to fulfil their particular roles. While in the case of parliament, this is more a matter of the political will in the executive, the legal framework for the provincial and district councils' needs to be improved and clarified on the rights and duties of the bodies and their relationship with the provincial and district governors. Necessary budgetary means need to be allocated for them by the Afghan government with the international community's support.

Additionally, mediation mechanisms between the executive and the legislative need to be further developed and their independence strengthened, like that of the Commission for the Oversight of the Implementation of the Constitution. In order to undercut the financial dependence of members of parliaments (MP) on wealthy powerbrokers and illicit resources, independent funding mechanisms need to be designed, including for working capacities (offices, staff). Simultaneously, bodies of self-regulation and transparency need to be developed. The major line of support could go through the parliament's secretariat.

5. GOVERNANCE

5.1 Achievements, Challenges and Opportunities

During the reconstruction push in the past ten years, Afghanistan was often treated as if it were an institutional *tabula rasa*: a country that had never been centrally governed and that could be given institutional frameworks and procedures modelled on the latest governance fashions or based on the preferences of the various donor countries. This resulted in a hotchpotch of laws, procedures and strategies, usually linked to short-term programs and often with little relation to previous practices or the perceived responsibilities of the institutions.

On the positive side, technical assistance, where it was sustained and provided by professionals, has resulted in the introduction of simplified and/or more coherent procedures and the development of institutional cultures that at least harbour the *possibility* of greater professionalism (although the extent to which this is the case varies greatly between the different organisations and departments).²³

On the sub-national level, policies have alternated between trying to strengthen the links between local departments and their line ministries and, conversely, seeking to locally strengthen institutions or personalities in isolation of their formal hierarchies. Direct support (particularly through Provincial Reconstruction Teams) to unreformed 'local power brokers' have added to the problems and deepened mistrust between the central government and local populations, often deepening the ethnic, tribal and factional divides. Centralised institution-building efforts have often been complemented by, or abandoned in favour of, localised support focusing on short-term service delivery and a desire to re-integrate 'informal', 'traditional' or 'tribal' practices.

The international governance effort has been driven by two main assumptions: that on-the-job training and technical assistance will result in functioning government bodies; and that the main function, and popular demand, of government institutions is to deliver services and drive reconstruction. There have been great difficulties, however, in addressing the more fundamental problems of governance: state capture and the largely default practices of abuse of power (which in their worst forms manifest themselves in excessive enrichment, cronyism and brutality).²⁴ Although there has been an increasing realisation of the corrosive effects of bad governance, most of the time the blame is placed squarely at the feet of the executive – in particular the president and his circle – with too little attention being given to the

²³ The introduction of, for instance, an electronic payment system for the security forces, standardised recruitment processes for civil servants, or simplified procedures to apply for licenses have introduced a certain standardisation and predictability that has – albeit patchily – increased the credibility of the government as an independent entity.

²⁴ Examples include widespread embezzlement, buying and selling of appointments, bribe-taking, detentions based on personal disputes or for extortion, and lack of the necessary oversight, which have for instance resulted in unchecked and irresponsible banking practices (as illustrated in – but not limited to – the Kabul Bank near-crash).

international community's own role. Huge imbalances in power are created by the awarding of large contracts to and the mobilization of paramilitary as well as by political clout being limited to a very small number of people. These have helped undermine the little institutional control that parts of the government had sought to exert.

The greatest opportunities for change that the international actors can leverage lie in the realm of their own policies: diversification and better oversight over contracting practices; better targeted, more inclusive diplomatic and political outreach; and greater policy coherence on a limited set of non-negotiables. These should include improvements in the field of financial practices (including banking), agreed democratic principles (such as representative elections, judicial oversight and protection of universal freedoms) and Afghanistan's international human rights obligations.

5.2 Long-Term View on Governance Support

Given the limited resources the Afghan government is likely to ultimately have at its disposal, the international community should strive to ensure that in the first place the core functions of the state are strengthened. To this end governance support should first focus on consolidating the government's financial and oversight systems; simplifying and rationalising procedures and regulations; prioritising basic government services; strengthening the justice sector and mechanisms to combat corruption; and exploring means of greater external leverage. Well-planned conditionality on donor funding – together with monitoring of all funding – may be the only means for ensuring commitment to governance reforms.

The current government structure is on one hand patchy and hobbled, and on the other hand top-heavy and complicated, particularly in the context of low levels of education, weak infrastructure and challenging geography. To help sustainable institution-building, the focus in the coming years should be on streamlining and simplifying structures, rather than a last-minute surge of add-on technical assistance, and on cheaper, less cumbersome governance and service delivery structures – based on long-term development experiences in low-income third-world countries, rather than on rushed reconstruction/nation-building doctrines. Examples include downsizing

project management units (PMUs) within ministries, limiting the proliferation of technical assistance and external advisers and, where possible, simplifying procedures that currently require outside expertise. The overriding principle should be simplification and rationalisation of the main governance and service delivery systems, at the national and sub-national level; this includes cutting down on the number of committees, coordination structures, management levels, councils, etc.

Improvements in the field of public financial management (PFM) has been one of the main achievements of the technical governance support, but with the decrease in funding and the presumed increased channelling of support through the government, pressures on government resources and systems are likely to increase exponentially. Therefore targeted technical assistance should focus on consolidation and protection of the government's financial systems, in order to safeguard the ability of the government to continue to pay salaries and to afford basic services and infrastructure and to withstand increasing pressures towards capture of state resources (as other sources of gain dry up).

Government services with a wide impact, that will need to be prioritised over a long period of time, include education, health, justice and basic welfare. A system of public-private partnership has enabled the reach of the health sector to greatly expand, but it will require a sustained level of funding in order to remain. Education has for years been touted as a major success in terms of enrolment, but the quality of the government-provided education remains excruciatingly poor, with most children receiving only a few hours of classroom teaching per day. The continuation of a basic welfare system for the most vulnerable (widows, disabled, families of martyrs) is an important safety net for some of the poorest Afghan citizens.²⁵ If resources are limited, the focus should be on the prioritisation of increased access to services in the fields of education, health, justice and social protection and should include a commitment to improving the quality of the services delivered.

The strengthening and clean-up of the justice system is the main prerequisite for continued and

²⁵ Many Afghans, both in- and outside government, do not ascribe to the aggressive free market system that has been propagated for their country and would probably tend toward a more hybrid system (with coupon systems, subsidized seeds, state enterprises, etc).

sustainable institution-building – however rudimentary. It will however continue to prove very difficult, as all potential oversight organs are themselves corrupted and/or politicised. Possible effective interventions in this field include:

- The establishment of a limited number of joint commissions, such as the recently established Monitoring and Evaluation Committee (MEC) – provided they are robustly backed by the international community;
- The strengthening of citizens' oversight, through sustained support to activist groups, media and representative bodies;
- A system of administrative warnings alongside the possibility of judicial prosecution with the possibilities for perpetrators of serious corruption.

The international community should seek to support any move towards greater accountability by leveraging external means of persuasion – such as international legal procedures, the freezing of funds or limits on travel or visas – in response to sustained corruption, abuse of power or human rights violations, both by those in government positions and those leveraging informal power.

The current government has neither the sustained will nor the capacity to implement fundamental reforms. But even a fully reform-minded administration would probably be at a loss as to where to start, given that all state organs to a varying degree have been captured by factionalised interest groups or individuals that offer services for sale. Moreover, international military presence and contracting practices have created a class of 'wielders of influence' who are practically untouchable. The international donors should therefore seek to expand and leverage their 'means of persuasion' in support of anti-corruption efforts by the government, media or civil society.

6. HUMAN RIGHTS, RULE OF LAW AND JUSTICE

6.1 Checks on the State of Impunity

There is a human rights crisis in Afghanistan. The state of impunity for abuses of power and for past and present crimes is undermining the human rights advances of the early years, such as the constitutional protection of political rights, the abolishment of discriminatory laws and children's return to school. It is likely that the commitment to human rights and rule of law of the Afghan government and the international community will

further diminish in the coming years. The deteriorating security situation and the need to make progress in reconciliation are likely to result into more marginalisation of rights and rule of law in institutional reform (especially in relation to the security forces), as well as issues relating to impunity for past and present war crimes and other abuses of power. Moving towards the transition, it is therefore important that the efforts to promote human rights are carefully chosen so that they strengthen the Afghan state's willingness and ability to fight impunity and protect the rights of its citizens; and the necessary monitoring and 'watchdog' functions of the national human rights commission, civil society and media are not undermined. There is certainly a need to shift the focus from information about rights to actually ensuring the ability to enjoy rights, ie, to promoting accountability of government institutions.

Three areas are of particular importance: ensuring that the Afghan government is willing and able to protect human rights; ensuring that when it fails, its actions are reported on; and seeking to end the cycle of impunity, by a focus on accountability.

6.2 The Human Rights Obligations of the Afghan Government

Afghanistan was one of the first nation states to join the United Nations; it has also signed all major international human rights treaties, although with some reservations. This was also recognised in the conclusions of the Human Rights Council's Universal Review of Afghanistan in 2009, but the council also pointed to the lack of *de facto* rights protection, especially relating to detention and judicial guarantees.²⁶ Detention and torture specifically in the National Security Directorate (NDS) detention were more recently highlighted in a report by UNAMA, showing that torture was systematically used in a large number of NDS detention centres.²⁷ Working towards the transition, it is, then, important that the Afghan government is enabled – and, when needed, put under pressure – to protect the rights of its

²⁶ UN Human Rights Council document. A/HRC/WG.6/5/L, 8 May 2009, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/AF/A_HRC_WG6_5_L8_AFG_E.pdf.

²⁷ 'Mistreatment of conflict-related detainees in Afghan facilities', UNAMA report, 10 October 2011, accessed on 18 November 2011 at <http://unama.unmissions.org/Default.aspx?tabid=1762&ctl=Details&mid=1920&emID=15341>.

citizens, as stipulated by the constitution. It is important to recognise that the failure to advance human rights and, in a more narrow sense, rule of law, has largely been due to lack of political will on behalf of the Afghan government and lack of consistent pressure from the international community.

Over the past years, there has been a hardening climate towards 'dissenting opinions' in Afghanistan expressed through judicial action and violence against human rights activists and journalists. The elections in 2009 and 2010 also showed serious encroachments of political rights. There is then a need for a renewed focus on the protection of the fundamental freedoms, i.e. the freedoms of opinion, expression, assembly and association, and the right to petition the government, intimately linked to political rights and to the promotion of a pluralist Afghanistan. The responsibility for this lies with the Afghan government, but the international community plays important roles as 'watchdogs' and supporting the Afghan civil society and media's roles as 'watchdogs'.

The lack of rule of law has been a constant concern. Illegal detention and the lack of judicial guarantees have been expounded by the extraordinary measures promoted as part of the 'War on Terror', many of which have become ordinary practice by Afghan security forces and judicial institutions. Preparations to hand over security to Afghan authorities should not only focus on ensuring that the Afghan authorities can ensure security but also that they can do so with respect for human rights. A security force that intimidates, harasses and abuses the local population is a security threat itself.

The advances for women's rights over the past decade have been patchy at best, but they have provided a foundation for further engagement for women's rights. The legal rights that women now enjoy need to be protected in the transition and through a reconciliation process, as do any spaces in which women are able to negotiate their access to the public sphere and status in the family. The international community should continue to engage robustly against government policies that may encroach on women's rights, such as the recent attempt by the government to take control over women's shelters. Women's political representation is an important first step for women's actual participation in political processes. The test for whether women's representation actually ensures participation is whether women

are enabled to engage in core politics and not primarily on women-centred issues.

6.3 The Role and Precarious Position of Human Rights Defenders

An analysis of the situation of human rights defenders and media in Afghanistan presents a mixed picture: On the one hand, the development of a strong and independent national human rights commission – the Afghanistan Independent Human Rights Commission (AIHRC) – and a vocal civil society and media are amongst the few successes of the past decade. On the other hand, these institutions remain fragile, often dependent on one or a few key individuals and susceptible to threats and harassment. Over the past years, human rights defenders have especially raised concerns about their lack of access to government authorities and the fact that – when faced with threats or harassment – they are ultimately left alone by their international allies. Civil society also remains largely reactive; few organisations seem to have a long-term advocacy agenda or vision.

While the international community has played an important role in supporting human rights defenders, it has also, by its extensive presence in day-to-day Afghan politics, taken their place. Inevitably, the abundance of short-term, project-based funding has resulted in Afghan human rights organizations – with some notable exceptions – gravitating towards donors rather than their local constituencies and being project – rather than agenda – driven. Moving towards 2014, the international community should, through political support, seek to ensure the continued independence of the AIHRC and its ability to monitor, investigate and report on human rights violations nationally and sub-nationally. Constant effort to safeguard the independence and 'work space' of the commission is needed as well as specific attention at politically significant moments, such as when the commissioners are appointed or the AIHRC takes a significant stand in media or through its reports.

Protecting human rights involves engaging not only the government but also human rights defenders – and Afghan civil society and media – when developing national or institutional priorities for Afghanistan. This includes ensuring that civil society activists are listened to and invited to working groups and conferences that seek to determine Afghanistan's future. It is also necessary to systematically monitor threats and attacks

against human rights defenders, and more widely against fundamental freedoms, and be prepared to robustly – but not naively – engage cases of individual and systemic violations of these freedoms.

6.4 Accountability and Transitional Justice

Transitional justice – addressing past violations – is often described from a victim-centred perspective. However, it also has a *political* justification: by curbing the power of those who committed the worst war crimes and human rights violations during the conflict, it seeks to secure the integrity of new political and governance structures. Promoting accountability for war crimes has been viewed as potentially destabilising in Afghanistan throughout the past decade's reform processes. As a consequence, the international community has funded the 'reforms' of a system that cannot protect itself against corruption and abuses of power. The most striking example is the drafting and adoption by parliament of the National Reconciliation, General Amnesty and National Stability Law (published in the *Official Gazette* in 2009). With few exceptions, the law provides blanket amnesty for all those involved in past and present Afghan conflicts. The law is a violation against Afghanistan's obligations under international law, but it is also a constant political reminder to what extent impunity has gotten its foothold in Afghanistan.

The AIHRC and Afghan civil society organizations have consistently emphasized the importance of accountability and the link between past and present violations. Important results have included the AIHRC's national consultation on transitional justice (2004),²⁸ resulting in the adoption of the Afghan government's action plan for Peace, Justice and Reconciliation (2005). More recently the AIHRC has conducted a massive documentation of war crimes in Afghanistan 1978–2001, which is expected to be published soon. Afghan civil society organizations have advocated for attention to justice in the reconciliation process and are working towards establishing a national network for Afghan war victims. Prosecutions based on universal jurisdiction in the UK and the Netherlands, and the ongoing preliminary investigations of the International Criminal Court (ICC), are also reminders of the international obligation to prosecute war crimes and crimes against humanity.

²⁸ 'A Call for Justice', AIHRC 2004.

Key steps for the international community should then be to support both the publication of the AIHRC's report on documenting war crimes and the implementation of the report's recommendations. Monitoring, documentation and truth-seeking is an important part of any transition from conflict to peace; the Commission's report is then an important contribution to this goal. There is a need to seek ways to safeguard evidence of war crimes, including the protection of mass graves, and to continue to put pressure on the Afghan government to abolish the amnesty law, which is contrary to Afghanistan's commitments under international law as well as international customary law. So far the threat and the actual use of universal jurisdiction has been underestimated as effective tools towards accountability. Afghans with alleged records of war crimes should not be able to feel comfortable when travelling abroad. The ICC should also be encouraged to commit more resources to its preliminary investigation on Afghanistan.

7. AN AFGHAN PEACE PROCESS

What Afghanistan needs is a political settlement that brings the insurgents and key political and social forces, including civil society, on board – the latter as a non-radical/Islamist political stabilising factor for any post-2014 order; as opposed to a one-sided Karzai-Taliban deal that would not address the root causes of the conflict. In this context, a political settlement should not be seen as synonymous with 'reconciliation', which is a much broader, societal process of bridging decades-old conflict lines and of healing wounds inflicted during this period; it would, however, contribute to paving the way for genuine reconciliation.

A long-term international engagement greatly increases the chances that such a political settlement could succeed and can provide a framework for a sustainable reconciliation process between the different key players in the various rounds of civil war and their victims. In the short term, the appointment of an independent mediator facilitated by the UN, the EU or a group of emerging economies (Brazil, Indonesia, South Africa, Korea and others), but with strong support from the US, could help to structure and bring this process on its way.

The environment to start negotiating a peace deal with the Taliban has, however, deteriorated during 2011. The high-profile assassination of the chairman of the High Peace Council (HPC), former

Afghan President Professor Burhanuddin Rabbani, on 20 September 2011 in Kabul and the lack of public signs on the part of the Taliban seem to work against this option, as well as the US kill-or-capture campaign against mid-ranking insurgents. The latter is seen as highly successful by the US military, while the Taliban perceive it as a declaration of war and a sign of a lack of readiness to look for negotiations. The Rabbani killing, on the other hand, has increased general scepticism towards the prospects of meaningful talks amongst numerous Afghan and international actors, and even the Karzai government – hitherto the clearest proponent of talks – announced a review of its strategy.

But the situation is less clear-cut than this. There is no conclusive proof yet that the Rabbani assassination was organised by the Taliban as a whole, as opposed to 'rogue elements' (Inter-Services Intelligence-driven or not), or that it even originally targeted him, just as it is not clear whether it really proves that there is no interest in talks at all. It is the experience from other peace processes that steps in the right direction also bring spoilers out of the woodwork. The participation of Tayyeb Agha, a figure deemed to be very close to Mullah Omar, in the German-triggered exploratory talks up to this summer (before his name was leaked and the talks seemed to have stalled), seem to indicate that the Taliban leadership at least considers talks an option.

Secondly, the Kabul government's new position towards talks is unclear, due to conflicting statements – ranging from a full (but maybe only temporary) stop of all contacts to a re-channelling to (or though) Pakistani institutions. So far all indications are that talks with the Taliban are not completely off the table for the Kabul government.

The US's 'fight, talk, build' approach is often presented as being in support of a political solution, but it is more likely to be counterproductive in the context of an insurgency that has deep roots in (parts of) Afghan society, is more than a terrorist fringe group, and whose persecution leads to continuous 'collateral damage'. Despite the high number of 'kills', the military-centred strategy applied so far has not worked. It has only pushed the influence of the Taliban back in a limited number of districts, and even there it is not clear whether this is irreversible. The Taliban have so far been able to compensate losses without losing momentum and still exert direct or indirect control or influence over vast parts of the country. The military-focused

strategy, therefore, is deepening the causes of the crisis rather than alleviating them.

Although there are indications that the Taliban movement may be fracturing, there are no indications that it has become so heterogeneous that talks cannot bring a meaningful result and should therefore not be tried. The 'Quetta Shura Taliban' are still the strongest and most influential in Afghanistan. In order to prevent the 'hawks' amongst the Taliban (including amongst the Haqqanis) from taking over, those still pondering talks as an option should be engaged and, hopefully, strengthened by such contacts.

Pakistan's support for the Taliban is not the only cause for their influence. The second part of the story is internal and consists of the 'grievances and frustrations' caused by bad governance and predatory behaviour that have both become systemic in the government. Any political settlement needs to be comprehensive, and it will not be viable unless it is supported by a majority of Afghans across the political and social board. This will only be the case when the causes of conflict are addressed. At the same time, it is crucial that negotiations are not seen as (and are not) a capitulation or a sell-out to Pakistan.

One crucial element would be a clarification of what the US really wants to achieve. Clinton's description of the 'fight, talk, and build' policy is different from Ambassador Crocker's approach that '[t]he Taliban needs to feel more pain *before* you get to a real readiness to reconcile them.'

It would be advisable for the international community to prioritise a comprehensive political solution over attempts for a military solution. This would include efforts to:

- help (or push) the Kabul government to bring its own people on board;
- create a mechanism for finding a genuine national consensus about the 'whether' and the 'how' of talks (the Peace Jirga and the recent Traditional Loya Jirga have not fulfilled this task) and about what else needs to be done to prevent a new and even more brutal post-2014 civil war;
- make sure that Karzai respects the constitution in 2014 and does not run for a third term;
- ensure that Afghan people have a real choice then, not just face a handpicked successor;
- start reforming and making the current government more inclusive (and strengthen it by that);
- help in creating a political middle ground.

The international community should also face its own mistakes and stop fuelling corruption and impunity.

The priority is to move towards a peaceful solution and to lower the level of violence. A more effective High Peace Council (HPC) could play a role in this regard, particularly if it was strengthened through the addition of respected Afghans with an expertise in peace and negotiations – either directly or as part of an independent contact group that informs the HPC. The body needs to be perceived as neutral, not as pro-government or government-driven. Local negotiating efforts should be combined with, preferably internationally led by, Track II channels and a regional dimension in order to secure guarantees for a negotiated settlement.

Important concrete steps that can be taken before 2014 include the creation of a political office abroad, among others to ‘liberate’ the Taliban from Pakistan (while ensuring that the family members of its personnel are adequately protected); implement local or broader ceasefires (with or without announcement); and include (locally acceptable!) Taliban in local administrations (as opposed to handing over areas) without forcing them to surrender. The need to find local solutions in the fields of employment and income, access to water, education or health – often unpolitical day-to-day work – may create common ground between adversaries and could be a more constructive and sustainable integration than just throwing money after ‘reconciled’ insurgents and letting them sit around idly – like examples from Badghis, Kandahar, etc, show. When talks have started, or seem promising, it may be possible to create ‘no attack zones’ in areas inside Afghanistan that are already controlled by the Taliban (along the Colombian model) where they can prepare for a political approach, in exchange for their eschewal of attack operations. This will also require a stop of the US/ISAF kill-and-capture operations, at least in those areas.

NGO activities in contested areas should be encouraged, not curbed, and independent humanitarian actors should under no circumstances be forced to take sides.

In the long run, the most sustainable basis for a peaceful future is formed by a broadening of the political space and a depolarisation of regional relations. The strengthening of political parties, civil society groups, trade unions and independent media will be crucial, as will the establishment of the rule of law and the fulfilment of the demands

for justice. The nascent Istanbul process provides important opportunities to improve bilateral relations between Afghanistan’s immediate and ‘near’ neighbours.

7. STRATEGIC PARTNERSHIPS AND REGIONAL COOPERATION

7.1 The Regional Context and Its Disputes

There has so far been no concerted political process to manage the regional disputes that have contributed to instability in Afghanistan. Consequently, there is still no practical formal framework or forum for dialogue among Afghanistan, key regional stakeholders, and the main international actors to develop a political agenda for constructive regional cooperation. The recent Istanbul conference, organised by Turkey, has only been a first step on this long road.

In days gone by, Afghanistan was known as the ‘land bridge of Asia’ and was a central part of the Silk Route. Both the Afghan government and the international community have expressed, at various times, a vision for Afghanistan to reclaim this role and once again become the main conduit for trade between its near and far neighbours. This normative vision continues to form the basis for regional cooperation in today’s Afghanistan but overlooks the consequences of four decades of conflict on Afghanistan and the rising efficiency of sea trading. Accordingly, a new vision for Afghanistan’s place in the region is required, a vision grounded in today’s realities.

This new vision must acknowledge that in the current regional context, even the most straightforward economic and energy aspects of cooperation are inhibited and overshadowed by the political conflicts within the region. Necessary improvements in the situation include, but are not limited to, agreement over the border between Afghanistan and Pakistan (the Durand Line), agreement between India and Pakistan over Kashmir (and nuclear build-up of arms), and a thawing of US and Iran relations. It is however unrealistic to expect that the normalization of Afghanistan’s regional relations can be put on hold until the key drivers of regional instability are

resolved. Instead, what is required are concrete mechanisms that facilitate stability (beyond the more domestic initiatives of ‘transition’ and reconciliation), even while the issues listed above remain unresolved. Even gradual improvements of bilateral relations between regional countries will contribute to an easing of tensions around Afghanistan.

7.2 What Does This Mean in Practical Terms?

Although there has been a lot of talk about the impending transition and withdrawal of (most of) the international forces, there is a great lack of clarity over the substance and intentions of the policy of the US and its allies with regard to Afghanistan and the region. Although the US government maintains that it has little interest in having long-term military bases in Afghanistan, the Afghan government has made it clear that it wishes to have a long-term partnership agreement with the US, and there seems to be a certain inevitability that it would seek, and the US would agree, to having an enduring US military presence in the country. This, however, may not be in the form of ‘permanent US bases’ but rather as ‘partners’ in joint military installations or as being ‘hosted’ on Afghan military installations. It is understandable then, that the US’s mixed messages have been met with some scepticism in the key regional capitals of Islamabad, Tehran, Moscow, Beijing and the Central Asian States. In this context, the Strategic Partnership Agreement (or Declaration; SPA/D), currently being negotiated between Afghanistan and the US, needs to clarify the nature of long-term US military assistance beyond 2015. It should, further, extend beyond the military sector and offer a basis for broad collaboration in other fields, such as long-term economic and technical assistance.

If such an arrangement can be reached between the Afghans and Americans, it will need to take into account the concerns of key regional stakeholders, and it will need to persuade regional capitals that the SPA/D is limited to facilitating the conditions for a more stable and secure Afghanistan. This will not be easy, because it could easily be interpreted as a US effort to threaten Russia and Pakistan, control China, isolate Iran and increase US influence in Central Asia. It is in this context that Turkey and the UN, as well as the EU and likeminded countries, could play an important diplomatic role. For example, in the absence of bilateral relations between Iran and the US, countries like Norway, Germany and Sweden –

with sound relations with both states and a commitment to Afghanistan – could facilitate dialogue and build confidence between Tehran and Washington.

Regional capitals will need to know about the nature and posture of the US presence – will it be limited to training and equipping the ANSF, or will the US seek to maintain a strategic force capable of pursuing its interests in the fight against terrorism and regional nuclear ambitions? In the absence of a strong, unified regional organization, a question remains over the possibility of a verification regime. Will Afghans and regional neighbours have access rights to conduct routine inspections of these facilities or would it fall to the UN to play a monitoring role to facilitate a regional verification program? How the US and Afghans answer some of the fundamental questions about a US military presence will play a defining role in shaping the nature of the response by regional capitals to an SPA/D in Afghanistan and, ultimately, whether there will be constructive regional cooperation or ongoing regional competition. Given the sensitivities among some neighbouring countries about the lead role of the US on both security and political matters, there is a role for other actors – the UN, the EU or individual European countries – to take a stronger position that would appease those concerned.

8. CONCLUDING COMMENTS

As noted in the introduction, the assumptions on which this paper is based may turn out to be wrong. It is by no means impossible that the situation in Afghanistan will radically change before 2014, and if it changes it will most likely be through an escalation in the conflict with the potential of further destabilization in the region. Sustainable stability in Afghanistan should therefore be a priority for both the region and the wider international community. While none of the actors have the ability to control developments in Afghanistan, the international community can influence them to the better or worse. A robust and long-term political engagement, through which the international community engages with the Afghan government and the wider Afghan society as a serious – and when needed critical – partner, is key to ensuring that the influence is for the better.

This requires an engagement that addresses the root causes of Afghanistan’s decades-long conflicts rather than just its symptoms (of which the ever-growing post-2001 insurgency is one) and is

inclusive and recognises not only the complexities of Afghan society but also the fact that the NATO-led international engagement has significantly contributed to the current complicated situation in the country. It might even require a re-assessment of the very basic assumptions of the transition process, including its timeline.

This will involve continued – and well-monitored – development assistance at a higher level than in the average ‘third world’ country. Priorities for international involvement include establishing sufficiently trained, equipped and disciplined security forces, a basic but functioning government system, adequate oversight mechanisms, the protection of basic rights, a reduced level of poverty, increased public revenues and a manageable level of regional discord. A better

calibrated system of development assistance (including the awarding of large contracts) in the absence of a large military presence will, moreover, help address the pervasive imbalances in power that come from huge income streams and close relations to the international military. The expected post-2014 drop of aid levels will require anticipatory measures, including possibly the establishment of a development trust fund into which resources might be channelled that currently cannot be efficiently used (or which have been committed but not yet been disbursed). Ensuring transparency in the functioning of such a trust fund, as well as inclusiveness in its oversight mechanisms, is important.

ABOUT THE AFGHANISTAN ANALYSTS NETWORK (AAN)

The Afghanistan Analysts Network (AAN) is a non-profit, independent policy research organisation. It aims to bring together the knowledge and experience of a large number of experts to inform policy and increase the understanding of Afghan realities.

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