

## Background

Governance reform is crucial for the stability of Afghanistan. Ineffective institutions and rampant corruption have been repeatedly cited as key sources of frustration for many Afghans<sup>1</sup>. Yet such governance transformation takes time and requires improvements to other areas including security and the economy. The National Unity Government, though clearly more reform-oriented, faces issues characteristic of a coalition government in a fragile state. This was most readily demonstrated by the delayed formation of government and prolonged deliberations over cabinet minister nominations earlier this year. Thus, the long term support of international partners is crucial if Afghanistan is to obtain lasting good governance.

## Progress

Since its establishment, the National Unity Government (NUG) has shown a strong political will to improve governance in Afghanistan. President Ghani frequently cites his and CEO Abdullah's shared vision to tackle corruption and improve accountability. While the re-opening of the Kabul Bank case was 'symbolically important'<sup>2</sup>, many Afghan anti-corruption experts believe the court verdict has yet to result in the recovery of the lost financial capital and the diminishing of mistrust. Other anti-corruption efforts, including investigating the Ministry of Defence's fuel contracts and Ministry of Urban Development Affairs' embezzlement allegations, are also steps in the right direction.

The NUG has taken steps to expand the space for civil rights, particularly through engaging Afghan civil society in many important decisions. These consultations, mostly in the form of ad hoc high level meetings, have created a valuable platform for civil society views to be voiced and considered. As an example, the Ministry of Information and Culture decided to abolish the Media Complaints Commission, which many viewed as an impediment to press freedom in Afghanistan, following productive meetings between media activists and the CEO.<sup>3</sup> Another factor that is expected to expand the space for civil activism is the enforcement in December of the Right to Information law.

Civil society has also been given a say in local oversight and reporting. In September 2014 the Independent Directorate of Local Governance (IDLG) issued guidelines to all provincial governors calling for more evidence-based and analytical monthly reporting on security, governance, development and other sectors. Their responses could inform the Central Government's decisions. The guidelines also instruct that a civil society representative be included in the Senior Officials Committee that oversees the finalisation of such reports in every province. This is a positive step towards inclusivity and transparency.

In the justice sector, the nomination of Anisa Rassouli as Afghanistan's first female Supreme Court judge was a sign of increased political will for women's inclusion in that sector. The appointment of more female ministers is another good example of the will to include women in senior positions.

## Challenges

**Afghans affected by lack of effective governance:** The late appointment of cabinet ministers and provincial governors has affected governance in many ways. Afghan Government ministries are failing to effectively carry out their programmes as evidenced in their low budget execution rates. Though the National Unity Government has demonstrated serious commitment to organisational and other reforms that may result in more effective governance, ongoing capacity and procedural challenges continue to hamper effectiveness. In June 2015, the Minister of Finance reported that only 17% of the total development budget had been spent in the first five months this fiscal year<sup>4</sup>. This raises concerns that there will be severe disruption to services.

Public confidence in government ministries in the last two years has decreased. The Asia Foundation 2014 survey shows that 47% of respondents were confident that the government ministries are doing their job while a higher percentage - 57% and 53% - were confident that the national and international NGOs were doing their jobs respectively<sup>5</sup>.

Against this backdrop, the Government of Afghanistan's decision to delay the beginning and/or resuming of major programmes are likely to severely impact service delivery. A prime example is NSP III which is due to finish in September 2015. Delays in agreeing on the design of the next phase of the NSP have led to speculation that it will not be resumed until spring 2016. Other examples are the EU-funded FARM and Natural Resource Management projects, which are likely to be delayed until mid 2016 and 2017 respectively. This in turn will lead to a loss of experienced staff to administer the programmes, if and when they resume, and further difficulties for those requiring the services.<sup>6</sup>

**Corruption still a big obstacle:** Afghanistan remains one of least transparent countries in the world. In 2014 Transparency International found Afghanistan's public sector to be the fourth most corrupt. This has severe implications for the delivery of public services and economic development. The Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) found evidence of persistent nepotism in the Ministry of Foreign Affairs' recruitment and benefits<sup>7</sup>. They also found systematic malpractices in the disability pensions at Ministry of Labour, Social Affairs, Martyrs and Disabled, where eligibility assessments of pension applicants can take up to 3 years<sup>8</sup>. Other forms of corruption in elected bodies, private sector, international aid and dealings with insurgents are rampant in Afghanistan<sup>9</sup>.

**Frail sub-national governance:** Decisions about budget and programmes continue to be highly centralised. The involvement of provincial and district departments in budgeting decisions are generally limited. Even though actual services are provided at the local level, ministerial budgets are not generally broken down by provinces, and provincial allocations are only made after the budget is enacted<sup>10</sup>. Despite attempts to improve provincial budgeting for many years, these issues linger on.

Provincial line departments mostly receive their funds from and report to line ministries in Kabul instead of the provincial governor. This has minimised the role provincial governors can play in public policy decisions. It is therefore unsurprising that Afghans increasingly distrust the abilities of provincial governors to solve their problems. A recent survey finds that public satisfaction about provincial government's performance in 2013 and 2014 have been 68%. This represents a 12% drop compared to 2011 and 2012<sup>11</sup>.

**Weak and exclusive justice sector:** The justice sector in Afghanistan remains frail, opaque, and inaccessible. Failure to use existing laws, especially progressive ones such as the Elimination of Violence Against Women (EVAW) law, in court verdicts is unfortunately routine. While many attribute this to lack of awareness among judges about these laws, anecdotal evidence suggests that in certain cases, judges intentionally resist using these laws because they found them at odds with their conservative interpretations. Where laws are used, the process is often unnecessarily prolonged by over-bureaucratic procedures, which in turn leads to corrupt practices. In more insecure provinces, there are often no active courts outside the provincial centres<sup>12</sup>.

The majority of Afghans rely on informal justice processes as they are simpler, more accessible and more acceptable in conservative areas. Nonetheless, there is limited knowledge about the fairness and credibility of the informal justice sector. Some cases reveal the application of misogynist norms, such as the exchange of women for settling disputes. It is clear that the lack of a transparent and efficient justice sector has disproportionately hindered women's rights.<sup>13</sup> Their participation in the justice sector is also unacceptably low. In 2013 only 8% of judges, 6% of prosecutors and fewer than 20% of lawyers were women<sup>14</sup>. Afghan civil society more often than not views the justice sector as the one in most immediate need of reform.

**Fears about the resource curse:** The extractive industry has the potential to generate economic growth and development to benefit the Afghan people and reduce Afghanistan's aid dependency in the long run. It is nonetheless a double-edged sword, which could also create many new conflicts. Insecurity, illegal mining, patronage, few and tokenistic social consultations, child labour and the weak capacity of government to enforce mining contracts, are among many of the hindering factors.

Afghanistan has released the majority of its mining contracts, including the publication in May 2015 of the major Mes Aynak copper contract. But it has not, so far, created a world-class framework for good resource governance as promised. Despite the extreme risks around the extractive sector, many basic elements of international good practice have yet to be implemented. These include automatic publication of contracts, beneficial owners, and payment and production figures; stronger protections for local communities and their involvement in monitoring; and safeguards against abuses from security forces involved in mining. It is so far unclear whether planned amendments to legislation will address these issues.

**The space for civil activism needs expansion:** The involvement of Afghan civil society in national decisions and policies has yet to be systematic. As Afghanistan and its international partners deliberate the country's national priorities in the Senior Officials Meeting in September 2015, many CSOs are concerned about how the input of civil society will be collated and taken into account in this meeting. The ad hoc meetings between government officials and civil society representatives have at times substituted for much needed rigorous and robust nationwide consultations, casting a tokenistic shadow over civil society's input in important national processes.

The enforcement of the Access to Information Law faces multiple generic and specific challenges. Given that the norm for Afghan governments has been one of information control, the implementation of the Access to Information law will require considerable political will in the capital and provinces. Such will has not been exhibited so far. On the contrary, the Ministry of Information has recently restricted the provision of information to journalists on the grounds of national security. Journalists fear that in the absence of clear mechanisms to classify information, many government agencies will use the same excuse to abstain from disclosing information. Other challenges such as poor record keeping, archiving and information generation affect the quality of information provided.

**BAAG's recommendations to the UK Government:**

- 1. To ensure that governance meets the needs of Afghan citizens,** push the Afghan Government for the immediate resumption of existing programmes that have gained broad support among donors and government agencies, including the fourth phase of the NSP.
- 2.** Assist the Afghan Government to remove barriers to the effective spending of the budget including streamlining the procurement processes and expanding provincial budgeting.
- 3.** Where the Afghan Government does not have the capacity or access to implement projects, support their implementation by local and International NGOs.
- 4. To effectively fight corruption,** advocate for the Afghan Government's adoption of a stronger legal and policy framework for fighting corruption, including measures such as vetting of senior public officials and requiring them to publish annual asset declarations; making procurement contracts valid only after their publication; and instituting Open Contracting across government. Government officials engaging in corruption, especially those at higher levels should be prosecuted; to demonstrate the government's commitment to tackling this issue.
- 5. To improve governance at the local level,** support the Afghan Government to promote local governance by clarifying the responsibilities and reporting lines of all layers of sub-national governance bodies and by increasing the role of local authorities in public policy decisions.

6. **To improve the provision of justice**, reform the *Stage* process (judicial service entry examination) to strengthen the appointments process; institute open trials; invest in better case management; enforce the judicial Code of Conduct; and push the Afghanistan Supreme Court to issue enforceable guidelines to all judges so they use existing laws better especially the law on the Elimination of Violence against Women. Also, support the Government's efforts in ensuring a greater role for women and other marginalised groups in the justice sector.
  
7. **To reduce the harmful effects of the extractive industries**, urge the Afghan Government to fulfil their commitment to put in place a strong legal and regulatory framework for mining. This should include: amending the law so that extractive contracts are only valid once they have been published; requiring publication of beneficial ownership and of payment and production figures; implementation of Open Contracting for the extractive sector and across government; stronger protections for local communities and their involvement in monitoring; use of publicly-developed model contracts; a single, transparent account for natural resource revenues; stronger safeguards against abuses from security forces and armed groups involved in mining; and a special focus on mining areas within broader security strategy.
  
8. **To expand the people's role in governance**, establish the Oversight Committee enshrined in the Right to Information Law and pressure ministers to ensure their ministries provide accurate and reliable information to media and citizens. Ensure that citizens' views, especially marginalised provincial ones, systematically inform national policies such as the ones which will be discussed in the Senior Official Meetings later this year. Ensure that work to reduce political exclusion and promote civic engagement by youth, women and other marginalised groups, is paired with meaningful governance reform.

<sup>1</sup> Mercy Corps (2014) *Youth and Consequences – Unemployment, Injustice and Violence*: [https://www.mercycorps.org/sites/default/files/MercyCorps\\_YouthConsequencesReport\\_2015.pdf](https://www.mercycorps.org/sites/default/files/MercyCorps_YouthConsequencesReport_2015.pdf)

<sup>2</sup> Afghanistan Analysts Network (2014) *AAN Podcasts: Martine van Bijlert talks Kabul Bank*: <https://www.afghanistan-analysts.org/aan-podcasts-martine-van-bijlert-talks-kabul-bank/>

<sup>3</sup> See BAAG Policy Position Paper on Human Rights for more details.

<sup>4</sup> Tolo News (2015) *Dari Article, Minister of Finance*: <http://www.tolonews.com/fa/afghanistan/19801-ministry-of-finance-says-revenue-collection-target-surpassed>

<sup>5</sup> The Asia Foundation (2014) *A Survey of the Afghan People* <http://asiafoundation.org/country/afghanistan/2014-poll.php>

<sup>6</sup> See BAAG Policy Position Paper on Service Delivery for more details.

<sup>7</sup> MEC (2015) *Irregular Hiring and Personnel Practices in the Ministry of Foreign Affairs*: [http://www.mec.af/files/2015\\_06\\_03\\_MOFA\\_Paper\\_\(English\).pdf](http://www.mec.af/files/2015_06_03_MOFA_Paper_(English).pdf)

<sup>8</sup> MEC (2015) *Vulnerability to Corruption Assessment of the Payment System for Martyrs and Persons Disabled by Conflict* [http://www.mec.af/files/2015\\_06\\_03\\_MOLSAMD\\_VCA\\_\(English\).pdf](http://www.mec.af/files/2015_06_03_MOLSAMD_VCA_(English).pdf)

<sup>9</sup> The Asia Foundation (2012) *The Growing Challenge of Corruption in Afghanistan: Reflections on a Survey of the Afghan People, Part 3 Of 4*: <https://asiafoundation.org/resources/pdfs/FNLcorruptionchapterOccasionalPaperJuly30.pdf>

<sup>10</sup> World Bank and DFID (2010) *Working Paper 3 for Afghanistan Public Expenditure Review*: <http://siteresources.worldbank.org/AFGHANISTANEXTN/Resources/305984-1264608805475/6739619-1276813833351/Paper3.pdf>

<sup>11</sup> The Asia Foundation (2014) *A Survey of the Afghan People* <http://asiafoundation.org/country/afghanistan/2014-poll.php>

<sup>12</sup> SIGAR (2014) *23rd Quarterly Report, April 2014*: <http://www.sigar.mil/quarterlyreports/index.aspx?SSR=6>

<sup>13</sup> See BAAG Policy Position Paper on Women's Rights for more details.

<sup>14</sup> IDLO (2014) *Women's Professional Participation in Afghanistan's Justice Sector: Challenges and Opportunities*: [http://issuu.com/idlonews/docs/idlo\\_afghan\\_report](http://issuu.com/idlonews/docs/idlo_afghan_report)