



Transforming Development Beyond Transition in Afghanistan: Governance Position Paper

“Only good governance can save and sustain the achievements of the last 13 years”
Aziz Rafie, Director, Afghan Civil Society Forum

Overview

This paper is one of a series highlighting civil society actors’ concerns in the lead up to the 2014 London Conference on the Tokyo Mutual Accountability Framework (TMAF). Other papers in the series focus on aid effectiveness, service delivery and women’s rights. After discussing progress since 2012 and the remaining challenges, this paper will outline policy recommendations.

Progress since 2012

Sub-national governance: progress has continued at community level, particularly through community development councils (CDCs) and district development associations (DDAs) implementing the National Solidarity Programme (NSP). Implementing non-governmental organisations (NGOs) have used social auditing at the end of NSP projects to ensure more accountability. In 2013, 63 per cent of Afghans responded that they were satisfied with their CDCs.¹ Many of these bodies have been successful in increasing local ownership and good governance, resulting in more transparency and accountability.

More women are also now involved in local governance and government is becoming more responsive to their needs. The NSP has achieved widespread involvement of women in community decision-making where they can raise their development priorities.

Challenges

Sub-national governance: Afghanistan’s current government system remains highly centralized in its decision-making, planning and budgeting mechanisms. Sub-national entities remain characterized by their lack of connection up the governance chain and to central government in Kabul. A more coherent and inclusive governance agenda would enable local bodies to influence key projects and processes that affect Afghans’ daily lives. Currently, sub-national governance policies do not clarify reporting lines and responsibilities, or delineate responsibilities between entities, resulting in an overall lack of coordination.

While CDCs and DDAs produce community and district-level development plans, the link between those priorities and those selected by national ministries and the donor community in Kabul is tenuous. More effort is required to ensure that the needs identified are determined through a consultative and inclusive process with those excluded from local leadership. Deliberate efforts are needed to increase marginalized groups’ participation: in particular women, internally displaced persons (IDPs) and people with disabilities at all levels of governance, and for specific needs to be included in development planning. For example, despite the 20 per cent quota for women to be provincial council representatives, only 299 out of 2,595 provincial council candidates (11.5 per cent) were women in the April 2014 election.²

Serious gaps remaining: The unpredictability of, and often long gaps between, access to resources channeled to sub-national governance entities damages their

momentum, legitimacy and effectiveness. Depending on the presence of certain donors and regardless of needs, some provinces have received greater discretionary resources than others. Challenges also remain in filling civil service positions at local and provincial levels in parts of the country particularly in ensuring that candidates have the appropriate educational background.

Sub-national entities, particularly widespread CDCs, must ensure they have downward accountability to the communities they serve. Monitoring mechanisms and ensuring that clear roles are defined would contribute to their effectiveness and community ownership. There are still 10,320 communities not yet covered by the NSP, which the third phase will continue to try to reach.³ Continued high levels of insecurity and shadow governance structures also undermine the representation of local governance bodies and most often prevent the participation of women.

Corruption undermines good governance: According to Transparency International's 2013 Corruption Perceptions Index, Afghanistan was ranked 175 out of 177 countries.⁴ Corruption can be political or administrative as well as that associated with the narcotics industry which has a huge impact on Afghan livelihoods and the development of the country. According to the Afghan organisation Integrity Watch's 2014 survey, Afghans paid about \$2bn in bribes in 12 months, a big increase compared to 2012.⁵ The bribes paid amounted to almost the same as the Afghan government's annual revenue. The justice institutions and the police were viewed as the two most corrupt public institutions and corruption is considered the second major concern of Afghan people after insecurity.⁶

Corruption undermines access to many key public services, including access to justice, higher education and basic services. Corruption also contributes to the misallocation and/or distribution of resources, which hinders development and promotes insecurity. Furthermore, it erodes public trust in governance and the rule of law. The Afghan government lacks adequate transparency and accountability mechanisms to reduce corruption, which is exacerbated by complex bureaucratic procedures.

Fragile and non-inclusive justice system: The justice system in Afghanistan is weak due to many factors including corruption, low-quality staff with low skills capacity, poor accountability and unclear legal procedures. Informal legal practices and justice mechanisms continue in many parts of the country, particularly in rural areas. Many people place greater trust in these informal processes as they are simple, easy to access, and perceived as more honest in dealing with people's problems. In provinces facing higher levels of insecurity, there are often no active courts outside the provincial centre.⁷

It is difficult for many Afghans to engage with the formal judicial system. Access to and the cost of lawyers encourages corruption in the legal system and also affects the number of people willing to bring their cases to judicial

institutions. Women in particular face bigger challenges in accessing justice and often suffer worse outcomes from informal processes. In 2013 only 8 per cent of judges, 6 per cent of prosecutors and fewer than 20 per cent of lawyers were women; compounded by only 1 per cent of the Afghan National Police being women, this hinders women's access to justice.⁸ Of the nine judges on the Supreme Court, none are currently women. As the International Development Law Organisation Director-General Irene Khan has stated, 'the rule of law cannot prevail when one half of society is excluded.'⁹

The Afghan Independent Human Rights Commission (AIHRC) established in 2001 to document, speak out and raise awareness of abuses has experienced a range of recent setbacks undermining its credibility. The appointment of new commissioners in 2013 without consultative vetting has raised serious concerns – only one of the five appointees came with any background in human rights, which continues to threaten the AIHRC's independence and impartiality.¹⁰ The International Coordinating Committee of National Human Rights Institutions (ICC) has threatened to downgrade the AIHRC to a 'B' status if the Afghan government fails to address concerns about the appointment process, the lack of female staff and funding. There is a real risk that some donors would be unable, due to internal rules, to fund the AIHRC if it is downgraded.¹¹ The international community briefly discussed the situation at the TMAF Senior Officials' Meeting in July 2013, but the outcome statement merely encouraged the Afghan government to take action on this issue.

Ineffective and unequal natural resource governance: There are great expectations that mining and oil will drive economic growth and fund the Afghan government and security forces. But the experience of Afghanistan and many other countries shows that there is a grave risk that natural resources will instead fuel conflict and corruption, and add little to revenues. Transparency, strong oversight and good community relations are essential to reduce this danger. The government committed in 2012 to create a world-class framework for resource governance and reinforced that commitment at the 2013 Senior Officials' Meeting. But despite some progress, a number of basic elements of international good practice are yet to be implemented. The conference is a valuable opportunity to create a clear road map of measures to ensure natural resources benefit the Afghan people and reduce aid dependency.

Recommendations

Sub-national Governance

- The International community should support good governance initiatives and capacity-building, especially on-going initiatives that have gained a broader consensus among donors and government agencies, including the new phase of the NSP, in particular the focus on elements of CDC capacity.

- The Afghan government should clarify the structure, roles, responsibilities and reporting lines of all layers of sub-national governance bodies, particularly from the district level and below, and between elected and appointed offices. It should prioritize developing a work plan on how to strengthen these bodies and communicate this to existing sub-national stakeholders. It should design mechanisms that enable sub-national governance entities to be consulted and their feedback absorbed into national budgetary and planning processes, so that existing bottom-up and top-down planning processes are more coherent and joined-up. It should support the third pilot of a draft provincial budget policy that could contribute to driving a longer-term decentralized fiscal policy. More clarity and commitment from the Afghan government over sub-national government is also expected to generate more international support.
- The Afghan government should ensure that the Independent Appointment Board of the Civil Service Commission continues plans to review appointment procedures, so that Afghans are appointed based on competence and so that gaps in the system are filled. This will ensure the further professionalization of the civil service.
- The Afghan government and international community should work to improve marginalized groups' participation in governance structures by challenging traditional representation and behaviours. They should also monitor the quality of these groups' participation. Training and awareness-raising work should be conducted to ensure marginalized groups' views are not muted. For instance, more women should be supported to join local governance structures and assume leadership roles that in the long term may help to increase the numbers of women prepared to stand in parliamentary or provincial council elections. This should be replicated for other marginalized groups in order to ensure a political process that is inclusive of the needs of all Afghans. The participation of marginalized groups should become more than a box-ticking exercise.
- Both the Afghan government and the international community should foster the important role of civil society organisations (CSOs) in providing oversight and promoting accountability. CSOs are able to perform a crucial watchdog role, demanding good governance and assisting in reform processes – for example, by monitoring the allocation of resources and government officials' conduct, and by establishing an environment where effective dialogue among stakeholders can occur. The international community should ensure that long-term support to CSOs working on good governance continues and should recognize that CSOs play a vital role in forging peace and social stability through good governance.

Corruption

- As stipulated in the TMAF, the Afghan government should enact and enforce the legal framework for fighting corruption, including measures such as publishing annual asset declarations of senior public officials and vetting them. There should be prosecutions of government officials, especially at higher levels, to demonstrate the government's commitment to tackling this issue.
- The Afghan Government and international community should ensure mechanisms are supported to help tackle corruption and bribery such as the wider dissemination of information and public awareness. This is in order that Afghan people better understand bureaucratic processes and know how to report violations, for example through hotlines.
- The international community should continue to support the independent joint anti-corruption Monitoring and Evaluation Committee (MEC) as one of the few organisations challenging corruption in Afghanistan and should ensure its continued existence.

Justice

- The Afghan government must work to ensure the implementation of Presidential Decree 45, which mandates that all inactive courts be activated and fully staffed with professionals so that Afghans can access justice even in remote and insecure areas of the country. It must recognize the discrimination of marginalized groups, in particular women, and must do more to encourage women to work in the justice sector.
- The Afghan government and the international community must review and ensure that commissioners within the AIHRC are appointed based on merit through a transparent process including consultation with civil society. The international community should continue to support the AIHRC and encourage the Afghan government to address the ICC's concerns, ensuring also that the Paris Principles governing national human rights institutions are adhered to. Donors should demonstrate a commitment to human rights by taking action, as envisaged in the conditionality agreement to hold the government to their TMAF commitments on the AIHRC.

Natural resources

- The Afghan government should use the conference to deliver on the laudable commitment it made in 2012 to put in place a system for oversight and control of natural resources that 'builds on and surpasses international best practices'. Its commitments at the conference should include:
 - **Transparency and bidding:** a clear requirement to publish all mining and oil contracts (in line with existing

presidential decrees); publication of project-level data on production, payments and revenue (in line with the revised Extractive Industries Transparency Index (EITI) standard); publication of the beneficial ownership of contract-holders and bidders; and the creation of a clear legal requirement for transparent, open and fair bidding and contracting processes.

- **Community engagement:** a commitment to respect the rights and interests of local communities – consulting and working with them on mining, security and other issues, ensuring they benefit from extraction. Also, accessible, independent and effective mechanisms for dispute resolution that are fair to companies and communities alike need to be developed, and a commitment made to ensure the environmental and social impacts of mining are fully taken into account and mitigated.
- **Security:** a commitment to ensure that security forces at mining sites operate according to strict rules (at a minimum, the Voluntary Principles on Business and Human Rights) and in consultation with local communities; and to take action against the involvement of informal armed groups of all kinds in the natural resource sector.

- The international community must do its part to help the government set up effective oversight mechanisms. Donors could also link additional funding to implementation of effective governance and an increase in control over mining revenues – and ensure accountability from their own mining companies.

Endnotes

- 1 The Asia Foundation (2013) *A Survey of the Afghan People*, <http://asiafoundation.org/country/afghanistan/2013-poll.php>
- 2 SIGAR (2014) *23rd Quarterly Report*, April 2014, <http://www.sigar.mil/quarterlyreports/index.aspx?SSR=6>
- 3 World Bank (2014) <http://go.worldbank.org/6SSKYA0SV0>
- 4 Transparency International (2013) <http://www.transparency.org/country#AFG>
- 5 Integrity Watch (2014) http://www.iwaweb.org/ncs/_2014/docs/national_corruption_survey_2014_english.pdf
- 6 *Ibid.*
- 7 SIGAR (2014) *23rd Quarterly Report*, April 2014, <http://www.sigar.mil/quarterlyreports/index.aspx?SSR=6>
- 8 IDLO (2014) *Women's Professional Participation in Afghanistan's Justice Sector: Challenges and Opportunities*, http://issuu.com/idlonews/docs/idlo_afghan_report
- 9 IDLO (2014) *Out of the Shadows, Onto the Bench*, <http://www.idlo.int/news/highlights/out-shadows-bench>
- 10 Afghan Analysts' Network (2013) *Dismantling Human Rights in Afghanistan*, <http://www.afghanistan-analysts.org/dismantling-human-rights-in-afghanistan-the-aihc-facing-a-possible-downgrading-of-status>
- 11 *Ibid.*

Acknowledgements:

The production of these position papers would not have been possible without the support of all ACBAR members, in particular the Advocacy Working Group and civil society organisations. Particular thanks to the following authors: Aid Effectiveness, Governance and Summary: Liz Cameron (Oxfam Afghanistan), Service Delivery: Coline Grunblatt (Handicap International), Women's Rights: Shika Ghildyal (Swedish Committee for Afghanistan) and Nuria Beneitez (Actionaid), as well as Justine Piquemal and Marine Durand for their guidance and support.

Photos by Oriane Zerach.
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Image: A boy draws the Afghan flag.

Endorsed by:

ENNA (European Network of NGOs in Afghanistan)

Funded with support from:

Tawanmandi, Peace Winds Japan, Japan Official Development Alliance, Civil Sophia, AAR Japan (Association for Aid and Relief, Japan) and JVC (Japan International Volunteer Center)

