

Afghanistan: Ambiguity of Situation versus Transition Process

By Farhad Arian

Source: The Afghan Institute for Strategic Studies

Saturday, 22 December 2012

PAPER Summary

The paper presents fresh analysis of the volatility of the situation and of the transition process in Afghanistan by critically examining the situation of security, human rights, the rule of law and corruption as the main indicators of serious challenges, undermining the transition process. The paper particularly highlights the inability of the government of Afghanistan to effectively address the current challenges associated with insecurity, human rights violations, the rule of law weaknesses, and widespread corruption.

INTRODUCTION

After more than ten years of the presence of international troops, the situation in Afghanistan still is highly volatile in terms of security, human rights, the rule of law, and socio-economic development. Many observers of Afghanistan anticipate that the situation worsens as the international community has accelerated the transition process. The international community and the government of Afghanistan have agreed that full responsibility for security would be handed over to the Afghan National Security Forces (ANSF) by the end of 2014. The transition process is considered as the last opportunity to pave the way for reinforcing an effective and democratic political system in Afghanistan. While the transition process is currently underway, there are serious concerns about the ability and commitment of the Afghan government to fulfil its obligations properly to improve security and human rights, to ensure the rule of law, and to fight the widespread corruption. Such concerns are multiplied by the poor record of the Afghan government in the last decade as it was incapable of effectively

improving the overall situation of security, human rights, the rule of law, and governance.

As the international community has accelerated the transition process, lack of access to reliable sources of data on the situation of Afghanistan is a matter of central concern, preventing the world to properly understand the potential challenges. Much of the information that is available is subject to large margins of uncertainty, incompleteness, and incomparability. The difficulty in collecting reliable data has resulted in a variety of miscalculations in academic and policy-making circles when assessing the situation of Afghanistan. For that reason, there is an immediate need for more critical research based upon reliable data to realistically evaluate the volatility of situation in Afghanistan with distinct focus on the potential challenges of the transition process.

In this paper, not only will the volatility of situation in Afghanistan be evaluated, but also the potential challenges of the transition process will be examined. While presenting fresh analysis of the volatility of the situation and of the transition process, the paper will critically focus on security, human rights, the rule of law and corruption as the main indicators of serious challenges, undermining the transition process. The paper will particularly highlight the inability of the government of Afghanistan to effectively address the current challenges associated with insecurity, human rights violations, the rule of law weaknesses, and widespread corruption. The paper will conclude that the current challenges significantly undermine the effectiveness of the transition process as the last opportunity to maintain last decade's achievements, sustain state institutions, and reinforce an effective democratic government. In its conclusion, the paper will also present a number of policy-related recommendations to the international community and the Afghan government to properly respond to the current challenges.

SECURITY SITUATION AND POLITICAL STABILITY

Political and security environment remains extremely ambiguous in Afghanistan. Such a situation significantly threatens the country's fragile achievements in the last ten years. Talking about the improvement of security situation is extremely arguable as

the Taliban and other insurgent groups have continued to expand armed conflict and demonstrate their reach across the country. A recent report by UNHCR reveals that the volatility of the situation in Afghanistan has severely affected some 1.3 million people, including newly returned refugees and internally displaced persons (IDPs)¹. Contrary to the claims of many from the international community and the Afghan government, there are still serious concerns about the safety of a large number of the population since their lives are regularly threatened by the Taliban, other insurgents, warlords, drug lords, and criminals². Such concerns are growing as the international community will soon transfer its security responsibilities to the ANSF which is incapable of effectively protecting the lives of Afghan citizens. To draw a clear picture of the political and security situation in Afghanistan, this part of the paper will examine the Taliban-led insurgency; lack of a strategy towards Pakistan; ill-trained ANSF; ambiguity about the number of the ANSF; uncertainty over the international commitment; the dominance role of warlords; and uncertainty about the 2014 Presidential election.

First, the persistent presence of an active insurgency led by the Taliban is the most serious challenge, threatening the achievements of the last ten years. The security situation is getting worse on a regular basis as the government of Afghanistan lacks a comprehensive strategy to effectively deal with the Taliban and other terrorist groups. Due to the lack of a comprehensive strategy, the Afghan government has failed to reconcile and reintegrate even a small number of the insurgents³. More confusingly, while the majority of the population, including civil society representatives, human rights activists, political parties, parliamentarians, and a significant number of government officials publicly consider the Taliban as the enemies of the people of Afghanistan, President Karzai tirelessly calls the Taliban his “angry brothers”. President Karzai wrongly perceives that the Taliban are drawn into combat accidentally, and not ideologically, due to corruption and possibly other personal

¹ UNHCR Country Operations Report: Afghanistan, The UN Refugee Agency, 2012, <http://www.unhcr.org>, Viewed 15 November 2012.

² Wetland, Morton, The Situation in Afghanistan, Royal Norwegian Embassy in Kabul, 2012, <http://www.norway.org.af>, Viewed 15 November 2012.

³ Canas, Vitalino, Governance Challenges in Afghanistan, NATO Parliamentary Assembly, 2010, <http://www.nato-pa.int>, Viewed 11 October 2012. & Miller, Laurel and Perito, Robert, Establishing the Rule of Law in Afghanistan, United States Institute of Peace, 2004, <http://www.usip.org>, Viewed 10 October 2012.

reasons⁴. Thus, there are major concerns in Afghanistan about a possible power-sharing deal between Karzai and the Taliban which would bring the Taliban into power and pave the way for severe violations of human rights and individual freedoms.

Second, in the last ten years, Afghanistan has not been able to define its interests in its relationship with Pakistan. The Afghan government has failed to develop and implement a comprehensive strategy to effectively deal with the role of Pakistan in post-2001 Afghanistan. The inability of the government to clearly define the role of Pakistan has significantly contributed to the ambiguity of situation in the country. While Islamabad has partly been able to pursue its strategic goals and interests in Afghanistan, Kabul has failed to define its security and political interests in its relationship with Pakistan. This inability has enabled Pakistan to pursue its goals in Afghanistan by maximising the influence of the Taliban in the face of a weak Kabul government, maintaining “strategic depth” against an Indian invasion, and facilitating training and operations of Islamic extremist groups including the Taliban⁵. As a result of the reliance of the Afghan government on an unbalanced traditional strategy towards Pakistan, Kabul is in the lack of a clear view in how to deal with the role of Islamabad in the deterioration of security⁶.

Third, there is no evidence to prove that the ANSF is well-trained to effectively protect the people of Afghanistan across the country. There are numerous examples of the inability of the ANSF in providing necessary security protection for both ordinary people and employees of the government and international organisations. Despite complex security arrangements, influential pro-government people are regularly being shot and killed in Kabul and elsewhere in the country. A good example would be the recent assassination of Mullah Arsala Rahmani, a former Taliban official and a senior member of the Afghan High Peace Council on 13 May 2012 by an unknown

⁴Kilcullen, David, *The Accidental Guerrilla: Fighting Small Wars in the Midst of a Big One*, Oxford University Press, 2009, p. 263-64.

⁵Tadjbakhsh, Shahrbanou, *South Asia and Afghanistan: The Robust India-Pakistan Rivalry*, Peace Research Institute Oslo, 2011, p. 21-22.

⁶Hanauer, Larry and Chalk, Peter, *India's and Pakistan's Strategies in Afghanistan*, RAND Center for Asia Pacific Policy, 2012, p. 26-27.

gunman who then escaped⁷. The assassination of Mr Rahmani once again raises the argument that while the Afghan government is incapable of protecting its senior officials, how would it justify protecting the lives of millions of Afghan people who live with no protection from the ANSF. Such incidents cause significant concerns among Afghanistan's populations and prove wrong the claims of the international community and the Afghan government that the ANSF would be capable of effectively protecting the people and securing the country.

Fourth, in the last ten years, neither the international community nor the Afghan government has been able to give firm assurance about the number of the ANSF to be trained. While in the early years of the presence of the international troops the United States and its allies agreed to create a 70,000-strong army, the target number grew rapidly in 2007 and 2008 without any genuine commitment of the necessary funding or personnel⁸. The ambiguity about the Afghan police force was even worse because there were approximately 95,000 men wearing police uniforms in 2009, and almost half of them had never received any training⁹. The target number of the ANSF once gained changed to a combined force of 400,000 due to the expansion of the insurgency by mid-2009. The new target number nevertheless did not last very long and subsequently in 2011 Afghan government and its international allies decided to create a combined security force of 352,000 by the end of 2014¹⁰. The unpredictable changes in the number of the ANSF and less attention to funding such a large security force with no existing military structures, widespread illiteracy and ongoing insurgency has further contributed to the ambiguity of the situation in Afghanistan.

Fifth, as the transition process is underway and the withdrawal of international combat troops will be completed by 2014, there are serious questions over the commitment of the international community in post-2014 Afghanistan. The withdrawal of international forces is a matter of central concern since the state institutions in Afghanistan are heavily dependent on their consistent support to

⁷Nordland, Rod and Sukhanyar, Jawad, Member of Afghan Peace Council Is Assassinated, The New York Times, 2012, <http://www.nytimes.com>, Viewed 12 September 2012.

⁸Chandrasekaran, Rajiv, Afghan Security Force's Rapid Expansion Comes at a Cost as Readiness Lags, The Washington Post, 2012, www.washingtonpost.com, Viewed 20 November 2012.

⁹ibid. Chandrasekaran, Afghan Security Force's Rapid Expansion Comes at a Cost as Readiness Lags.

¹⁰ibid. Chandrasekaran, Afghan Security Force's Rapid Expansion Comes at a Cost as Readiness Lags.

prevent an immediate collapse¹¹. The uncertainty over the long-term commitment and continuous engagement of the international community will likely cause considerable unrest, increase instability, and deepen existing vulnerabilities. Such concerns are multiplied in the absence of an inclusive political process focused on peace and reconciliation with the Taliban and other insurgents. Many observers seriously question the ability of the Afghan government to sustain in the absence of considerable political, military and economic support from the international community¹². However, though the reassurance of the commitment of the international community would reduce the level of ambiguity, the inability of the Afghan government to effectively respond to security threats caused by the insurgents still remains a central concern, preventing the world to help Afghanistan survive in the post-2014 period.

Sixth, the overwhelming presence of warlords, drug lords and criminals in state institutions is a further contributing factor to the insecurity in Afghanistan. The association of the government of President Karzai with popular warlords became very visible as he decided to run for the 2009 presidential election with the direct support of well-known warlords from the four major ethnic groups of Pashtuns, Tajiks, Hazaras and Uzbeks. Ironically, despite the continuous efforts of the international community to marginalise warlords and despite the regular criticisms from the Western allies of Afghanistan, in the post-2009 period the majority of senior government positions have been filled by either warlords or those who are associated with them¹³. As a result of the overwhelming control of warlords over population through force and intimidation and by Cabinet ministers, provincial governors, militia commanders, police chiefs and other power-holders, there is no hope for Afghanistan's people to trust and rely on the government for their protection¹⁴. The government of Afghanistan is more likely the representative of the interests of a group of powerful lawbreakers rather than serving the interests of the people.

¹¹Afghanistan: Consolidated Appeal, UN Office for the Coordination of Humanitarian Affairs, 2012, p. 2-3, www.unocha.org, Viewed 29 November 2012.

¹²ibid. Afghanistan: Consolidated Appeal, UN Office for the Coordination of Humanitarian Affairs, p. 17.

¹³Afghanistan Annual Report: Protection of Civilians in Armed Conflict, United Nations Assistance Mission in Afghanistan and Afghanistan Independent Human Rights Commission, 2011, pp. 1-2, <http://unama.unmissions.org>, Viewed 4 September 2012.

¹⁴ibid. Miller and Perito, Establishing the Rule of Law in Afghanistan.

Lastly, the 2014 Afghan presidential election will be crucial for the country's stability and security after the withdrawal of the international combat troops. The 2009 poll that gave President Karzai a second term were marred by allegations of massive fraud and vote-rigging, significantly undermining the legitimacy of the government¹⁵. Despite the fact that the Afghan Constitution limits Karzai's presidency to two terms, there are concerns that he might seek a way to remain in power or possibly appoint a family member to run as his proxy in the 2014 election¹⁶. Many observers of Afghanistan consider Karzai's government as a corrupt political establishment in the favour of his political allies and family members rather than respecting the Constitution of Afghanistan. However, though the improvement of security situation and political stability in Afghanistan would be partly reliant on the level of a transparent presidential election, there is no objective evidence that the Afghan government is committed to guarantee a free and fair election in 2014.

HUMAN RIGHTS

The overall deterioration of security has provided the Afghan government with the excuse to pay no attention to the protection and promotion of human rights. Despite the significant human rights achievements between 2002 and 2009 with the technical and financial support of the international community, from 2010 onwards the government of Afghanistan has evidently stepped back from the commitment to improve the situation of human rights. In the post-2009 presidential election, there is no such evidence suggesting that the Afghan government is still committed to take the human rights cause seriously and fulfil its international human rights obligations. The transitional justice and the human rights reporting processes are two evident examples of the unwillingness of Karzai's government to systematically promote and protect human rights in the country. For instance, though the government did report on three human rights treaties between the years 2006 and 2009, it has failed to make

¹⁵Amiri, Mokhtar, Afghanistan Election Planned for 2014, The Guardian, 2012, <http://www.guardian.co.uk>, Viewed 22 November 2012.

¹⁶Quinn, Patrick, Afghans To Elect New President in 2014, A Democracy Gambit in the Year of US-NATO Withdrawal, The Associated Press, 2012, <http://www.canada.com>, Viewed 28 November 2012.

even one report since the 2009 election¹⁷. To better examine the overall situation of human rights in Afghanistan, this part of the paper will focus the failure of the Afghan government in fulfilling its human rights obligations and implementing the transitional justice.

First of all, apart from the submission of a 2009 report on the overall situation of human rights within the Universal Periodic Review (UPR) mechanism, the government of Afghanistan has made no observable attempt to implement the recommendations made by the United Nations Human Rights Council. The Afghanistan UPR state report was prepared based on a national participatory process in which the Department of Human Rights & Women's International Affairs at the Ministry of Foreign Affairs of Afghanistan led the process with the necessary financial and technical support from the Dutch government¹⁸. In the UPR preparation process, a large number of stakeholders, including civil society organisations, national human rights institutions, Afghan legal/judicial agencies and relevant executive branches, made very significant contributions, which made the report more reliable and transparent¹⁹. However, after the submission of the report to the Human Rights Council in Geneva in May 2009 and receiving 143 constructive recommendations, the Afghan government entirely ignored the recommendations and took no further measures to fulfil its human rights obligations.

In addition, a second example of the lack of commitment in the Afghan government to fulfil its human rights obligations is the Afghanistan initial reporting process on the Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW). The CEDAW reporting process began in August 2009 and was primarily planned to finish in one year from the date of its commencement. Ironically, the CEDAW reporting process took three years to finish. The main reason behind the delay of preparing the report is most likely because the government has continually failed to stop severe violence against women such as rape, honour killings, early and forced

¹⁷ Bormann, Trevor and McAllister, Wayne, Afghanistan: Girl Power, Aljazeera English, 2012, <http://www.aljazeera.com>, Viewed 24 November 2012. & Afghanistan CRC Report, UN Committee on the Rights of the Child, 2011, <http://www2.ohchr.org>, Viewed 9 September 2012.

¹⁸ Afghanistan UPR Report, International Service for Human Rights, 2009, <http://www.ishr.ch>, Viewed 20 August 2012.

¹⁹ Afghanistan UPR Report, the UN Office of the High Commissioner for Human Rights, 2009, <http://www.ohchr.org>, Viewed 20 August 2012.

marriage, sexual abuse, and slavery across the country²⁰. There still are serious doubts about the transparency of the CEDAW reporting process and the reliability of the content of the report as well as many ongoing reports of abuses against women. Aside from the limited surveys on violence against women, there are numerous indicators such as media, police records and NGO reports, proving that the government pays no attention to stop such inhumane behaviours across the country²¹.

Moreover, the government of Afghanistan has also failed to effectively fulfil its obligations in relation to the promotion and protection of children's rights. The government of Afghanistan prepared an initial report on the Convention on the Rights of the Child (CRC) with the technical and financial support of the Norwegian government and the United Nations Children's Fund (UNICEF). The CRC report of Afghanistan was subsequently submitted to the UN Child Rights Committee in Geneva in 2009. The preparation and submission of the CRC report has nevertheless not contributed to the improvement of children's rights in Afghanistan as the government has not taken firm steps to consider the CRC as a legally binding instrument²². This is because the Afghan government has not systematically incorporated the CRC into Afghan legal system to nationally implement its provisions²³. There is no evidence to indicate that the government has any practical plans to implement the recommendations of the UN Child Rights Committee as a means of improving the situation of children's rights in the country. The consistent failure of the government in reporting to other human rights treaties and its ignorance of the recommendations to the UPR and CRC reports demonstrate the fact that Karzai's government is no longer committed to the cause of human rights in Afghanistan.

Lastly, after the fall of the Taliban regime in 2001, the government of Afghanistan never took the issue of transitional justice seriously as a means of addressing massive human rights violations in the past. Redressing the legacies of massive human rights abuses is central to the sustainable stability in Afghanistan because the people, who have experienced massive violations of their human rights such as disappearances,

²⁰Rahkola, M. Anne, Norden in Afghanistan: The Implementation of UNSCR 1325 in Nordic Engagement in Afghanistan, The Finnish 1325 Network, 2011, p. 9.

²¹ibid. Bormann and McAllister, Afghanistan: Girl Power & ibid. Afghanistan UPR Report.

²²ibid. Afghanistan CRC Report.

²³ibid. Afghanistan Annual Report: Protection of Civilians in Armed Conflict, pp. 1-2.

torture, mass executions, ethnic persecution and internal displacement, need to see the human rights violators are trialled and punished²⁴. In other words, the implementation of transitional justice in a sense of criminal prosecutions, truth commissions, reparations programs and various kinds of institutional reforms, would definitely recognise and respect the rights of victims to see the human rights violators punished, to know the truth, and to receive reparations²⁵. The implementation of transitional justice would help achieve genuine and long-lasting peace in Afghanistan as it helps people to deal with their past struggle, suffering and loss in order to move forward. However, there is no hope that the Karzai's government takes firm steps towards transitional justice due to its lack of credibility and legitimacy, and its close association with the alleged human rights violators.

RULE OF LAW

More than three decades of armed conflict and foreign invasion in Afghanistan have rendered governance structures fragile and incapable of implementing the rule of law. Despite the continuation of technical and financial support by the international community, the rule of law still is neither widespread nor applicable in many parts of the country. The equitable dispensation of justice and the rule of law throughout the country remains an unattained aspiration as many Afghans believe that the central government is incapable of resolving disputes arising from the population due to corruption and insecurity²⁶. The rule of law has never been widespread in Afghanistan due to a number of legal, political and religious factors. The main contributing factors that significantly undermine the rule of law in Afghanistan are included: contradictions between secular law, Sharia law and customary law; confusions over the interpretation of the Constitution; dominance of Islamic clerics over the justice system; and lack of balance between the centre and provinces in terms of governance and authority.

²⁴Winterbotham, Emily, *The State of Transitional Justice in Afghanistan: Actors, Approaches and Challenges*, Afghanistan Research and Evaluation Unit, 2010, p. 3-4.

²⁵What is Transitional Justice?, International Center for Transitional Justice, 2012, p. 2-3, www.ictj.org, Viewed 17 November 2012.

²⁶Hagerott, Mark, Umberg, Thomas and Jackson, Joseph, *A Patchwork Strategy of Consensus: Establishing Rule of Law in Afghanistan*, *National Defense University Press*, Issue 59, Quarter 4, 2010, p. 143.

Firstly, a major contributing factor to the weakness of the rule of law in Afghanistan is contradictions between secular law, Sharia law and customary law as the main sources of Afghan legal system. The division of Afghan legal system into three branches --secular law, Sharia law and customary law-- has prevented the enforcement of national laws across the country²⁷. A recent report by the International Commission of Jurists reveals that customary and Islamic laws are the dominant laws in Afghanistan, and consequently, the formal justice system is simply not the norm governing the lives of the majority of population²⁸. Customary law in a sense of informal rules of justice are frequently used in the country for dispute settlement purposes but they are often at odds with national secular laws and international human rights standards²⁹. For example, in a recent case of murder within Waziri tribes of south-eastern Afghanistan, the informal justice council (Jirga) ordered offender's family to give the victim's family a 'Bad' (payment) typically a girl to marry a member of the victim's family as an expression of approval of the Jirga's decision³⁰. So further human rights abuses are committed under the banner of customary law on a regular basis in Afghanistan, the government is incapable of stopping these unlawful and inhumane practices.

Secondly, another contributing factor to the failure of the Afghan government to create the ground for ensuring the rule of law is the ambiguity over where to locate the power to issue Constitutional interpretations. As a result of the absence of a legitimate authority to interpret the Constitution of Afghanistan, the door is open to a variety of misinterpretations of the Constitution that significantly undermine the rule of law. Although the Afghan Constitution emphasises the establishment of an independent commission for the supervision of the implementation of the Constitution, it does not specify where to locate the power to issue Constitutional interpretations. Such a legal gap has provided the Afghan government with the opportunity to interpret the Constitution in line with the political interests of President Karzai. For instance, when the House of Representatives of Afghanistan's Parliament used its Constitutional

²⁷Their, Alexander and Dempsey, John, Resolving the Crisis Over Constitutional Interpretation in Afghanistan, United States Institute of Peace, 2009, <http://www.usip.org>, Viewed 11 October 2012.

²⁸The Customary Laws of Afghanistan, International Legal Foundation, 2004, p. 4, <http://theilf.org>, Viewed 6 September 2012.

²⁹ibid. UNHCR Country Operations Report: Afghanistan.

³⁰ibid. The Customary Laws of Afghanistan, International Legal Foundation.

power to express a no-confidence vote against Foreign Minister, Dr Rangan Dadfar Spanta in May 2007, a major dispute emerged over Constitutional interpretations between the government and the parliament³¹. In that case, President Karzai used the Supreme Court of Afghanistan as a means of achieving his political goals, and consequently the Supreme Court found that the no-confidence vote was both unconstitutional and improper³². This case set a precedent and provided the government with further opportunities to repeatedly violate the Constitution and interpret it based on its political priorities.

Thirdly, the increasing dominance of Islamic clerics over the formal justice system has significantly undermined the rule of law in Afghanistan. While the courts in Afghanistan are theoretically obliged to apply the Constitution and other secular laws and their primary source of judgement should be based on secular laws, the majority of courts primarily make their judicial decisions in accordance with Islamic jurisprudence as the judges are predominantly Islamic clerics³³. This practice is contrary to the Constitution because the Constitution makes it clear that Islamic jurisprudence will be used to adjudicate cases if provisions in the Constitution or other Afghan laws do not provide sufficient ground. The dominance of Islamic clerics over the court system has significantly undermined the enforcement of Afghan laws even where there are sufficient grounds³⁴. As a result, the formal justice system has not only repeatedly failed to rely on Afghan secular laws, but also judges do not equally consider those secular laws of the country that respect international human rights standards³⁵. Therefore, without the replacement of the Islamic clerics with professionally trained judges it would be impossible to enforce Afghan laws on a regular basis to ensure the rule of law.

Lastly, the lack of balance between the centre and provinces in terms of their authority and governance is a further contributing factor, undermining the rule of law in Afghanistan. As a result of more than three decades of armed conflict and political instability, both national and sub-national governance structures are extremely fragile

³¹ Ibid. Their and Dempsey, Resolving the Crisis Over Constitutional Interpretation in Afghanistan.

³² Ibid. Their and Dempsey, Resolving the Crisis Over Constitutional Interpretation in Afghanistan.

³³ Ibid. Rahkola, Norden in Afghanistan: The Implementation of UNSCR 1325 in Nordic Engagement in Afghanistan, p. 9-10.

³⁴ Ibid. Canas, Governance Challenges in Afghanistan.

³⁵ Ibid. Afghanistan UPR Report.

and incapable of effectively delivering necessary public services to the people, particularly with reference to the rule of law³⁶. As such, maintaining balance between Afghanistan's national and sub-national structures and decentralisation of power in a way to strengthen provincial governments and improve sub-national governance arrangements would be crucial to ensure the rule of law³⁷. While decentralising the power and improving local governance structures is key to enhance public confidence on the government and ensure the rule of law, the control of the central government over every aspect of public and judicial administration has significantly reduced the hope for ensuring the rule of law. The over concentration of the power in the centre has also left local populations with no chance to actively take part in the administration of their local areas which in return undermines public confidence and fuels insecurity and political instability in the country.

CORRUPTION AND POVERTY

Corruption is widely perceived as a major contributing factor to the spread of insurgency and severe poverty in Afghanistan. After spending billions of dollars by the international community in the last ten years, corruption and poverty are portrayed as the biggest challenges confronting Afghanistan. As a result of the widespread corruption, the government of President Karzai is increasingly unpopular throughout the country and is widely seen by the majority of Afghans as incapable of combating poverty and solving socio-economic problems in the country. In a more realistic picture, Afghanistan is a country where corruption is commonplace within the state institutions, private sector and international organisations. For example, conducting business in Afghanistan, at both public and private levels, is heavily based on personal, familial, ethnic and historical relationships rather than relying on applicable regulatory rules. Successfully initiating a business of any type is impossible in Afghanistan without negotiating a maze of bribes, taxes and murky government

³⁶ *ibid.* Afghanistan: Consolidated Appeal, UN Office for the Coordination of Humanitarian Affairs, p. 3.

³⁷ Dabo, Awa, Salmon, Jago, Venancio, Moises and Keuleers, Patrick, Local Governance, Peace Building and state building in Post-Conflict Settings, United Nations Development Programme, Discussion Paper, 2010, p. 3-4.

requirements³⁸. The most common forms of corruption in Afghanistan can be classified as political, economic and administrative led by warlords, drug lords, non-governmental actors, international organisations, government officials, and family members of high ranking officials including the Karzai's family.

First, warlords, drug lords and human rights violators who, with President Karzai's patronage, currently hold senior positions in the state institutions or have close association with the government, are mostly seen as the main corruption engine in Afghanistan. According to Abdul Jabar Sabit, a former Afghan Attorney General who between 2006 and 2008 declared a jihad, or holy war, against corruption, there is a class of high-ranking officials, --including members of the parliament, provincial governors and Cabinet ministers--, which is fully corrupt and above the law³⁹. For example, on 25 April 2012, the Afghanistan High Office of Oversight and Anti-Corruption accused Ismail Khan, Afghan Minister of Energy and Water, of land grabbing and using state-owned properties for his private use in Herat province⁴⁰. Immediately Ismail Khan denied his involvement in any land grabbing activities and the Afghan government then entirely ignored the accusations. The further the government relies on warlords and drug lords, the longer they stay in power and political, economic and administrative corruption continues. Thus, as a consequence of corruption, poverty remains constant as a means of fuelling unrest and instability across the country.

Second, President Karzai's family and its close allies within the government are frequently accused of corruption by independent sources. There are credible allegations by both international and internal sources that the president's brother, Mahmoud Karzai, has amassed millions of dollars since Karzai took office in early 2002. Mahmoud Karzai, previously a partner in a string of modest family-owned restaurants in the United States, is one of Afghanistan's richest men, possessing a mining company, a cement factory, property development, and an exclusive sales

³⁸Global Security, Corruption in Afghanistan, 2009, <http://www.globalsecurity.org>, Viewed 22 August 2012. & Schulman, Daniel, Corruption in Afghanistan: It's Even Worse than You Think, Mother Jones, 2010, <http://www.motherjones.com>, Viewed 24 August 2012.

³⁹Zavis, Alexandra, No Easy Cure for Afghan 'Sickness' of Corruption, The Los Angeles Times, 2009, <http://articles.latimes.com>. & ibid. Global Security, Corruption in Afghanistan.

⁴⁰Tolo News, Herat Mayor Dismisses Land Grab Accusations, 2012, <http://tolonews.com>, Viewed 9 October 2012.

agreement with Toyota⁴¹. DaoudSultanzoy, a former Afghan parliamentarian, says that it is no longer possible to build up such wealth in a very short period of time unless you, like Mahmoud, are related to the Afghan president. ZalmayKhalilzad, the former US ambassador to Afghanistan, claims that various businessmen came to him during his assignment in Afghanistan and complained that Mahmoud wanted a share of their new business⁴². Therefore, as long as the government of Afghanistan in itself is behind the political, economic and administrative corruption, it is extremely hard to effectively fight corruption for the intention of good governance and poverty reduction in the country.

Third, national and international non-governmental organisations are mostly seen as one of the main corruption engines in Afghanistan. According to observers of Afghanistan, officials of some national and international NGOs are allegedly becoming wealthy through fraud and other forms of illegal activities⁴³. Part of international assistance to Afghanistan is mostly seen corrupt due to inefficiencies in the high cost delivery through international organisations, NGOs, firms, and the high payments for NGOs, contractors, consultants, and advisors⁴⁴. For that reason, the international community has an obvious role in contributing to corruption in Afghanistan which has negative impacts on the operations of government and private sector and reducing Afghans' support for the government. The contribution of the international community to corruption in Afghanistan creates not only significant barriers to the improvement of security and governance, but also undermines any socio-economic development efforts to combat poverty. The Afghan government, the allied forces and international organisations working in Afghanistan tend to defend their lack of action against corruption by making appeals to the needs of security and capacity building. The long term consequences, however, include further entrenched corruption.

Lastly, the widespread corruption significantly undermines economic transition and political transformation in Afghanistan. Though the economic and political transition

⁴¹Spillius, Alex and Farmer, Ben, Karzai Inc: Has Afghanistan's Leader Turned the Country into a Family Business?, The Telegraph, 2009, <http://www.telegraph.co.uk>, Viewed 15 October 2012.

⁴²ibid. Spillius and Farmer, Karzai Inc: Has Afghanistan's Leader Turned the Country into a Family Business.

⁴³Williams, Clive, Afghan Aid Is Wasted But We Can't Do Nothing, Australian Broadcasting Corporation, 2012, <http://www.abc.net.au>, Viewed 29 October 2012.

⁴⁴Assessment of Corruption in Afghanistan, Checchi and Company Consulting, Inc., 2009, p. 9, <http://www.usaid.gov>, Viewed 3 November 2012.

in Afghanistan has its own strengths such as creation of permanent democratic institutions, rapid economic growth and robust public financial management, there are significant challenges, undermining the economic transition and political transformation⁴⁵. Of these challenges, government ineffectiveness in addressing the nationwide corruption is a major concern that undermines the economic transition and political transformation in Afghanistan. While the security transition is underway and full responsibility for security would be handed over to the ANSF by the end of 2014, the key question is how Afghanistan sustains its newly established democratic institutions and maintains adequate economic growth in the post-2014 era. Responding to this question by fighting corruption would be central to the success of the Afghan government to survive and maintain its fragile achievements. Effectively fighting the corruption would not only pave the way for a successful economic transition and political transformation, but also enable the government to overcome the challenge of ongoing insurgency led by the Taliban and other insurgent groups.

CONCLUSION AND RECOMMENDATIONS

This paper concludes that aside from the consistent political, economic and military support by the international community, the situation in Afghanistan remains highly volatile. The volatility of the situation and uncertainty about the future of the country presents significant challenges to the transition process through which full responsibility for security would be handed over to the ANSF by the end of 2014. The government of Afghanistan has failed to translate opportunities into sustainable practice to improve security and human rights, ensure the rule of law, and fight nationwide corruption. As the transition process is accelerated, there is no evidence suggesting that the Afghan government has the ability, willingness or commitment to properly fulfil its obligations to successfully combine the security transition, political transformation and economic growth as a means of deterring insurgency and paving the way for lasting peace. For that reason, there is a great deal of ambiguity about the post-2014 era due to the lack of necessary capacity in the Afghan government to effectively respond to the current challenges.

⁴⁵Afghanistan in Transition: Looking Beyond 2014, The World Bank, Vol. 1, 2012, p. 3-4.

To sustain the fragile achievements of the last ten years, it is important for the international community to put significant pressure on the Afghan government to develop and implement a comprehensive security strategy. Such a comprehensive strategy needs to draw a bold line between the enemies and friends of Afghanistan: those who regularly kill the people of Afghanistan, abuse their human rights, and repeatedly destroy state institutions. By doing so, the government will have a better chance of winning the support of the majority of the population, and in return, people would consider themselves as part of the political establishment of the country rather than feeling isolated.

In addition, it is extremely important for the international community to ensure that the economic transition and political transformation in Afghanistan continue alongside the security transition process. To practically support the economic and political transition, supporting and empowerment of the democratic and progressive young Afghans would be crucial as a means of dis-empowering the warlords and corrupt political elites. By doing so, the international community provides the ground for a genuine economic, political and security transition in which the fragile political, economic and social achievements of Afghanistan will likely sustain and be incorporated into further progress in the years ahead.

Also, the international community needs to clarify the continuation of its presence in Afghanistan in the post-2014 era as a means of giving firm assurance to the Afghan people that its engagement will continue in the country. The commitment of the international community would not necessarily contribute to the improvement of security situation if the government of Afghanistan takes no firm steps towards fundamentally reforming the Afghan security forces to a point to effectively deter the security threats caused by the Taliban and other insurgents. This goal would be achievable if the Afghan government were to successively break apart the links between its security forces and warlords, drug mafias, criminals and the insurgents.

Furthermore, it is important for the international community to take the cause of human rights seriously and as an issue of central importance in Afghanistan. For that matter, the international community needs to prioritise the promotion and protection of human rights in its relationship with the government of Afghanistan. The willingness and commitment of the international community to promote and protect

human rights could force the Afghan government to fulfil its international human rights obligations, and consequently improve the situation of human rights in the country. This aim however would not be achievable until the international community puts human rights at the top of its security, political and economic relationships with the Afghan government.

Moreover, ensuring the rule of law is undoubtedly a cornerstone in delivering good governance, paving the way for sustainable socio-economic development, and improving the security situation in Afghanistan. The combination of these efforts would significantly increase the popularity of the Afghan government among the population. However, the dream of the rule of law would not come true unless the government entirely stops its intervention in the internal affairs of the judiciary and the parliament as the two independent branches of the state. The international community should effectively monitor the government's practices to ensure that the rule of law is respected by the Afghan government and the Constitutional principles of 'separation of power' and 'balance of power' are fully guaranteed.

Lastly, to better fight corruption and put an end to legal impunity in Afghanistan, the international community needs to continuously support independent anti-corruption bodies in Afghanistan and ensure that the anti-corruption agencies established by the Afghan government perform their duties properly, transparently, and impartially. By regularly overseeing and assessing anti-corruption activities, the international community will have the chance to effectively combat corruption at both public and private sectors in Afghanistan as a means of generating political will for strong and sustained anti-corruption initiatives. To achieve this goal, the international community needs to use its leverage such as financial aid and technical support in order to force the Afghan government to effectively fight political, economic and administrative corruption.

About the Author:

Farhad Arian is a Senior Analyst at the Edmund Rice Centre for Justice and Community Education in Sydney, and a Research Coordinator/Guest Fellow at the Afghan Institute for Strategic Studies. He is a former Deputy Director of the Department of Human Rights &

Women's International Affairs at the Ministry of Foreign Affairs of Afghanistan. He has also worked with numerous non-governmental organisations and international development agencies in Afghanistan. Farhad has recently completed a Master of International Affairs at the Australian National University, and holds a Bachelor of Arts in Law & Political Science from Kabul University in Afghanistan. He regularly writes on democratisation, human rights, refugee rights, social justice, conflict resolution, and political stability in Afghanistan. His writings have appeared on Open Democracy, the Diplomatic Courier, Online Opinion, South Asia Times, and other international outlets.

REFERENCES

Afghanistan: Consolidated Appeal, 2012, UN Office for the Coordination of Humanitarian Affairs, www.unocha.org.

Afghanistan in Transition: Looking Beyond 2014, 2012, The World Bank, Overview, Vol. 1.

Amiri, Mokhtar, 2012, Afghanistan Election Planned for 2014, The Guardian, <http://www.guardian.co.uk>.

Assessment of Corruption in Afghanistan, 2012, Checchi and Company Consulting, Inc., <http://www.usaid.gov>.

- Bormann, Trevor and McAllister, Wayne, 2012, Afghanistan: Girl Power, Aljazeera English, www.aljazeera.com.
- Canas, Vitalino, 2010, Governance Challenges in Afghanistan, Paper Delivered at the 56th Annual Session of NATO Parliamentary Assembly, Warsaw, Poland, 12-16 November 2010.
- Chandrasekaran, Rajiv, 2012, Afghan Security Force's Rapid Expansion Comes at a Cost as Readiness Lags, The Washington Post, www.washingtonpost.com.
- Dabo, Awa, Salmon, Jago, Venancio, Moises and Keuleers, Patrick, 2010, Local Governance, Peace Building and state building in Post-Conflict Settings, United Nations Development Programme, Discussion Paper.
- Global Security, 2009, Corruption in Afghanistan, <http://www.globalsecurity.org>.
- Hagerott, Mark, Umberg, Thomas and Jackson, Joseph, 2010, A Patchwork Strategy of Consensus: Establishing Rule of Law in Afghanistan, *National Defense University Press*, Issue 59, Quarter 4.
- Hanauer, Larry and Chalk, Peter, 2012, India's and Pakistan's Strategies in Afghanistan, RAND Center for Asia Pacific Policy.
- International Legal Foundation, 2004, The Customary Laws of Afghanistan, <http://theilf.org>.
- International Service for Human Rights, 2009, Afghanistan Universal Periodic Review (UPR) Report, <http://www.ishr.ch>.
- Kilcullen, David, 2009, *The Accidental Guerrilla: Fighting Small Wars in the Midst of a Big One*, Oxford University Press, New York.
- Miller, Laurel and Perito, Robert, 2004, Establishing the Rule of Law in Afghanistan", United States Institute of Peace.
- Nordland, Rod and Sukhanyar, Jawad, 2012, Member of Afghan Peace Council is Assassinated, The New York Times, www.nytimes.com.

Quinn, Patrick, 2012, Afghans To Elect New President in 2014, A Democracy Gambit in the Year of US-NATO Withdrawal, The Associated Press, <http://www.canada.com>.

Rahkola, M. Anne, 2011, Norden in Afghanistan: The Implementation of UNSCR 1325 in Nordic Engagement in Afghanistan, The Finnish 1325 Network.

Schulman, Daniel, 2010, Corruption in Afghanistan: It's Even Worse Than You Think, *Mother Jones*.

Spillius, Alex and Farmer, Ben, 2009, Karzai Inc: Has Afghanistan's Leader Turned the Country into a Family Business?", The Telegraph, www.telegraph.co.uk.

Their, Alexander and Dempsey, John, 2009, Resolving the Crisis Over Constitutional Interpretation in Afghanistan", United States Institute of Peace.

Tolo News, 2012, Herat Mayor Dismisses Land Grab Accusations, <http://tolonews.com>.

UNAMA and AIHRC, 2011, Afghanistan Annual Report: Protection of Civilians in Armed Conflict, <http://unama.unmissions.org>.

UN Committee on the Rights of the Child, 2011, Afghanistan's Report on the Convention on the Rights of the Child (CRCReport), Geneva, Switzerland, <http://www2.ohchr.org>.

UNHCR, 2012, Country Operations Report: Afghanistan, The UN Refugee Agency, <http://www.unhcr.org>.

UN Office of the High Commissioner for Human Rights, 2009, Afghanistan UPR Report, <http://www.ohchr.org>.

Wetland, Morton, 2012, The Situation in Afghanistan, Paper Delivered at the UN Security Council Debate on the Situation in Afghanistan and the UN Assistance Mission in Afghanistan, New York, <http://www.norway.org.af>.

What is Transitional Justice?, 2012, International Center for Transitional Justice, www.ictj.org.

Williams, Clive, 2012, Afghan Aid Is Wasted But We Can't Do Nothing, Australian Broadcasting Corporation, <http://www.abc.net.au>.

Winterbotham, Emily, 2010, The State of Transitional Justice in Afghanistan: Actors, Approaches and Challenges, Afghanistan Research and Evaluation Unit.

Zavis, Alexandra, 2009, No Easy Cure for Afghan 'Sickness' of Corruption", The Los Angeles Times, www.latimes.com.