



**DEMOCRACY-BUILDING  
IN AFGHANISTAN:  
AN INTEGRATED DIMENSION  
FOR THE WAY FORWARD**

**EUROPEAN UNION  
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# Democracy building in Afghanistan: A crosscutting dimension for the way forward

## 1 Introduction

### 1.1 Democracy – an integrated dimension

The European Union Electoral Observation Mission (EU EOM) to Afghanistan was fielded from July - October 2005 to monitor the elections for parliament (*Wolesi jirga*) and provincial councils, which also became the end of the Bonn process.<sup>1</sup> The EU EOM comprised a democratisation component in addition to electoral observation. The aim was to identify important areas and recommendations for how to strengthen democracy-building beyond the Bonn process. Democracy-building can benefit broader state-building and development, but also support stabilisation.

Democratisation is a priority for the European Union, which is reflected in its Common Foreign and Security Policy and in the European Commission's development policy. The EU standpoint is that:

*“The promotion of genuine democracy and respect for human rights is not only a moral imperative: It is also the determining factor in building sustainable human development and lasting peace. Actions in support of democratisation and respect for human rights, including the right to participate in the establishment of governments through free and fair elections, can make a major contribution to peace, security and the prevention of conflicts.”*<sup>2</sup>

Elections are only one of several instruments used to promote state-building and democratisation. These are much broader and multifaceted issues comprising political, institutional and capacity development, protection of human rights, enforcement of the rule of law, security, and social and economic development. In other words, replacing bullets with ballots alone will not build a stable and democratic state.

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1 The Bonn process labels the transition in Afghanistan that was laid down at the conference in December 2001 at Petersberg, Bonn, Germany, which is called the 'Bonn Agreement'.

2 The EU's Human Rights and Democratisation Policy reflected in the Treaty on European Union (TEU) of 1 November 1993, [http://europa.eu.int/comm/external\\_relations/human\\_rights/intro/index.htm](http://europa.eu.int/comm/external_relations/human_rights/intro/index.htm) Accessed 16 August 2005

For more than a century, Afghanistan has been split between reformists and conservatives leading to coups and change of regimes.<sup>3</sup> The local power structures are complex. There have been frequent disputes over the powers of the central government vis à vis local power-holders. Socio-cultural and economic disparities, between elites in the larger cities and the rural population, have reflected high levels of social exclusion and the limited power of the state.

During a transition, such as that which Afghanistan is currently undergoing, emerging new values and institutions co-exist with past norms and practices. Their relative influence is unknown. This makes the process unpredictable and may give rise to opportunism and mixed public support to the political transformation. Democracy-building can strengthen the bond between the state and people through inclusion, participation, public information and civic education.

### **Democratisation and peace-building**

A broadened and deepened democracy can stimulate and socialise a political culture and motivate political actors to resolve disagreements through debates and other pragmatic political means. This in turn enhances prospects for durable stability and peace. Peace-building through democratisation is a relatively new concept. There is only limited documented experience and lessons on how to make it succeed. Research on transitions to democracy has mostly focussed on relatively stable transitions and not post-conflict or conflict-prone countries.<sup>4</sup> Democratisation is about building a people-governed political system and broad political power-sharing.

Democratic processes entail the unblocking of diverse political views, letting differences of opinions emerge, then solving them through peaceful means. The idea of bringing disputes and disagreements into the open for debate may worry some political leaders, where there is a recent history of violence and, even more so, when disarmament is pending.

Participation and contestation are nevertheless a vital part of democracy, which entails acceptance of rule by the majority - with safeguards to ensure that the interests of minorities are properly addressed.) A competitive and well-functioning democratic system is the best guarantee against further civil conflict. However, several key issues still have to be addressed in order to deepen and consolidate such a system in Afghanistan.

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3 Barfield, Thomas (2005) An Islamic State Is a State Run by Good Muslims: Religion as a Way of Life, in Heffner, Robert (2005) Ed. Remaking Muslim Politics – Pluralism, Contestation, Democratisation, Studies in Muslim Politics, Princeton, US, 189-213

4 Jarstad, Anna (2005) International Assistance to democratisation in Bosnia and Herzegovina, Kosovo and Macedonia, Department of Peace and Conflict Research, Uppsala University, Sweden, pp 13-29

## **1.2 Democracy is not a new phenomenon for Afghanistan**

Afghanistan has a **long tradition of consultation** at both local and central level through *shuras* (Dari) or *jirgas* (Pashto): local non-statutory councils. Yet this is only a partial experience of democracy because women have traditionally been excluded from public life. Recently, under the government's National Solidarity Programme, women's *shuras* have been established in parts of the countries, mainly to address local development needs of the female population.

The presidential election in 2004 was a major step toward democratisation. It was Afghanistan's first free election with universal suffrage. All EU EOM findings indicate that the Afghan people are in general ready for democracy. Yet the majority of the people are in need of a better understanding of what access and means they have to participate in public life and influence politics. Continued nationwide civic education is needed. It should not only be a means to prepare the people on how to vote in elections. Comprehensive information and education is needed on broader civic issues such as the organisation of the state, the role of parliament and local government including provincial councils, rights and duties of the citizen and the state, human rights, and the rule of law.

Democracy builds on trust among different groups and between the government and the governed. This trust cannot be imposed: it has to be nurtured from within. The EU EOM asked approximately 50 people around the country what politics means and the three broad answers are indicated below. Distrust and suspicions about government acts and political parties are prevalent. It is a legacy of past wars, which need to be addressed.

Politics is the knowledge of lying, cheating, fraud, and using power in an illegal way to threaten people. Most Afghans dislike the word 'politics' because the politicians have made life hard for people for over 25 years. They have not forgotten.

Politicians should understand politics. If they are honest then they control the people of the nation and don't allow people to do illegal things. They can build sound relations between people and government.

There is no need for everyone to be involved in politics. Only high-ranking government officials should be part of politics.

### **1.3 Democracy-building needs – a three-pronged approach**

The democratic elements of institution-building and a civic culture have started to materialise. Changes in attitudes and norms have also begun to surface. A consolidated democratisation process obviously demands time, but also requires political will, assertiveness, institutional development, stability, and an extensive and well-grounded civic culture within a rule-based society. As yet there is no ready-made strategy for gradual and effective democratisation. Democracy in Afghanistan should be developed in a form that is suitable for the country's culture, political maturity and level of stability. Democracy should build on existing assets and structures, but not compromise fundamental principles of equal public participation, people-led decisions, freedom of speech, and right to form political associations.

#### **I. Consolidation of a democratic political system and further state-building**

A democracy entails a democratic electoral system, legitimate institutional regulations endorsed by the parliament, constitutional safeguards ensuring checks and balances between the different institutions, political, and a certain degree of decentralised local government. Democratic political systems are the first areas of the analysis that include:

1. Future elections
2. A functional parliament
3. An effective and trustworthy judiciary, rule of law including enforcement
4. Protection of human rights
5. Improved government outreach through strengthened and efficient local administration

Recommendations are provided for each of these topics on how democracy-building can be enhanced but also to contribute to the achievement of these wider national priorities.

#### **II. Fostering a democratic civic culture**

The areas of the assessment for enhancement of a democratic civic culture include strengthened role of the media; expansion of political participation through a strengthened civil society; continuing improvement of the situation of women especially in public life; enhancement of national unity and reconciliation; and ending a culture of impunity.

### **III. Elimination of risk factors that threaten democracy building**

There are several factors that risk undermining future efforts to enhance democracy, of which the most critical are:

1. Widespread corruption and lack of good governance
2. A pervasive illegal opium production around which an illegal security sector and an illegal economy have emerged, fortifying local networks engaged in corruption and illegal exchanges
3. Continued lack of security and stability in parts of the country caused by internal and regional threats.

The report strives to make recommendations for how to address and mitigate these risk factors, yet recognises that these recommendations are not exhaustive.

This analysis presumes that international assistance will continue to improve security and stability and also that it will consolidate civilian command over the security apparatus (the national army, police and border control). A final factor is management of people's expectations as regards state-building, reconstruction and development. Widespread disillusionment could result in public disengagement and opportunistic behaviour.

This democracy-building report is based on an underlying assumption that the National Development Strategy and the post-Bonn compact between Afghanistan and the international community will help to address concerns about the country's economic prospects and on its human development with an emphasis on education and social cohesion. Poverty is a threat to stability, illiteracy is a significant obstacle for fostering a civic culture conducive to democratisation, and social exclusion is a threat to reconciliation and unity. If people are preoccupied with trying to fulfil basic needs every day, they cannot be expected to have sufficient surplus resources to engage in a democratic political process let alone voting.

In Ghor province, for instance, people and women in particular indicated that they are too busy with weaving and domestic work to participate in an election. (EU EOM Interview September 2005)

Sustainable and successful democracy is inter-linked with durable peace and stability and developmental prospects. It is therefore recommended that Afghanistan's social and economic development, improvement of public services and security are approached with an understanding of how they relate to democracy-building.

#### **Change of attitude and norms**

Developments in attitudes and expectations, such as trust, are less tangible but equally important. This may include a sense of nationhood and a sense of identity as a citizen holding equal rights and duties. In addition, ethnic integration in public life, motivation to participate in public and political life, and incentives to comply with rule of law are important for democratic processes. Trust in elected political leaders and parties are fundamental and may be generated through transparent and accountable behaviour. These 'soft' aspects will be addressed under the different topics, where relevant.

### **1.4 Objectives of the EU EOM Democracy-building report**

The EU EOM Democratisation report aims to present a broad perspective on democratisation and **to describe the elements of a future democratisation road map**. The report assesses the important factors and areas that either directly support or threaten democracy-building in Afghanistan's post-Bonn agreement era as indicated above. The objective is to shed light on how democracy-building can be conducive to stabilisation, state-building and development, if addressed in an integrated way alongside existing national priorities. The report's perspectives and recommendations are intended to feed in to discussions and preparation of the post-Bonn era. Democracy-building should be properly integrated into the post-Bonn strategy for Afghanistan.

### **1.5 Methodology**

The research and drafting of the report took place from August to October 2005. Visits were made to selected provinces in the West, South or South East, North and Central Highlands to assess the electoral process, sub-national administration, local law enforcement entities, traditional leadership and civil society membership. The assessment also included a local democratisation beneficiary survey of 45 local people from all parts of the country. The aim of the interviews, at central and local levels, was to get diverse perspectives on the democratisation process, to assess expectations and to generate recommendations.

There are different tools to assess democratisation process. For instance, according to the World Audit of Democratisation, Afghanistan ranks number 83 out of 150 countries on democracy but with the caveat that there is no indicative figure on such critical parameter as corruption in Afghanistan. As regards freedom of press, Afghanistan ranks as number 107.<sup>5</sup> However, a comprehensive democratisation audit is not especially relevant at this initial phase of democratisation. Too many parameters cannot be assessed simply

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<sup>5</sup> World Audit, <http://www.worldaudit.org/democracy.htm> Accessed 13 September 2005

because of lack of available data. Democratisation has not yet reached a basic level where appropriate legislation has been developed to underpin democratic institutions and functions. Further, political parties that do not yet have a formal role in the electoral process. What is most important for Afghanistan is not what its world ranking is, based on limited measures, but to identify the critical areas and elements for democracy-building and to develop a road map with clear and agreed targets and indicators.

## **2. Assessment of the ‘Bonn’ process in relation to democracy building**

It is relevant to take account of the Bonn process in regard to democratisation before the planning and recommendations for the Post-Bonn era are finalised. For easy reference the **main political developments of the Bonn process included:**

December 2001	Afghan Interim Authority established at the Bonn conference
June 2002	Emergency <i>Loya Jirga</i> established to appoint a Transitional Administration
December 2003	Constitutional <i>Loya Jirga</i> convened
January 4, 2004	Constitution adopted
October 9, 2004	Presidential elections held
September 18, 2005	Parliamentary elections ( <i>Wolesi Jirga</i> and Provincial Council) held

According to the Bonn Agreement, the people of Afghanistan have the right to “freely determine their own political future in accordance with the principles of Islam, democracy, pluralism and social justice”,<sup>6</sup> and it guarantees political liberty and right to vote. The drafting and adoption of a new Constitution, holding of elections for a head of state and a legislature, establishment of a human rights commission, and ratification of international human rights treaties are fundamental for building and sustaining the democratisation process.

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<sup>6</sup> The Petersberg (Bonn-) Accord signed on December 5, 2001

## **2.1 Establishment of national leadership**

The composition of the interim administration, appointed at the Bonn conference, was not sufficiently representative to exercise effective leadership throughout the entire transitional period. The **Bonn agreement therefore implicitly required several relatively early elections** - for the Emergency *Loya Jirga*, the Constitutional *Loya Jirga* (CLJ), and presidential and parliamentary elections in order to meet the timeline. Elections were held early in the sense that **limited time was allowed for reconciliation and national unity** through mediation between opposing factions and conflicting views. Few resources were devoted to civic education that was significantly challenged by high illiteracy rate and shortage of access to communication. The different elections were not planned as a series of events and not as one coherent process. This resulted in a lack of continuity, loss of institutional memory after each event and less than efficient use of resources. The duration and scope of civic education were therefore reduced, and so was its impact with regards to awareness-raising and empowerment. As a result, there was limited impact on people's sense of national unity, their behaviour in terms of compliance with the rule of law, their ownership of the constitution or their awareness of the rights and duties of government and citizens.

The Bonn process did not directly address democratisation by fostering a broader political culture or providing support and guidance to political parties and the civil society. Many Afghans still associate political parties with civil war. This legacy from the past was one important factor in the decision to limit the role of political parties in the election process. If political parties had been permitted to play a greater role in the process, traditional 'Jihadi' and communist parties would undoubtedly have been in a strong position to influence voters by means that new parties do not have. At the same time, there would also have been much more **political space for ideas to grow and groups to form around issues**. The presence of political parties could have facilitated coalition-building in parliament and kick-started a culture of greater acceptance of party politics, instead of perpetuating prejudices and historical baggage.

At the outset of the Bonn process, it was considered pivotal to establish a national leadership to take charge in line with the 'Light Footprint approach' recommended by the former UN SRSG Ambassador Brahimi.<sup>7</sup> Significant trust was vested in the state institutions as part of efforts to establish sovereignty. Inclusion and co-operation were the strategies chosen to avoid an escalation of conflict, to avoid creating unwanted power vacuums, and to balance interests among the various groups. **Stability and sovereignty were the over-riding**

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7 Emphasis was on national ownership and decision-making, which were successfully achieved, in particular in comparison with Timor Leste and Kosovo. In response to the policy interventions and present requirements at the time United Nations Assistance Mission to Afghanistan (UNAMA) was created with limited international staff, a simple two-pillar structure (Political and Recovery, Rehabilitation and Relief) and a relatively small number of staff at the eight regional offices. The main tasks of UNAMA were to guide and support the political development process and to facilitate coordination of recovery and relief efforts. (DANIDA 2005)

**concerns.** The trade-off was the failure to deal with serious and deep-seated grievances. Commanders, including some accused of war crimes and gross human rights violations, were allowed to be part of the political reconstruction process. Democratisation leading to a more pluralistic society will be conducive to national reconciliation because it acts as a conflict-mitigating mechanism.

## **2.2 The role of the international community**

Hitherto, there have been different and comprehensive visions for the reconstruction of Afghanistan. The Bonn process called for the initial state institutions to be put in place and to maintain stability. The steps of the state-building process, reflected in the Bonn agreement, were **designed to keep the peace plan on track**, avoid confrontation with factions, which had not yet been disarmed, and leave room for an organic process that would in time lead to democratisation. The process was **meant to create space for normal life** for the normal citizen, and over time to remove the ability of warlords to hold the citizens hostage to their own interests.<sup>8</sup>

Donor conferences focused on the most critical development needs, fundamental state-building, and economic sustainability of the state.<sup>9</sup> All of these issues are pivotal for a post-conflict Afghanistan facing severe poverty, human capital shortages, destruction and a dilapidated political and social fabric.<sup>10</sup> As the political foundation has been laid down, it is now important to devise **a comprehensive, yet selective, strategy for broad political development** through consultation. This would need to take account of **the wider political context** including factionalism, the co-existence of ethnic groups, extremism and religious fundamentalism, the organisation of the state and the relationship between the state and its citizens, human rights protection and in particular as regards women, transitional justice, strengthening of civil society, the role of media and freedom of speech, illegal drug production and security.

## **2.3 Summarised assessment of the ‘Bonn’ process**

The **main achievements** of the Bonn process can be summarised as:

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<sup>8</sup> Interview with Knut Ostby, former senior deputy country director, UNDP Afghanistan 10 September 2005

<sup>9</sup> According to the Afghan government, The required budget for development and reconstruction from 2002-2005 is 33,352.72 billion US\$, and the commitments by international donors amount to 15,076.91 billion US\$ which accounts for 45% of the required development (Ministry of Finance, October 2005. The figures are associated with some uncertainty as financial assistance is also channelled outside of government and directly to projects in country). The requirements for the security sector (ANA, ANP and Justice from 2002-2005 were 3,859 billion US\$ of which 2,87 billion was committed. In total disbursement until 2005 amount to 1,778 billion US\$ (Ministry of Finance 2005). The report ‘Securing Afghanistan’s future’ estimates that the financial needs up to 2015 amount to 27,6 Billion US\$. <http://www.af/resources/mof/recosting/SECURING%20AFGHANISANS%20FUTURE%20EXECUTIVE%20SUMMARY.pdf>

<sup>10</sup> See Asian Development Bank, UNDP and World Bank (2002) Afghanistan – Preliminary Needs Assessment for Recovery and Reconstruction. In preparation for the Tokyo donor conference 2002,

<http://lnweb18.worldbank.org/SAR/sa.nsf/Countries/Afghanistan/CB1C6A33FB68218485256B44004B58E5?OpenDocument>. Berlin conference 2003

- A basic foundation for state structures was laid down (including a new constitution, creation of commissions for acceleration of state-building and reform processes including the judiciary, the civil service, protection of human rights, and elections). The elections went peacefully which in itself was a major achievement
- Relative stability was achieved through inclusion and bargaining
- Demilitarisation through dissolution of structures of armed forces and raising national awareness about disarmament
- Centralisation to weaken powerful non-statutory power brokers
- Establishment of national leadership and election of parliament

The **main weaknesses** are assessed by the EOM to be:

- Lack of comprehensive assessment of the Bonn process before a successor (“Post-Bonn Compact”) is prepared.
- Lack of broader vision for state-building, reconstruction and development that could have led to greater balance between the different elements of state-building including the relation between the centre and local government; public sector reform; the rule of law; and reconstruction, development and stability.
- Inadequate civic education and support for civil society.
- Limited international assistance to the Afghan security services has been an impediment to broad political participation and to economic and social development in certain parts of the country, particularly in the South and East. The regional aspect of security as a challenge to national sovereignty was not sufficiently addressed.<sup>11</sup>
- Lack of reconciliation and limited time to build political trust before holding elections and a continuing culture of impunity.
- Inconsistent application of criteria for appointment to senior government positions, as stipulated in the Bonn agreement.
- During the initial part of the Bonn process, the commitment and attention to addressing the illegal opium production was not adequate. Although the level of commitment and attention has increased since mid-2004, the extent of the problem has grown significantly in the meantime.

## **2.4 Recommendations**

**It is recommended to undertake a comprehensive and independent evaluation of the Bonn agreement.** This should include the political process and its key components such as the four commissions in regard to mandates, performance and achievements. It should also cover the electoral process and the effectiveness of international assistance, and how the assistance has

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<sup>11</sup> Afghanistan ratio of ISAF troops to head of Afghan population is 1 per 1,115, in Kosovo in was 1 per 50, Bosnia 1 per 66 and East Timor 1 per 111 (Wilkinson P., et. Al (2004) Minimal Investments, Minimal Results: The Failure of Security Policy in Afghanistan. Briefing Paper. Afghanistan. AREU

impacted democratisation.<sup>12</sup> Regrettably, there is no time for such an assessment of Bonn before the Post-Bonn conference that is scheduled for early 2006.

It is recommended that the Post-Bonn compact undergo the widest possible consultation to build broad support and ownership of a **future comprehensive vision for a democratic Afghanistan**.

The Afghan Government/International agency report 'Securing Afghanistan's Future' of March 2004 contains an analysis of relevant sector needs and outcome targets to be achieved by 2015 in line with the UN Millennium Development Goals.<sup>13</sup> It could serve as a basis for the post-Bonn Compact, but it is critical that the political context is taken into account to avoid a strategy comprised of compartmentalised public sector investment programmes that do not take adequate account of the political and democratic developments.

In parallel, the Afghan government is preparing a national development strategy that it is supposed to be both comprehensive and visionary. It is encouraging that the government has the lead in the post-Bonn planning. The government should be supported as needed in its endeavour to develop a vision of the state and nation.

It is recommended that concrete benchmarks for state-building, development, economic growth and security should be complemented by **measurable indicators**. These would allow for monitoring of progress or setbacks against the benchmarks and for efficient targeting of assistance. Aid should be provided on the basis of **mutual and binding arrangements** between the Afghan government and the international community. All partners should be held accountable to these arrangements. It is also important to define **concrete goals and indicators for the democratisation process**.

## **3 Democracy in Afghanistan**

### **3.1 How fast should democracy be built – what is a feasible speed?**

There are different views about the advantages and adverse effects of fast democratisation processes. There are findings that suggest that democratisation

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<sup>12</sup> Five like-minded donors conducted a multi-donor evaluation in 2005 of their assistance that accounts for about 30% of the total aid to Afghanistan. The report may be used as an incentive for a broader and more comprehensive assessment see <http://www.um.dk/da/menu/Udviklingspolitik/MaalOgResultatstyring/Evaluering/Evalueringssrapporter/2005/Humanitarian+and+Reconstruction+Assistance+to+Afghanistan+2001-05.htm>

<sup>13</sup> Securing Afghanistan's Future (2004) <http://www.af/recosting/index.html> Accessed 24 October 2005

may halve the risk of inter-state war. But speedy democratic transformations may on the other hand result in a risk of re-eruption of conflicts and a risk of undermining the long-term democratisation prospects.<sup>14</sup>

*“There is a tendency to measure democracy in terms of the quantity of elections but not in terms of how much justice has been achieved”.* International Human Rights Advisor, September 2005

Establishment of a constitutionally democratic system and even a democratically elected government may only result in slow and fragmented democratisation. To avoid this, the political elite must be held accountable, and must accept political divergence. It must also deliver on inclusiveness, power-sharing and ensure security and protection. Otherwise, it may risk a more conflict-prone situation.

*“If he can’t give the sheep back to me, how can he become a candidate?”* said a local man in Ghazni two days before the elections. EU EOM Ghazni, September 2005

If people feel that their security is threatened, they may have an increased tendency to seek protection through an ethnic and/or religious affiliation or devote their loyalty to non-statutory armed groups. Afghan society is divided by social exclusion, different ethnic origins, diverse religious beliefs and territorial separation. In such a context, the fundamental elements of democratisation such as inclusiveness, participation and political competition may in the short term exacerbate divergences and potentially increase the risk of instability. In any event, it is the nature of democratisation to give space for disagreements, which will gradually be solved through institutionalised political systems or simply through dialogue and public debates, and as a result will not evolve into violent disputes.

### ***3.2 Democracy and Islam – is a debate on political systems, not religion per se***

Democracy has become for many states and people a universal concept, but there are diverse views on democracy and how it should be implemented. There are as many interpretations of political Islam as there are countries. The major obstacles to democratisation, according to the EU EOM findings appear to be

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14 Mansfield and Snyder (2002), 334 in Jarstad, Anna (2005) International Assistance to democratisation in Bosnia and Herzegovina, Kosovo and Macedonia, Department of Peace and Conflict Research, Uppsala University, Sweden, 21

backwardness, poverty, ignorance, and traditions that conflict with notions of respect for human rights, rather than religion. An ideal Islamic society may also be based on “*freedom of thought and expression, freedom from arbitrary arrest and the rule of law*”,<sup>15</sup> and social justice and equality. Human rights are not a new concept in Islam. Human rights are *reflected in the Qur’an and many Islamic books*” according to a member of the Ulema Council in Balkh.<sup>16</sup> Islam in Afghanistan is more a way of life than a monolithic ideology as Islam is found to have many and different interpretations and is not led by a central religious institution.

EUEOM: “Is democracy suitable for Afghanistan?”

Answer: “In some time it will be. We couldn't say it (the parliamentary and presidential elections) were the only tests. It wouldn't occur in a year. Day by day it will appear that it is good. Not fast, but slowly...There are lots of mullahs and illiterate people. We should not pressurise them, but explain that democracy is not against the religion. Student, Badakshan September 2005

## **4. Democracy and state-building - two sides of a coin**

Democratisation and state-building are clearly inter-linked processes. The state is the guarantor of the rule of law, the protector of rights and is fundamental for promoting democratisation. Democratisation sets standards for state-building and the public sector both in terms of consistency and predictability of government acts, delivery of social services, protection and security. A representative democracy intrinsically raises people's expectations regarding the performance of their elected and presumably representative political leaders.

### **4.1 Paving the way for future elections**

#### **Post-conflict elections**

Elections are critical for democracy-building and for creation of a new and legitimate post-conflict regime. Electoral democracy means direct participation in political processes, election of representatives, and broader representative power-sharing. Political pluralism can be a sensitive issue in countries emerging from conflict. Some might argue that not all of Afghanistan is yet a post-conflict country. Opening up diverse political views and political power-sharing should

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15 Ibrahim, Anwar (2005) Islam and Democratisation – the Winds of Change. Paper presented at the Centre for the Study of Islam and Democracy (CSID) Sixth Annual Conference, Washington DC, US [http://www.islam-democracy.org/documents/pdf/6th\\_Annual\\_Conference-AnwarIbrahim.pdf](http://www.islam-democracy.org/documents/pdf/6th_Annual_Conference-AnwarIbrahim.pdf)

Accessed 10 Sep. 05

16 DANIDA Interview in Masar-e Sharif 2005

therefore be managed carefully. This can be done in different ways, using various tools and measures. These include voting systems, timing and cycle of elections, and criteria for political parties, use of codes of conduct and oath swearing for political candidates and public-office holders. There are different experiences from post-conflict democratisation processes for instance East Timor, Cambodia, Bosnia and Kosovo. Experience in all of these countries indicates that **it is not elections per se, but the resulting outcome that is critical for whether viable stability, reconciliation and credible political structures will be established.**

**Elections in post-conflict emerging democracies balance on the fine line** between creation of a credible and legitimate state and the establishment of weak government structures lacking broad public trust. For more than a century Afghanistan has been split between reformists and conservatives, Islamists and tribal power, leading to coups and change of regimes. The power structures are complex and there are tensions at several levels: over limitations of powers between the central government and local power-holders; cultural disparities between elites in Kabul and the rural population; tribalism in the Pashtun areas vis a vis other ethnicities such as the Tadjiks, who identify themselves more by locality; and between 'modernisers' and Islamic 'traditionalists'.<sup>17</sup> During a transition emerging new values and institutions co-exist with past norms and practices. Their relative influence is unknown, which make the process unpredictable and may create some local resentment.

Central elections for head of state and the parliament can contribute actively to nation- and state-building in emerging democracies. Local elections at provincial and municipal level can strengthen the relationship between the state and the citizens, as local electoral issues tend to concentrate on more specific development issues and service delivery (E.g. Health, education, reconstruction).<sup>18</sup> If elections are seen as leading to positive development changes and prospects, they will strengthen incentives for public participation and broad support for the democratically elected leadership.

### **Ongoing efforts to establish an Independent Electoral Commission**

The Joint Electoral Management Body initiated a Post-Electoral Strategy Group (PESG) in May 2005. The PESG is developing a timely strategy to make the electoral system durable and economically sustainable.<sup>19</sup> Recommendations include the importance of completing a national census and voter registry; capacity-building of the national institutions; harmonisation of electoral cycles, municipal elections, and legislative development; and consolidation of economic sustainability. The strategy assumes that the constitution will be amended within the next five years. Most likely the preference will be to work with the newly

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<sup>17</sup> Barfield, Thomas (2005) *An Islamic State Is a State Run by Good Muslims: Religion as a Way of Life*, in Heffner, Robert (2005) Ed. *Remaking Muslim Politics – Pluralism, Contestation, Democratization*, Studies in Muslim Politics, Princeton, US, 189-213

<sup>18</sup> Post-Election Strategy Group (2005) *Preliminary Report*, July 2005, Afghanistan, 12

<sup>19</sup> Joint Electoral Management Body (2005) *Post-Election Strategy Group Preliminary Report*. Afghanistan

established system and devote resources and attention to improved stability and security, economic development, education, public sector reform and combating illegal opium production. A relevant evaluation and 'lessons learned' exercise is being planned.

### **Other challenges for future democratic elections in Afghanistan**

Afghanistan has gained experience in holding elections of universal suffrage, which have been major endeavours that unfolded relatively peacefully and in a short time. Universal suffrage does not necessarily result in democracy and equal opportunities to influence or participate in government. A range of issues will influence whether people have equal opportunities for electoral participation and elected representation, which is the focus of the chapter. The predominant factors include a fragmented political power base that consists of different networks of power-brokers; lack of political reform and the definition of political coalitions around issues as opposed to values and ethnic origin; a number of impediments to the broader participation of women; and a media that operates under tacit censorship and lacks guarantees of protection.

Well-established political parties that reflect and represent issues of common interest to major groups of society will be able to develop strategies for change and create alliances with for instance civil society groups in order to give suggestions and examples that the government may follow.

### **Fragmented political power base - the influence of networks**

During the conflict, traditional civil society structures have been partly dismantled and co-opted by militarised groups and by criminal networks, in order to secure local power. The political transition and reconstruction of the country creates unavoidable uncertainty about the future because of weak institutional structures and unpredictability about outcomes in terms of stability, political transformations, reconstruction and development progress. The institutional void tends to get filled by opportunistic non-statutory power brokers and illegal drug producers and traffickers. These actors exploit corrupt government officials to continue their businesses and consolidate their illegal and militarised networks.

In the past, the different groups were based on ethnicity, faction, religious conviction or location, but today new alliances are observed around illegal economic activities. These networks and groups exercise exclusive and self-proclaimed rights and privileges in their area of operations. This undermines efforts to enhance national unity and the rule of law. Where these illegal networks predominate, genuine universal suffrage is difficult to realise as they intimidate and instruct people how to vote and block the idea of equal rights and participation.

### **Political parties – why should they now have a role?**

The constitution of Afghanistan guarantees party and political pluralism. However, because of the choice of voting system and other provisions of the electoral law, political parties had an extremely limited role in the recent election process. Even if candidates were affiliated to a political party, they were not able to communicate this fact to the voter on the ballot paper. Accredited party agents, who were allowed to observe voting and counting, were the only means in which political parties were formally involved.

Afghanistan has 76 registered parties. This does appear to be a very high number for an efficient party-based future democratic system and some degree of consolidation and alliance-building is desirable. Article 9 of the political party law indicates a threshold of a minimum of 700 members but there is limited information on whether this provision is enforced.<sup>20</sup> Political parties need to be representative, democratic and be in touch with public opinions in order to gain credibility and earn the confidence of the government, people and civil society.

There is a strong connection between a parliament's legislative ability and the maturity of political parties. Initially, it is expected that some of the parliament's attention will be taken up with factional, ethnic and local issues that resemble identity politics. The sooner the parliamentarians can move to an educated focus on substantive policy issues and common beliefs about democratic systems, the more effective parliament will be in its legislative role.

### **Women in the election – the goal is not yet reached**

Women have registered as voters on a huge scale. Women account for 44 % of the total number of voters. However, their illiteracy, generally low social status and relative lack of empowerment make them more vulnerable to intimidation and manipulation. Nevertheless, the past two elections attracted a considerable number of female candidates for the first time in the history of Afghanistan. In the development of political parties it is important that women obtain a significant representation. The traditional *Jihadi* parties have shown little or no commitment to women's participation in political and public life.

Experience shows that legislation is not enough when it comes to improving the role of women in the political process. Quotas for women could also be introduced to ensure women's representation in political parties, but **only as an interim measure**. Female politicians and activists, although they are very few, should be supported and safe space provided for their activities

The media plays an important role in shaping people's attitudes and beliefs. It can play a useful role in fostering a culture of political parties and equal representation in spite of gender, ethnicity, religious conviction, lineage,

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<sup>20</sup> Government of Afghanistan (2004) Political Parties Law, Ministry of Justice

occupation or place of residence. Civic education has been part of the electoral programmes but has concentrated on electoral procedures rather than on broader issues. Nation-wide and continued civic education on democratic relations between state and citizen should have a high priority in the Post-Bonn era.

### **Recommendations**

- A stronger sense of shared national identity - in spite of ethnic, social, political and gender differences and unity between different factions and groups;
- Political party development in terms of coalition building to diminish the number of parties, training in forming party agendas, policy development and political accountability;
- Establishment of political party resource centres at provincial level to provide facilities to develop and print party programme and campaign material, and access to internet for research and networking;
- Create interim quotas for women's representation in political parties that requires nevertheless a different electoral system and inclusion of parties in future elections;
- Support for female politicians in changing perspectives on women in public life;
- Strengthen links between political parties and civil society organisations around common issues;
- Continue civic education nation-wide to compensate for the literacy gap and to improve the general level of knowledge of political development, rights, democracy and participation; and
- Build a national cadre of competent and professional political observers.

## **4.2 A functional parliament**

The national assembly is empowered to provide oversight of the executive and cabinet, and may also summon ministers to demand accountability. It is also mandated to review, ratify or modify draft and existing laws and international treaties; approve the state budget and create or make changes to the administrative organisation of government.

The rules of parliamentary procedure are being drafted and reviewed by experts and will be presented before parliament for discussion and endorsement. Two pieces of legislation will also be drafted beforehand, namely the privileges act and the staff act. The speaker will have an important role in guiding on prioritisation of issues, consulting and reconciling views to ease decision-making. Therefore it is highly desirable that the chosen candidate should command broad respect and support not only within national assembly but also among the wider

Afghan public. The election for this post should be held transparently and there should be clear procedures for quorum and dispute resolution.

The parliament as an institution is being built from the ground up through a two-year project, Support to Establishment of Afghanistan Legislature (SEAL) started in February 2005. The total budget is US\$ 15,50 million of which US\$ 5,77 million is not yet funded.<sup>21</sup> The areas of focus are capacity-building,<sup>22</sup> rehabilitation of facilities as an interim solution until a new parliament building is in place, and a comprehensive information and communication technology component. The national counterpart is the newly established Secretariat of the Afghan National Assembly, which is headed by a Secretary General appointed by the President.

### **Training and capacity building are not only urgent, but also fundamental**

The functioning of parliament will be challenged by the fact that most parliamentarians lack experience and training to review and pass laws. During the Bonn process, legal drafting has been merely limited to presidential decrees and orders. International advisers have drafted most laws. In total 1,145 presidential decrees and 22,549 presidential orders and 203 cabinet decisions have been passed by the transitional administration.<sup>23</sup> The parliament may wish to be assisted in reviewing the presidential decrees and orders, which will be submitted to parliament at its first session and will remain valid until it decides to annul them.<sup>24</sup>

In addition, budget preparation and planning require a separate set of skills. The MPs will receive different kinds of training. A women's caucus will be established to support platform development for female MPs. Human rights training and conflict resolution are not yet included. The latter may prove to be useful to facilitate consensus-building in view of the diverse composition of different groups and the number of individual leaders in parliament "*The biggest concerns are first security, then capacity and lastly sustainability*", said the programme manager of the SEAL.<sup>25</sup>

### **Roles, responsibilities and processes for policy and law-making**

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21 The SEAL project is managed by a taskforce that provides oversight, gives directions and regularly re-evaluates priorities and activities to ensure timely implementation of activities and achievement of outputs. It will include participation of Government (Civil Service Commission; relevant Government entities such as: Cabinet Secretariat; Ministry of Finance; Ministry of Communications; Ministry of Urban Development), the United Nations (UNAMA, UNDP, UNIFEM and other UN agencies involved in the process), the Lead Nation France for Parliamentary Support, and major donors.

22 Legislative drafting and management, parliamentary administration, public relations, human resources management, and parliamentary security (Secretariat of the Afghan National Assembly in cooperation with the SEAL Project/UNDP Afghanistan and the Inter-Parliamentary Union (IPU), „National Seminar on Parliamentary Processes and Best Practices“, 23-25/10 2005, Kabul

23 Adam Smith Institute 22 September 2005

24 The Constitution of Afghanistan (2004) Chapter Twelve – The Transitional Provisions

25 EU EOM Interview with Ms. Thusitha D. Pilapitiya, Programme Manager, SEAL September 2005

Parliament's institutional relationship with cabinet, ministries, the executive and also the provincial councils will need to be clarified, as will their respective roles, responsibilities and processes for law-making. Such clarification is needed for efficient and transparent policy development and lawmaking.

### **Accountability**

Under the Constitution, one role of the parliament is to hold the government accountable for its performance. The parliament itself must also be accountable. This can be achieved through an active outreach strategy, institutionalisation of forums for interaction between MPs and the broader public; and an active civil society. It is currently being debated whether sessions shall be public and broadcasted. Such a measure would expose the shortcomings and difficulties facing parliamentarians,<sup>26</sup> but broadcasting could enhance accountability and make the MPs aware that their public role that requires a certain standard of conduct and ethical behaviour.

### **Recommendations**

- Procedures for policy reviews and law-making need to be formalised to ensure effective and efficient processes;
- Support needs to be provided to help review the large number of decrees, presidential orders and cabinet decisions issued during the transitional period;
- Capacity-building and training in technical aspects of legal reviewing including gender-mainstreaming, economic issues, human rights, legislative frameworks for the security sector, pro-poor legislation, national budget reviews, and due process;
- Parliamentary Committees should be established on issues including governance, human rights with emphasis on women's rights, the rule of law, anti-corruption security, private sector, social development, and parliamentary oversight;
- Technical assistance could be facilitated by expert panels through 'Question and Answer' sessions and day-to-day requests;
- A process or mechanism to ensure transparent parliamentary oversight;
- Broadcasting of parliamentary sessions and a public relation strategy should be developed;
- Establishment of partnerships with relevant parliaments abroad for continued capacity-building and networking;
- Candidates should be offered special training to establish political platforms, with a particular focus on female candidates; and
- Adequate security should be provided before the parliament is inaugurated for all MPs, the secretariat and programme staff.

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<sup>26</sup> EUEOM interview August 2005

### **4.3 Strengthened local administration for effective government outreach**

#### **Sub-national administration is the interface**

Afghanistan has a long tradition of strong decentralised local administration in the form of tribalism and warlordism. The central state has had to negotiate support from local leaders to stay in power throughout its history.

The Bonn process emphasised centralisation, but a decentralised *local* administration is also an important element of democratisation. It can bring the state closer to its citizens and improve state-building and responses to local needs. There is an inherent dilemma between maintaining peace, stability and building a central state on the one hand, and promoting democratisation, local empowerment and political pluralism on the other hand.

It is difficult to discern sufficient political will for strengthening the sub-national administration: the overriding priority has been to build a functional administration first of all. However about 75% of the population live in rural areas and improvement of livelihoods by better provision of social services can only be achieved through strengthened local governance. Some international specialists are of the view that it will require at least 4-5 years of stability and another presidential election before local empowerment will be actively pursued. Some are of the opinion that it may take decades. It is important to bear in mind that DDR, counter-narcotics, law enforcement and new public sector management measures are fundamental for any progress.

#### **Local Administration in Bamyan**

In Bamyan, the province in the central highlands and the heartland of the Hazara people, the first female governor of Afghanistan was appointed in March 2005. This was a breakthrough for improving gender equality in the administration. Support for the governor is important for the sake of Bamyan province, which has been neglected in regard to assistance, but also to ensure that the first female governor is sufficiently resourced and equipped. At present her office has not experienced any changes. If she does not deliver it can have repercussions and set back women's role in politics and public administration because she may be viewed as a test case.

A strong and effective provincial administration is also needed to address the different aspects of illegal opium production and disbanding illegal armed groups, as this cannot only be done from central level. At present, central planning, lack of delegation of responsibility for the management of resources, and unclear

relations with local representatives of the central ministries curtail the governor's authority and role.

### **Local over-regulation**

There is a need for greater clarity on the interaction, mandates and structures of the various local administration bodies and initiatives. These comprise the newly elected Provincial Councils, the centrally appointed provincial governors and the Provincial Development Councils. At the district level the list includes the Afghan Stabilisation Programme (ASP) and the National Solidarity Programme (NSP)'s community development councils. Still pending, at the time of writing, is the establishment of district and villages councils according to article 141 of the Constitution of Afghanistan.

This plethora of local structures risks creating overlaps, potential gaps and inefficient use of resources if their different roles, institutional and reporting relations and funding are not soon clarified. This should be done pragmatically, without creating unrealistic expectations as to their performance and achievements. The national assembly will be mandated to review established structures, and to modify and to rationalise the local administrative structures. It is important that parliamentarians are properly briefed about various options and about the sequence to follow for any reform. Experience demonstrates that there is a minimum of four requirements for decentralisation to lead to a reduction of poverty:

- i) Adequate funds for elected bodies at lower levels;
- ii) Adequate powers for the same bodies;
- iii) Reliable mechanisms for accountability of elected representatives to citizens and for accountability of bureaucrats at lower levels to elected representatives,<sup>27</sup> and
- iv) Competence and capacity

### **Decentralisation**

Decentralisation is a process and a government administrative and management tool. Commonly in developing countries, decentralisation either happens too fast or in a fragmented way (for instance inadequate structures or legal framework, mismatch between decision-making power and fiscal authority). Decentralisation is not in itself a panacea and should be carried out in a well-planned and comprehensive manner.

The local administration needs to be reviewed properly, in particular with emphasis on roles, responsibilities, relations and reporting between the various bodies. **The confusing structures of sub-national administration make it**

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27 UNDP (2004) Decentralised Governance for Development - A combined practice note on Decentralisation, Local Governance and Urban/Rural Development, UNDP NY, USA <http://www.undp.org/policy/docs/practicenotes/dgdpnitra.doc> Accessed 20 September 2005

**more difficult for people to participate in and influence local government or to act as an effective constituency.**

An effective and efficient organisational structure should take into account the specifics of Afghanistan's regional economical and geographical disparities and ethnic differences. It should be based on a carefully defined blend of different degrees and forms of decentralisation (De-concentration, deregulation and devolution).

The local administration suffers from lack of funding and institution-building and does not have proper functional institutions and structures in place for implementation. By default the Ministry of Rural Rehabilitation and Development is being tasked with additional functions beyond its mandate by default including disarmament of illegal armed groups (DIAG)

The Ministry of Interior urgently needs to be reformed and solutions found for the variety of problems that it faces including widespread corruption; lack of professional and management capacity; inadequate communication and control between Kabul and the rest of the country. There is a severe shortage of qualified staff and resources. The Ministry is in general overstretched given the range of challenges with respect to its broad responsibilities, ranging from the Afghan National Police to the local administration. A decision is pending on whether local administration should be transferred to another governmental entity, or whether the police departments should be managed outside the Ministry for an interim period to accelerate the reform and capacity-building progress.

**Bridging tradition with modernity**

There is no reference to the traditional local administration such as *Shuras* and *maleks* (village leaders) in the constitution, legislation, polices or programmes except for the NSP. The NSP applies an understanding of community structures but requires election of new councils and representation of women.

In the rural areas there is limited or no impact of the provincial or district administration, because of a lack of developed structures, scarce resources, difficulty of access and lack of communication. The de facto local power and decision-making are formed within pre-existing structures such as the traditional and religious.

Afghanistan's cultural and social fabric is based on patron-client relationships and traditional hierarchies. If the patrons are approached and gradually and voluntarily included, it may have a positive impact on the strong patrimonial administration and hence ameliorate the situation for the 'clients' – the local people. The strong and local patrimonial structures and power relations may not change because of a couple of elections, when the level of civic education is low and many female voters are not sufficiently empowered to make their own

choices. *Shuras* are defined by the local context and hence their composition and operation vary from one location to another. The newly elected provincial councils could serve as a bridge between the governor and the local communities. The ASP, which originally targets the district level, could be an advisory body to the governor also, as it represents several ministries and targets the district level.<sup>28</sup>

## **Recommendations**

- A vision needs to be created for the organisation and structure of the three-tier government and clearly defined roles and functions for the different levels of government should be devised within a defined timeline. The process could be led by a parliamentary working group on sub-national administration;
- Large-scale policy proposals could be subject to public consultation to enhance support and ownership;
- A comprehensive approach to local administration should take into consideration civil service reform, future electoral reform proposals as envisioned in the Post-Electoral Strategy Paper for local elections and their implications for local administration, the various local programmes, modalities to increase women's access to basic services and role in local government;
- The priority given to supporting a central government, in spite of its deficiencies, hinders efforts at building governance from below and may curtail the outreach of good governance processes. Development aid should, where possible, be devolved and not only centralised;
- A national strategy for capacity-building for central and local administration needs to be coupled immediately to the reform of the Ministry of Interior with clear targets, and performance measures for transfer of knowledge and skills;
- The pay and grade reform needs to accelerate. Notwithstanding the concern for fiscal sustainability, there are acute short-term needs for a competitive salary level to attract and retain qualified candidates
- Combating illegal production of opium and trading, corruption and disarmament of illegal armed groups should be part of a governor's tasks and he/she should be properly empowered and also be held accountable;
- A communication strategy and mechanism should be devised for inter-governmental communication between the different tiers of the administration;
- A nationwide public outreach strategy should be implemented to inform civil society and the population about plans, initiatives, and progress but also about obstacles for development and management of expectations;

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<sup>28</sup> EUEOM Interview with Habiba Sorabi, Governor of Bamyan 19 September 2005

- A monitoring mechanism for state-building should be established;
- Funding should be provided based on mutually binding arrangements and selected conditions of which a critical one is insistence on vetting and merit-based appointments.

## **5 The rule of law – for a rules-based, not an opportunistic society**

### **5.1 A reformed and trustworthy judiciary**

Justice, peace and democracy are mutually reinforcing imperatives.<sup>29</sup> The rule of law is a prerequisite for peaceful resolution of disputes and must replace use of arbitrary or non-statutory adjudication and violence. An individual, a citizen, is free to the extent that laws are developed democratically and government officials are required to act in accordance with the law.

#### **A complex mosaic**

The rule of law in Afghanistan, and in particular the judiciary, has not demonstrated any significant changes, regardless of the fact that it was supposedly a priority of the Bonn process. The justice sector is in strong need of reform and capacity-building. It is **probably the most complicated sector** because of the co-existence of different sources of law in Afghanistan. Most international experts are unaware of the Afghan legal context whilst most legally knowledgeable Afghans are unaware of recent international developments in judicial-sector reform and liberal democracies.

The justice system continues to face several political, structural, and resource constraints; limited administrative capacity, rampant corruption, political interference, poor salaries, and intimidation of judicial personnel. Most of these problems are common to countries in transition from protracted violent conflict, but things are especially complex in Afghanistan because of the interface with Islamic law and customary practices, as well as the question of transitional justice.

The legal context in Afghanistan is a mosaic of different sources of laws; statutory law that consists of different kinds of civil codes from different regimes, customary law (Pashtunwali), Islamic law, and international human rights law. The different sources of law operate without a formalised hierarchical order or

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29 Peace, Justice and Reconciliation Plan in Afghanistan (2005) Action Plan, Transitional Justice Working Group, Afghanistan

system but, in the absence of a reformed judiciary, are applied differently according to the context and location.

### **The Islamisation of the judiciary**

At local level, Islamic laws and interpretation operate more or less uninterrupted, where the state authority is absent or is not functional. Many local judges have only training from madrasas in Afghanistan or Pakistan and practice *Shari'a* (Islamic law and civil codes). Civil codes and the Constitution are mainly applied in cases not covered by Islamic law, which are in most local areas only very few.

The practice of Islamic law is subject to continual interpretation. In spite of Islam's prevalent influence in the Afghan society, it does not have a significant centralised religious institution, making it less monolithic as an ideology and is regarded more as an encompassing way of life. Mullahs have also the double role of exercising political authority in many rural areas and deciding on local priorities.

### **Many intentions but no coherent strategy**

The judicial landscape remains fragmented and subject to relatively uncoordinated and incoherent assistance in the absence of a common vision and comprehensive strategy. A response to the poor state of the judiciary has been formulated in the very ambitious "Justice for All – Ten Year Strategy" adopted earlier this year by the permanent justice institutions of Afghanistan. At present, it lacks sufficient governmental support, and needs to make stronger links to security sector reform.<sup>30</sup>

### **The rule of law is not only a matter of rules and regulations**

Establishing the rule of law is much more than creating rules and regulations and establishing the state's monopoly over producing legislation and the use of coercive force. The social-cultural situation, especially practices deriving from customary and religious laws, is a major impediment to expanding implementation of statutory laws. The rule of law and justice depend also on changes in people's attitudes, expectations and behaviour. **Legal pluralism co-exists in a society, like Afghanistan, that is stratified by differences in knowledge, education, development, ethnicity and degree of religious conviction.** It is important to recognise that there are sources of law other than centralised statutory laws that guide social behaviour and social control - such as religious and customary law.

The legal competition, or rather, the co-existence of alternative dispute settlement mechanisms including the local religious leaders, *Shura* structures and councils of elders, provide people with different options for arbitration. In the absence of a functioning court system, **access to justice is currently**

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30 The justice for all strategy was drafted under the leadership of the Ministry of Justice in close consultation with the other two justice organs, the Attorney General (Saranwali) and the Supreme Court and international partners/organisations through the consultative group forum.

**inadequate, especially for women.** Some NGOs have started legal aid clinics such as the Norwegian Refugee Council but more could be done in this field. It would not only improve the rule of law, but could also improve human security in particular for women. Most people feel insecure not because they are preyed upon, but because they do not have access to law enforcement in the form of a trustworthy police or justice system to protect or to take care of their legitimate interests

**Law reform is urgently needed** to develop a comprehensive, coherent and national body of legislation that engenders public ownership and support. Complex issues are property rights, legislation for distribution of wealth and resources, and family law, touching at the core of *Shari'a*. Property rights are also associated with dealing with past atrocities, as land-grabbing between warring factions was widely exercised. The thousands of presidential orders and decrees need to be reconciled with future law-making to avoid legal conflicts especially where they may create unwanted precedents. Interim legislation such as the criminal procedure and juvenile justice codes should have a defined duration. Law reform should be closely coordinated with the security sector and police reform to ensure complementary and better-balanced funding allocation. Of the national development budget **the justice sector has received 2.6% of the total contributions to security and law enforcement (Justice, police and Afghan National Army (ANA))**.<sup>31</sup> Law reform should be an open process. It is anticipated that a strengthened civil society will demand and should have a greater role in law-making.

**Public awareness needs massive investment and legal consultation is fundamental.** An expert recommended, after having been involved in the drafting of the juvenile justice code, that new legislation should be shared with all stakeholders to develop consensus to get the necessary support of the Supreme Court. This may prove problematic due to the conservative nature of the Supreme Court [*I have deleted this as there is a risk of contradiction with the legal analysis in the Election Report – which claims for example that the Supreme Court is fully entitled to get involved in the decisions of the JEMB/ECC, even though some people have tried to prevent this because of SC's conservatism*]. Its endorsement is nevertheless required to legitimize the efforts already undertaken by a small group of local specialists.<sup>32</sup> New legislation should be printed and disseminated widely to all judicial entities such as courts and prosecutor's offices and the *Hoquq* (dispute department of the Ministry of Justice (MoJ)), and relevant laws should be explained to the police. The population should also be made aware of major new legal developments through the media and in particular the radio to enhance the understanding of laws and need for compliance.

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<sup>31</sup> Ministry of Finance (MoF) October 2005

<sup>32</sup> EU EOM Interview September 2005

## **Recommendations**

- Further development of the Justice for All proposal to better address the key problem of unclear and overlapping roles and institutional discretion between the Supreme Court, the MoJ and the Attorney General, in addition to the structural problems of low salary levels, and legal pluralism;
- Consultation with law enforcement entities is required in the finalisation of the Justice of All programme. The timeline should be broken down into phases of two years to ensure better planning, monitoring and resource allocation;
- Islamic legal reform could be raised at conferences on relevant experience from other Islamic countries and with attendance of Islamic law experts;
- Structural obstacles such as low and unattractive salary levels and lack of facilities should be urgently removed to attract professional and qualified lawyers;
- Definition and enforcement of criteria for appointment of qualified judges is urgently needed and should be done by an advisory panel;
- A professional legal training institution should be established and training delivered on a coherent curriculum. Special courses for new and future judges should be created;
- Improved access to justice and protection of women through legal aid clinics to compensate for a deficient judiciary;
- Continued efforts to raise public awareness about the function of a judiciary and the rule of law; and
- Increased priority in terms of access to funding<sup>33</sup>

## **5.2 Human rights – is not only the responsibility of the human rights commission**

As part of the Bonn process, human rights became an item on the nation- and state-building agenda. The Afghan Independent Human Rights Commission (AIHRC) that was established in 2002 has mainly led promotion of human rights. The Commission has engaged in extensive awareness raising, monitoring, investigation, training and advocacy in relation to human rights and in particular women and children's rights. It has also taken several initiatives in relation to accountability and justice for past crimes committed during the war. It has seven regional offices and its operation and activities are funded by bilateral contributions.

Afghanistan has ratified the major human rights treaties.<sup>34</sup> The government's commitment and obligations to protect human rights are enshrined in the

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33 The required budget for justice (1381-1384) is 300.84 million US\$ (100%). Commitments amount to 75.89 million US\$ (25%) of total requirements. In total 40.83 million US\$ was disbursed, which is equal to 14% of the requirements and 54% of the commitments. MoF, October 2005

34 ICCPR, ICESCR, CEDAW, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Genocide Convention, ICERD (International Convention on the Elimination of All Forms of Racial Discrimination), Convention on the non-applicability of statutory limitation to

constitution, specifying equal rights for both women and men and recognising the international human rights treaties.

The human rights situation has improved in part because of enhanced security provided by the increasingly competent Afghan security forces, ISAF, the Coalition forces and PRTs; increased monitoring and reporting; and the international presence in general. Yet there is still a long way to go. Social and economic rights are hardly observed because of widespread poverty, under-developed state administration and scarce provision of social services.

**Political and civil rights continue to be violated** because of hitherto lack of sufficient political will to reform the judiciary and tremendous capacity gaps in the law enforcement institutions. They are not used to any kind of public oversight and there is a general lack of trust in the judiciary. There are also restrictions on political and civil liberty. In some cases, these are caused by the lack of hierarchy between the different sources of law that allow space for conservative influence in relation to freedom of speech.

The influence of criminal networks such as drug traders and illegal armed groups, ignorance, and some customs and local practices also violate human rights. Customary practices such as child- and forced marriages and sexual abuses are widespread. **Awareness-raising, training of local traditional community representatives and strong political statements are needed to improve this situation.**

Members of the AIHRC who have tried to raise awareness through media such as radio programmes have received threats - even death threats.<sup>35</sup> Freedom of expression is fundamental for civil liberty and a democratic society and should be guaranteed. There are regular reports of intimidation and threats to journalists, as well as kidnappings. For instance, the journalist and editor of the magazine "Hoquq-e Zan" (women's rights) was arrested on 1 October 2005 on charges of blasphemy and on 22 October was sentenced to two years in prison. The case is currently under appeal. Arbitrary arrests and detentions remain common practice.<sup>36</sup>

Investigation of abuses and enforcement of corrective or protective measures have limited impact, when both the judiciary and the police are relatively weak in terms of capacity and integrity. Non-statutory local power brokers, who exercise control over communities and resist law enforcement, are major obstacles to improving the human rights situation.

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war crimes and crimes against humanity, International Convention on the suppression and punishment of the Crime of Apartheid, Convention on the Rights of the Child. <http://www.ohchr.org/english/countries/ratification/index.htm>) accessed 17 October 2005

35 EU EOM Interview with Afghan Independent Human Rights Commissions in different provinces August- October 2005

36 EU EOM Interview with UNAMA human rights officers August – October 2005

In general, understanding of and respect for human rights should continue to be enhanced to ensure that state agencies and non-state groups don't violate human rights. Initiatives should encourage traditional civil society leaders and the religious community to act in accordance with human rights law and , but also position law enforcement agencies as promoters of human rights. Security, political stability, the rule of law and protection of human rights are inter-linked and mutually reinforcing. There is a need to address protection of human rights in a more comprehensive way and institutionalise it throughout the continued state-building process. Human rights should be an integrated concern in those related reform processes. It is a greater task than the AIHRC can shoulder and needs firm political commitment by the national authorities and international community.

### **Recommendations**

- **Public trust in the legal and judicial institutions** should be built by example, through awareness-raising, and by encouraging people to appeal to the law to guarantee their rights as opposed to local alternative dispute settlement mechanisms;
- **Development of a national human rights action plan** should include key targets and indicators for human rights mainstreaming and identification of implementing partners including the Afghan Independent Human Rights Commission. The action plan should include:
  - Human rights assessment of government recruitment policy;
  - Human rights training of senior government staff, the police, the ANA, the judiciary, traditional civil society leaders and religious leaders;
  - Human rights law should be part of the law curriculum;
  - Research on customary law and violation of human rights;
  - Increased human rights awareness through better use of media, civic education, integration of human rights in the national education curriculum schools and special courses for civil servants;
  - Closer monitoring of arbitrary detention;
  - International human rights verification;
  - Continuation of support to the AIHRC; and
  - Creation of parliamentary committee on human rights.

### **5.3 Improvement of law enforcement through a better and professional police**

A safe and secure Afghanistan and enforcement of the rule of law require a fully professional police. The German, US and Norwegian police projects have trained more than 35,000 police. The goal is 62,000 by the end of 2005. It is ambitious and the concern for quantity and speed may compromise the quality

and impact of the training. The US concentrates on lower ranks of the police for street patrol and delivers courses of about eight weeks and two weeks of specialised training.<sup>37</sup> The German police project concentrates on officers and offers three-years training and one year of training for non-commissioned officers.

### **The Afghan National Police (ANP) are not less important than the Afghan National Army (ANA)**

Local commanders, who later became chiefs of police at district and provincial level and transformed their staff into police, originally hired most of the police. Some of them poorly educated and some are illiterate. The ANA officers receive a higher salary than the police and hence the ANA recruited the most qualified security officers at the expense of the capacity of the police. The ANP has received just over 20% of the total contribution for security and law enforcement of which some 78% was allocated to the ANA during the Bonn process from 2002-2005.<sup>38</sup>

### **Half full or half empty?**

The police have received uniforms that help people to identify who are the trained and new police. Uniforms are an important symbol of national identity but personal equipment, administrative facilities, reliable communications, firearms, vehicles and fuel to support their functions remain in need.

The police needs legal and human rights training in addition to information on basic patrolling, tactical skills and keeping order on the streets. The manner in which they work is critical and therefore training on human rights, gender sensitivity, 'stop and search' techniques, criminal justice and due investigation processes are important. The AIHRC has undertaken some training of the police but on an ad hoc basis only, given shortages of resources and capacity. The Norwegian Police training programme has for more than two years undertaken human rights training of the trainees at the police academy. There is room for expansion. The police need training in criminal justice and evidence handling, and also gender training for when they interrogate women, conduct house searches, or deal with rape cases. Conservativeness and ignorance are detrimental to women's security and protection. A concerted effort is recommended for hiring of women.

*"If a woman complains about rape to the police, there is a great risk that she will be charged for adultery and imprisoned".*

EU EOM Interview with Human Rights Commission staff and local women NGOs Aug-Oct. 2005

37 US Government Accountability Office, (2005) Efforts to Establish Army and Police Have Made Progress, but Future Plans Need to Be Better Defined, Afghanistan, 19-27

38 Ministry of Finance October 2005

The police should fully understand the rights and principles reflected in the constitution and should be trained in relevant international human rights treaties including the Convention Against Torture and International Covenant on Civil and Political Rights. The Ministry of Interior created a human rights unit for the police in 2003 but hitherto it has not received much support or funding. The senior management is in need of an understanding of management and organisational functions, which should be addressed through theoretical training and applied practice with support from international mentors.

Most police stations lack secure and proper detention facilities and sometimes private residences are used. They also need secure facilities for storing firearms. The new prison law is perceived to be a sound piece of legislation and the conditions in prisons are being improved. Case adjudication continues to be of concern both in regard to how the detainees entered prison and how their cases will be processed.<sup>39</sup>

### **Capacity- building in despair**

The impact of training faces different challenges. Many young and newly trained cadets are not able to apply their acquired skills when returning to poorly resourced community police stations that are staffed by some illiterate, untrained or former militia members with limited loyalty to the elected government.<sup>40</sup> A main factor is that the training so far has been concentrated in Kabul. Follow-up and evaluation are lacking.

### **Reform of the Ministry of Interior - an end to over-stretch**

The administration of the police falls under the MoI. In addition, the MoI is in charge of border control, counter-narcotics police and sub-national administration. Its limited absorption capacity is also an obstacle to progress. In total only 50% of the allocated funding from 2002-2005 has been disbursed in spite of the continued uncovered needs.<sup>41</sup>

Some Provincial Reconstruction Teams (PRTs) are tasked to support the government's law enforcement capacity in addition to ensuring local stability. Several PRTs have undertaken ad hoc and uncoordinated police support and basic training, which may be better than nothing but is problematic if the right competence or curriculum is not in place.

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<sup>39</sup> EU EOM Interview with Mr. Richard Bennett, Chief Human Rights Officer, UNAMA Kabul, 26/09/05

<sup>40</sup> US Government Accountability Office, (2005) Efforts to Establish Army and Police Have Made Progress, but Future Plans Need to Be Better Defined, Afghanistan, 22

<sup>41</sup> Ministry of Finance October 2005

## **Recommendations**

- Expanded training, mentoring, and mobile training teams to conduct follow-up training in all provinces and districts;
- Police training and capacity-building should include criminal justice, human rights and gender training and also training of border police;
- Merit-based appointments and promotions;
- Integrated and mixed teams of police officers from different provinces;
- The Provincial Reconstruction Teams should be supported by a police advisor to do on the job training and follow up on capacity-building;
- Assistance to the Human Rights Unit in the MoI;
- Reform of the MOI and the police department could be managed as an umbrella project with more involvement by international advisors;
- Establishment of an institutionalised link between justice and police; and
- A better balance between the ANA and the ANP in terms of resources and support.

## **6 Fostering democratic civic culture**

### **6.1 The media – its multiple roles**

#### **The media - an instrument in peace-building, transition and democratisation**

The media can play a critical role in peace-building, transition and democratisation. Through the media the need for and understanding of national unity can be strengthened by debates on sensitive issues, and presentation of divergent views between new trends and conservative beliefs or values. Debate may embrace different regions and ethnic groups or people of different kinds of religious conviction. It can broaden acceptance of differences and forge reconciliation. The media **may be instrumental in transforming disagreements and disputes** into inclusive debates and pragmatism rather than fights and exclusion.

The media cuts across cultural hierarchies and gives space to the younger generation to air their views and their interest in fusing modernity, Islam and Afghan culture. About 40% of the population are under the age of 15 and they should also be allowed to have a say.

Radio and TV are significant instruments for civic education and dissemination of information, when the illiteracy rate is extremely high (over 70% of the population) and the printed media is under-developed. The radio seems to be the primary source of information, also for civil servants about central state affairs, education and entertainment throughout the country. A breakdown of media usage per province disclosed that an average of 83% of the population

listen to radio and 36% watches television. Only 2% has access to the internet. The civic education for the elections was mainly done through the media, but the lack of a developed spectrum of infrastructure restricts coverage (in most cases it is limited to 20KM range).

A professional and empowered media can make a positive impact on a wide range of social, economic, political and cultural issues. It can promote transparency in the public and private sector by being an important monitor of government performance and private sector transactions. It can strengthen a culture of accountability by disclosing cases of corruption and resource waste. It may be conducive to restoring cultural identity and heritage that have been damaged during times of war. The young generation has sparse knowledge of the country's prominent cultural assets. Broadcast of national music that was banned during the Taliban rule, poetry, writers, interviews with traditional leaders and contemporary cultural educational programmes are important. **Increased cultural awareness can raise the sense of national identity, dignity and an interest in preserving and rebuilding Afghanistan.**

The support for the media started almost from scratch at the beginning of the Bonn process. The government was committed to establishing a free and independent media. However, the state media did not seem to be a priority. Rather, the new independent, private or NGO media was a focus. The media has mushroomed to approximately 350 independent and state-owned publications and magazines. A similarly impressive growth in the number of existing or planned radio stations is also evident with 32 independent stations and 18 state stations either operating or planning to operate in the near future.

### **Challenges ahead**

The state broadcaster operates the majority of television services throughout the country and the Kabul-based Afghanistan Television and Radio (RTA), is complemented with regional channels that produce some of their own programmes, albeit on a very limited budget. Several regional TV and radio stations are owned by commanders or controlled by governors making the integrity and independence of the news doubtful. To some extent the growth of the sector disguises the fact that a lack of a consumer market and the low level of state funds leaves the sector lacking resources. In the case of RTA, its regional outlets and production centres are impoverished. The weak financial and economic base leads to a lack of resources in news collection and programme-making; inadequate investment in staff training; and a lack of distribution capacity. The result is the continued absence of quality media content throughout the country and a lack of sustainable media organisations. The legal and regulatory framework for the media sector needs to be developed.

### **Freedom of speech – how much freedom?**

The conditions for the media in Afghanistan and the rights of journalists have been improved, but arbitrary arrests continue, particularly in cases relating to

accusations of blasphemy. The recent arrest and imprisonment of the journalist Ali Mohaqeq Nasab for publication of supposedly anti-Islam articles in his magazine Haqooq-i-Zan (Women's Rights),<sup>42</sup> is disturbing. Such unwanted events may continue in the absence of a developed legal framework to provide a detailed interpretation of the right to freedom of speech set out in Article 34 of the Constitution.

Assistance to the media should be based on three pillars of development: investment in legal reform, institutional development and human resources. All three should be considered of equal importance as areas for support from the Afghan and the International community.

### **Recommendations**

- The continued development of an adequate media law establishing key principles and regulations is a priority for the media sector in Afghanistan. Such an instrument should provide a comprehensive framework with clear parameters set for broadcasters and the regulatory framework;
- The authorities should establish an operational independent regulatory authority for the broadcast media as soon as possible to assist the stable growth of the media industry in the country;
- Reform of RTA and support both for the core and periphery is necessary to overhaul the organization with focus on independence from the state. Funding should be provided and set out in statutory law;
- The nascent union of journalists should also be supported in their efforts to develop a forum for the protection of journalists and a platform for exchange and competency development;
- Capacity-building through support to national and regional training institutions to provide training in new technology, objectivity, accurateness, and verification of sources, investigative techniques, media management, and training of trainers.

## **6.2 Improvement of conditions for women – also a man's job**

In general, it was a priority for the international community public to improve the conditions of women after having received reports for years on the maltreatment of women, in particular during the Taliban regime. Nevertheless, very few of the donors and international organisations have had integrated gender mainstreaming in their programmes.<sup>43</sup> There have been numerous workshops and training for women, which may result in change of roles but not change the relationships between men and women. In some cases, the training of women has led to domestic conflicts and frustration, because the woman became aware

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<sup>42</sup> Pajhwok Afghan News website, Kabul, in English 24 October 2005

<sup>43</sup> DANIDA (2005)

of her rights but was not able to exercise them. <sup>44</sup>Training is important but it obviously is not in itself sufficient to ensure significant impact and transformations. Socio-cultural constraints continue to hinder the participation of women in professional and public life. Either they are not allowed to participate by their families or they are burdened by responsibilities for many children and time-consuming domestic work.

### **Improvements – but for whom?**

During the Bonn process the situation has improved, particularly for women with education who have re-entered the job market. Appointment of three female ministers out of a total of 40 senior government positions is a something of an achievement in addition to appointment of a female head of the Afghan Independent Human Rights Commission and national female constitutional and electoral commissioners. The presence of some 10% female candidates in the *Wolesi Jirga* and Provincial Council elections demonstrates to other women that they have a role and a say in public life. In some areas women were among the top candidates. The constitution stipulates quotas for women in parliament, which is a significant step, but there are no quotas for women in senior government positions. There are no gender advisors to support the public sector reform carried out under the decree for Priority Reform and Restructuring within ministries to ensure more balanced recruitment and promotion.

For the majority of women, of whom approximately 87% are illiterate and uneducated, the situation is less optimistic. *“Nothing has improved until now. Except from people like me with an education, but is that change? Any women who want to work for a woman, or who wants to do something, are all under threat”*, says a senior female NGO worker. She wishes to remain anonymous after having received death threats because she spoke out about the lack of transitional justice and the prevalence of rule by the gun.

### **Women continue to lack protection**

Several cases demonstrate that women who complain to the police about rape are instead accused of adultery and have been imprisoned. Forced and early marriages remain a widespread phenomenon in the communities. The lack of human security is especially pertinent to women who have no access to economic means or opportunities. If women are economically empowered they may change their own situation and can influence their men and family. Awareness-raising of women’s rights and gender balance are very important, not only for women but also for men, local leaders and government officials. Education and increased literacy are obviously vital for improvement of the situation of women and is a longer-term strategy. Discriminatory and restrictive attitudes and norms that penetrate a strong patriarchal society need to be changed. Acceptance of gender equality and equal rights and opportunities

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<sup>44</sup> EU EOM interview with women NGO October 2005

should be fostered through economic empowerment and through awareness-raising for men.

### **Recommendations**

- Build on the momentum of elected women in parliament and support a female caucus. Facilitate training in policy-making, legal review, public speaking (as many women are unfamiliar with speaking in large official fora) to enhance the impact of women in all decisions and provide gender mainstreaming training for all MPs;
- Gender awareness training and gender policy development must be a balanced process including men, otherwise relations, attitudes and behaviour will not change;
- Support women's role in local administration by enhancing their engagement in local development and through applied training;
- Removal of obstacles to recruitment of women in public sector by issuing quotas as interim measure, and by appointing gender advisors to the public sector reform and also for the national planning processes;
- 'Professionalisation' of gender advisors as a civil servant position in ministries, policy and national development planning;
- Pre-training of women for entry exams for higher education;
- Economic empowerment through micro-credit schemes and applied training; and
- More emphasis on women and men sharing common ground through community-based development projects, and development planning to create a basis for gradual and sustainable changes to exclusion, suppression and segregation.

## **6.3 Civil society - is not a NGO but a dual phenomenon**

### **A strong civil society eases democratisation**

A strengthened civil society may support state-building through increased and expanded relations between the state and its citizens. Its engagement in the political process is instrumental for fostering a culture of political pluralism, dialogue and autonomous political and social spaces. A strong civil society can enhance the social and political capacities of the poor; increasing their effectiveness in influencing governance institutions and making the latter more responsive to their needs.

### **Creating lobby space**

Civil society is broadly defined as the space and actors that exist and operate between the state and the private sphere that is not organised as an enterprise. It

consists of informal committees, associations, unions, and interests groups.<sup>45</sup> In Afghanistan, the professional associations appear to be at an early stage of development.<sup>46</sup>

Civil society is, however, often associated with NGOs as implementers of humanitarian and development assistance. International support to civil society implies structures; reporting and accounting requirements that often run counter to the notion of civil society 'grass root' levels and 'bottom-up' approaches.

Some donors have offered Afghan civil society capacity-building but this has been limited to project management. Skill development is also needed in areas such as policy development, advocacy, networking, political activism and lobbying. Lobbying of elected political representatives should be based on issues and professionalism. This could decrease the traditional influence of clientilistic or ethnic networks.

The '*NGO-ised*' approach to civil society is reflected in the NGO law Art. 8 stipulating that participation in political activities and campaigns is illegal,<sup>47</sup> but requiring civil society organisations to register as NGOs. It is unclear how broadly 'political activities' should be interpreted. There should be separate regulations for charitable NGOs and civil society to ensure that civil society is not prevented from engaging in political work and to prevent developmental NGOs from becoming political organisations.

Afghanistan has limited experience with formal and organised civil society organisations. A new civil society has emerged after the Taliban was ousted and stability improved in most of the country. During the four years of the Bonn process **progress was observed in the political civil society arena**. People who were earlier suppressed now use the opportunity to engage. Experience in training young leaders shows that young people exercise a strong sense of responsibility in the absence of adequate government provision of social services and protection, and feel that they also should try to support the state and their communities.<sup>48</sup>

Strengthening civil society in Afghanistan has many different entry points include:

- Increasing the knowledge level about the role of the civil society
- Strengthening public participation through improved access to information
- Ensuring protective measures for freedom of expression and fostering a culture of dialogue

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45 Wieland-Karimi, Almut (2004) Peace-building and Democratisation in Afghanistan – the Role of Civil Society, Paper for conference on "Post-conflict peace-building: How to gain sustainable peace?" Oct 2004, Geneva.

46 EU EOM interview and visit to the Ministry of Labour and Social Affairs, October 2005

47 Ministry of Economy, Law on Non-Governmental Organisations, July 2005

48 EU EOM interview with Friederich Ebert Stiftung September 2005

- Cultivating a young and new generation of political leaders through training about the purposes of politics
- Overcoming existing resentment towards political parties, which many associate with civil war

Additional skills development should include advocacy, networking, policymaking, and public speaking. In addition, creating pro-poor associations could be constructive for 'bottom-up' empowerment. It would be equally relevant to examine the barriers that militate against political inclusion of marginalised or socially excluded groups.

### **Traditional civil society and local networks –hands off**

Afghanistan has limited experience with formal and organised civil society organisations but long experience with traditional civil society structures. Civil society is in many parts of the country the *de facto* authority and form of social control as soon as one is outside the village of the district governor (Uluswali). Management of local matters and disputes usually relies on customary law and community councils: *shuras (Dari)* and *jirgas (Pashto)*. These structures are still prevalent throughout the country. Local disputes and issues (including, in some parts of the country, who to vote for in recent elections) are discussed at the level of the *Shura* or *jirga*, where women are not represented.

The National Solidarity Programme<sup>49</sup> builds on the existing *Shura* culture with the establishment of community development councils. Yet the NSP requires new democratic elections and participation of women. There has hitherto not been much focus on support for local communities. This can partly be explained by the overall priority attached to building a central state. In part it may also be because of scarce knowledge on the part of international donors about how the traditional structures work.

There is also a fear of creating parallel structures and undermining state-building and the emerging democracy. A way to overcome this **is to always consult with the government authorities**. Further, there is a latent concern for unwanted local empowerment because of the influence of illegal political-military networks and warlordism. It is feared that engagement with local structures could lead to increased factionalism and not broaden and strengthen the democratic foundation of the country.

### **The religious community**

In regard to the religious community, Western donors may be apprehensive about engaging with Islamic institutions, as well as having a lack of knowledge

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49 The NSP is a bottom-up local empowerment development project. Local communities are requested to establish a democratic community development council (CDC) that shall decide local development needs and prioritised projects. A grant is allocated to the CDCs from the Ministry of Rural Rehabilitation and Development. The NSP operates now in 402 of districts in all 34 provinces of the country (MRRD October 2005)

about how to do so. This argues for development of partnerships in this field with Muslim donor countries.

The religious community is also part of traditional civil society as Islam impacts on everyday life and social behaviour. There is a shortage of trained and educated mullahs. The Madrasas are of relatively low standards in terms of level of Islamic scholars, studies and resources. Religious training is not centralised. The Mullahs are obviously not one coherent group, as illustrated by the recent spate of targeted assassinations of moderate and pro-government clerics and maulawis by Taliban. This form of persecution and spreading of militant fundamentalism is a cause of major concern.

### **Popular support**

The population in general aspire to a stronger civil society both to create an unarmed society but also to improve the political system. The media also plays an important role in this regard. Investigative journalism can serve to highlight concerns relevant to people, expose bad practice in government, and report on positive achievements or good examples. The lack of security remains a major hindrance especially for participation of women in civil society activities outside the main urban centres.

### **Recommendations**

- Capacity-building and training of youth activists and civilian leaders in advocacy, networking, policy-making, lobbying, civic education, the role of the media and how to work with the press;
- The youth, who have grown up in times of war, should be exposed to different ideas and visions about how a society can function;
- Supportive legislation for civil society should be developed and should not be a straitjacket;
- Enabling legislation for establishment of professional associations and unions;
- Provision of technical assistance to build associations and unions;
- Creations of trans-national links with relevant partners in the region and beyond for example with professional associations, young democratic leaders forum etc.; and
- Provision of facilities, print and communication equipment.

## **6.4 Reconciliation, national unity and ending a culture of impunity**

### **Dealing with past atrocities**

There is a growing, if belated recognition of the crucial interdependence between national and human security and justice. There cannot be enduring security as long as endemic injustice remains uncorrected. Transitional justice can be a

critical process to manifest a change in history and can help to entrench political pluralism, democratisation, participation, and long-term stability.

**Transitional legal justice and rectificatory justice are interdependent, but also complementary.** Together they can better address the needs of victims and survivors and deal with the underlying causes of conflicts. Transitional justice can achieve more than just immediate justice. This calls for openness towards legal pluralism and protection of freedom of expression. One example is rectificatory justice that includes Truth and Reconciliation Commissions, non-judicial sanctions, removal from office, reparation, symbolic acts to pay respect to victims, and community-based approaches.<sup>50</sup>

The government of Afghanistan has **taken an important and significant initiative to consult and prepare for identification of suitable approaches** for how to deal with the Afghanistan war legacy and past crimes.<sup>51</sup> It was discussed at the Hague Conference on Peace, Justice and Reconciliation in June 2005. The Action Plan is pending approval by the President. It recognises that transitional justice aims not only to deal with past atrocities but is also forward-looking, striving to build peace and reconciliation. The draft multi-pillar action plan entails national symbolism and acknowledgement of suffering; good governance with focus on transparent vetting procedures; truth-seeking and documentation; promotion of reconciliation; and establishment of accountability mechanisms. International commitment to support the action plan as required is equally important. **Reform and capacity-building building of the judiciary are pivotal** before any enforceable transitional justice measures can materialise.

### **Vetting procedures are critical**

Many Afghans who suffered during the prolonged conflict find it difficult to accept the continuing presence of figures they hold responsible for human rights abuses in positions of power and responsibility, including in government. There is therefore strong demand for a transparent and merit-based process for public appointments, based on clear criteria for eligibility, but also removal from office. The Executive has, according to the constitution, the authority to make many important appointments – for example, heads of armed forces, provincial governors and police chiefs. An independent advisory appointment board would be helpful in ensuring proper vetting and that appointments are made in a transparent way.

### **How far back?**

Truth Commissions and transitional criminal justice face the challenge of defining how far back in history one has to go in order to establish accountability and

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<sup>50</sup> Mani, Rama, "Beyond Retribution – seeking justice in the shadows of war" (2002), Polity Press, 7

<sup>51</sup> An Action Plan for Peace, Justice and Reconciliation was drafted by the government including the AIHRC, the office of the President, the ministers of Foreign Affairs and Refugees, the Dutch minister of Foreign Affairs, the EU, UNAMA, and representatives of seven European countries, Canada and the US.

reconciliation. Truth Commissions (TC) normally have no jurisdiction and hence have difficulty bringing persons who have committed serious crimes to trial. Further, Truth Commissions in general apply an 'exclusion principle', which means that victims only receive reparation if they have been directly subject to harm and violations.<sup>52</sup> This means that descendants or widows cannot claim rectificatory justice, for example to use property that was seized by a former regime or war criminals. A TC lacks enforcement powers and cannot apply consequential measures.

Rectificatory justice may reconcile societies, and transitional legal justice can prevent impunity for serious crimes committed by the senior figures. Yet neither TC nor rectificatory justice are able to adequately address *distributive justice* emerging from conflicts, which calls into question their ability to support durable peace-building. A connection, both systemic and political, between legal and non-legal transitional justice needs to be further explored.

### **Recommendations**

- A forward-looking and comprehensive transitional justice and reconciliation system that may impact positively on peace-building, should be a hybrid of legal pluralism (International humanitarian and human rights law, Islamic law, customary law, and statutory law), conflict resolution, and mediation and possible compensation;
- A process of transitional justice should be carried out in an inclusive and participatory manner tailored to the Afghan context and aim to build peace and heal societies;
- The starting date for how far back transitional justice issues should be decided as part of a nationwide consultation;
- The sequence of processes is critical. Sufficient time should be devoted to devise the most constructive strategy that yields full national ownership and control;
- Addressing impunity: vetting procedures based on clear criteria for professional eligibility should be established and applied throughout public life;
- The executive's extensive authority, according to Ch.3 Art. 5 of the Constitution, to appoint and dismiss judges, officers of armed forces, police, national security, and high-ranking officers should be supported by an independent advisory panel;
- Public awareness is fundamental and inclusion of the media and civil society is strongly recommended;
- A possible Transitional Justice Commission should be independent of the government but obviously must be endorsed by the government; and

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52 Thompson, Janna " Historical Injustice and Reparation: Justifying Claims of Descendants" (2001), Ethics Vol. 112, pp 114-135, University of Chicago, US

- Acceptance of ethnic differences and divergent views through public debates on different themes and issues.

## **7 Risk factors**

### **7.1 Lack of good governance –corruption, poor management and waste**

Lack of legal infrastructure, enforcement of the rule of law and absence of poor public oversight are common challenges for weak states but in particular for a post-conflict transitional regime like Afghanistan. At the outset a transitional administration and the successor post-conflict government are notoriously weak in terms of governing capacity and institutions. Its internal legitimacy varies among the different groups within the country, and is directly contested by anti-government groups, in particular by those who perceive its legitimacy as being imposed externally. Transitions also create uncertainty about the future and opportunistic behaviour is often observed in regard to the sudden influx of aid. The institutional void is filled by non-statutory local power brokers and indeed the drug producers and traffickers who exploit corrupt government officials to continue their businesses.

#### **Streamlining of bureaucratic procedures**

Property and resources that were in the possession of the state are being privatised without adequate legal underpinning, economic assessments or capacity to manage tenders or procurement. Consequently, contract awards, property concessions, and exploitation of natural resources may be done partially illegally or with only limited gain for the state. Bribery becomes widespread as a means of expediting reconstruction when the bureaucracy is weak and political networks, local commanders and other power brokers dominate decision-making and management of land.<sup>53</sup> The results of the civil service reform are yet to be harvested. The low salary level for civil servants (US\$30-70/month) makes corruption even easier.

Speed of reconstruction and disbursement are important success criteria for most donors. This focus on speed may result in some cases in more expensive solutions and a failure to assess the potential for using local implementing actors.<sup>54</sup> As a result, the legitimacy of the new government and the international

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53 Galtung, Frederick (2004) Introduction: The Corruption Dimension of Post-War Reconstruction. Technopress, Beirut..Lebanese Transparency Association [www.tiri.org](http://www.tiri.org)

54 WSP-International Peace-building Forum (2004) Building Effective Partnerships- external and internal actors: Afghanistan case study, by Sarwar Mamound, David Poplack, Abdul Wakil Sediqi, Hamidullah Natiq & Katarina Ammitzboell. WSP Geneva, Switzerland

community may be weakened. The central government is the focus of donor assistance. However, this has not been balanced with sufficient attention to anti-corruption measures. Efforts to build democratic political institutions are threatened by increasing and widespread corruption undermining trust and confidence in the government and the rule of law.

### **What is the current status?**

There is very limited information available on the scope and depth of corruption in Afghanistan except that it is known to penetrate the state administration. The office of the president established a unit with support from UNDP. However, this remains at a preliminary stage. The Attorney General's Office remains weak. The institution-building process has not yet reached a level where public oversight exists. Nor is there sufficient transparency and accountability. External pressure for accountability is hampered by the weakness of civil society and of the independent media, as mentioned above. Systems for tracking aid expenditures in terms of deliverables and outcomes are yet to be developed, as a complement to the centralised financial management system of the Donor Assistance Database in the Ministry of Finance.

### **Recommendations for improving good governance and decreasing corruption**

- **Accountability:** Increase transparency through complete disclosure of disbursements and outputs and through proper accountability of resource-use including disclosure of contract rewards and sub-contracting. The government and the parliament, provincial governors, and the international assistance community could report publicly on an annual basis on achievements and spending to enhance transparency and accountability, decrease corruption, and enhance public trust;
- Anti-corruption and transparency should not be exclusively carried out by the executive but be vested in a reformed and strengthened Attorney General's office;
- Funding should be provided based on mutual and binding contractual arrangements and selected conditionalities or benchmarks, of which a critical one is vetting of candidates for public office and merit-based appointments;
- Emphasis on value for money and quality as opposed to quantity and disbursement as success targets for the donor community;
- The tacit notion of 'exceptions' to strict application of donors' financial procedures and unofficial acceptance of an 'estimated' waste, merely because Afghanistan is a post-conflict situation should be carefully reviewed;
- Opening up of contracts to more competition to improve efficient use of available resources;

- A nation wide public outreach strategy to regularly inform the population about plans, initiatives, progress, but also obstacles to development;
- Expanding the civil service reform to improve good governance, performance-based management and increased salary levels to develop an efficient public administration;
- Establishment of a national contract and audit office to improve accountability and oversight;
- Build public oversight in a targeted and efficient fashion through capacity-building for government entities, regular audits, training of the police and the attorney general's office in investigation, and strengthening of civil society; and
- Raising public awareness about the implications of corruption and issuing a firm commitment by the executive to end corruption.

## **7.2 The impact of illegal drug production – a threat to democracy**

### **The scale of the production and revenue**

Afghan opium production accounts for over 80 per cent of illegal heroin consumption worldwide. UNODC expects to confirm a decrease in the area of poppy cultivation from 131,000 hectares in 2004 to 104,000 hectares this year, a significant decline of 21%. Yet the output of the harvest (in terms of amount of opium produced) will only decline by 2% from last year due to increased productivity.<sup>55</sup> Last year the country produced almost 4,000 tons in 28 of the 32 provinces, which is converted into about 400 tons of illegal heroin and morphine in laboratories around the country.

The production accounts for about US\$2.7 billion in output a year<sup>56</sup> that is about 50% of the GDP of Afghanistan.<sup>57</sup> Unofficial estimates are that between 1-10% of the illegal revenue stays in Afghanistan, which is shared between traffickers, corrupt government officials and farmers. About 50 % of the revenue stays in transit countries and about 40% in receiving countries, mainly in Europe.<sup>58</sup> These figures are unofficial estimates, as it is difficult to obtain officially recognised information on this subject.

The developmental impact of illegal production is doubtful. The farmers involved are the lowest segment in the value-added chain, mostly work as tenant farmers and receive a relatively small share of any profits. Involvement in opium

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<sup>55</sup> UNODC (2005) The Opium Situation in Afghanistan – as of 29 August 2005, UNODC

<sup>56</sup> Senlis (2005) Feasibility Study of Morphine and Other Essential Medicines – Initial Findings. The Senlis Council, Drug Policy Forum

<sup>57</sup> In receiving countries, 1 kg of pure heroin that is sold for about US\$1200 /kg is developed into approximate 95 kgs. The street price in Europe is at the level of US\$125 /gram. It is difficult to estimate of how much of these illegal billions of dollars stay in the country.

<sup>58</sup> EU EOM interview with drug control specialist, October 2005

production may make them financially dependent, since the only credit available to them is often denominated in opium (i.e. they are required to repay their debt in kind, by providing a specified quantity of opium). There are limited statistics on land ownership but it is estimated that about 75% of the farmers do not own their land. There are various figures on how many farmers are involved in drug production because of poverty. Unofficial estimates by UNODC suggest that only about 10% of the about 90% of poor farmers are involved in drug production. The Senlis Council states that the proportion is much higher as agriculture employs about 80% of the population.

### **Lubricating corruption and terrorism?**

There is a fear that the fledgling democracy could be undermined by unaccountable narco-interests capturing state institutions to serve their own agendas, if the illegal drug production is not rapidly terminated. Some argue that Afghanistan is already a narco state, with government officials involved at all three administrative levels.<sup>59</sup> As a result of their involvement in the narcotics trade, warlords are growing richer and more powerful and are able to finance illegal security forces. Part of the revenue is thought to be fuelling insurgents linked to the ousted Taliban militia and international terrorism. US officials admit that, despite past animosity between the Pashtun Taliban resistance and the Northern Alliance, in some cases new relations have been observed. Although there are no clear signs of northern commanders providing strategic support to the Taliban-backed resistance, the drug trade is of mutual interest to both groups and may lead to new and reinforced cross-factional alliances.<sup>60</sup> *"Let's be clear: that (poppy production) is the number one problem that Afghanistan has to face for its future... so it is not the resurgence of the Taliban or al Qaeda,"* said the supreme allied commander of the NATO forces US Marine Corps General James Jones.<sup>61</sup>

The illegal opium production is also one of the most serious threats to state-building. It generates a vast amount of illegal and black money with an enormous capacity for fuelling corruption, funding illegal security groups, and promoting destabilisation. The corruption penetrates the administration throughout the entire system. There is a threat of the Afghan government in future becoming a 'rentier' state and disengaging from provision of basic services, the rule of law and any guarantee of security. Rentier economies with easy access to resources that can be used for illegal purposes do not have to build up a social contract with their citizens. Compounded by a culture of impunity, the state may not be seen to be that different from criminal networks. Such a perception would obviously severely undermine democratisation efforts.

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<sup>59</sup> Interview with Nader Nadery, Commissioner, Afghan Independent Human Rights Commission in the New York Times, 18 October 2005

<sup>60</sup> Syed Saleem Shahzad, Bureau Chief, Pakistan Asia Times Online. saleem\_shahzad2002@yahoo.com

[http://www.atimes.com/atimes/Central\\_Asia/GI03Ag01.html](http://www.atimes.com/atimes/Central_Asia/GI03Ag01.html) Accessed 3/09/2005

<sup>61</sup> "NATO commander says drugs Afghanistan's top threat", Reuters by Charles Aldinger 20 October 2005  
[http://news.yahoo.com/s/nm/20051020/wl\\_nm/afghan\\_nato\\_drugs\\_dc\\_1](http://news.yahoo.com/s/nm/20051020/wl_nm/afghan_nato_drugs_dc_1) Accessed 21 October 2005

### **What has been done so far?**

In early 2005, the government took several firm steps to persuade local governors, officials and tribal leaders to curb poppy planting in their regions. These included appealing to national pride as well as religious faith. The religious community was mobilised; *jihad* was declared against opium production, and *fatwas* (legal religious opinions) issued, appealing to national pride and religious faith.

The original figure that 37,000 acres had been eradicated has now been reduced to 13,000 acres by the verification team. There are limitations on government-led enforcement when some governors themselves are widely believed to be involved in the drug trade. (EC-funded counter-narcotics expert)

Alternative livelihood projects are being pursued through the various ministries engaged in rural development. The term 'alternative' may be misconceived in so far as the assistance is provided to supplement illegal opium production, rather than offering a comprehensive agricultural and local development plan. Rather the objective should be integrated rural development that would reflect a national goal and would link assistance with positive development and support, as opposed to compensation for ending poppy cultivation.

The international community's counter narcotics enforcement assistance is driven by pressure for rapid and visible results. It has mainly affected the lowest end of the value-added chain, which are the farmers. Eradication of their crops puts them at risk of destitution. Such enforcement action so far appears to have had no real impact on those higher up in the production and value-adding chain, such as large land-owners, traders and traffickers. They retain their power through co-optation into government positions and because they are able to fund illegal armed groups for protection.<sup>62</sup> Illegal networks consisting of such individuals rapidly come to dominate local power-structures and the local economy. This domination further reduces options for the farmers in terms of access to credit and land, diminishes options for traditional and alternative livelihoods and increases dependency on opium poppy as the only cash crop, which is locally viable.<sup>63</sup> Many landless farmers have difficulties in switching to a different crop because they are caught in illegal opium-denominated debt.<sup>64</sup>

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63 Project for Alternative Livelihoods (PAL) (2005) Conflict Processing and the Opium Poppy Economy in Afghanistan – Internal Document. PAL, European Commission

64 Project for Alternative Livelihoods (PAL) (2005) Conflict Processing and the Opium Poppy Economy in Afghanistan – Internal Document. PAL, European Commission

These illegal networks are mobile and resourceful, and can plug into a range of economic activities to sustain themselves. Crop eradication appears to have had limited impact on their revenue streams.

Most counter-narcotics activities are rushed, lack co-ordination and are devised without reference to traditional and grass-root political processes and local governance structures. The local law enforcement institutions are inadequate and many lack integrity. The strength and nature of local illegal networks should be taken into account in the design and implementation of counter-narcotic strategies. The local administration (including provincial and district governors, police, provincial development committees and provincial councils) should be resourced and empowered to actively engage in effectively combating illegal opium production and trafficking, and held accountable for their performance in this regard.

Hundreds of millions have been committed to counter-narcotics. Part of this sum is also to provide for alternative livelihoods and agricultural development. Experience elsewhere shows that farmers typically see only a very small share of opium revenues (between 1-8%) and the traffickers get the main share.<sup>65</sup> The international funded alternative livelihood projects are generally not “competitive”, in the sense of providing a complete package of seeds, fertilisers, micro-credit, access to land and market. The illegal drug traffickers can offer a much more attractive ‘package’. They are able to provide the farmers with access to credit and inputs, and take care of market access in the absence of effective law enforcement.

### **Innovative and less conventional thinking can be complementary**

Established and conventional norms and efforts have not yielded encouraging results. An unbalanced approach focusing exclusively on eradication, enforcement or alternative livelihood programmes is unlikely to bring sufficient changes in the near future in Afghanistan.<sup>66</sup> It is recognised that it will take several decades, or more, to eliminate illegal opium production, according to counter-narcotic specialists of the lead-donor United Kingdom, based in Kabul.<sup>67</sup>

The current drug control strategy pursued by the Government of Afghanistan with international support has achieved limited success in 2005. The key question will be whether the strategy can be deepened and sustained in the coming years. Consistency and perseverance over a long period are clearly required for dealing with such a deep-rooted and complex problem, whatever approach is chosen.

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<sup>65</sup> Richter, Rosemary, Let Afghan poppies bloom, the Times, UK. The EU EOM was told that opium production is a physically very hard job and farmers risk getting addicted, and therefore many do have a preference for producing other agricultural products.

<sup>66</sup> The World Bank presentation at the Senlis Conference held in Kabul in September 2005 outlined the complications of combating drugs through conventional approaches that entail improving government structures and security sector reform, capacity building that could lead to strengthened control mechanisms.

<sup>67</sup> EU EOM Interview September 2005, Kabul

Given all these considerations and the serious threat which the illegal opium economy poses to stability and democracy in Afghanistan, it is important to have an open debate and to consider different ideas and approaches on their merits including balance between enforcement actions and assistance for rural development; optimal sequencing of different counter-narcotics interventions; licensed production of opium for medical purposes; role of public information campaigns; regional co-operation in the field of counter-narcotics; and addressing growing drug use in Afghanistan. A comprehensive macro-economic assessment is required to assess and provide an understanding of the impact of the illegal revenue generated by illegal poppy cultivation and to evaluate the benefits of alternative strategies. It is important that the illegal revenue is decreased, which will not succeed if farmers are the main focus of counter-narcotic strategies.

### **Recommendations**

- The notion of 'alternative livelihoods' should be changed to a discourse of industrial agricultural growth. Favourable conditions for agricultural production that can replace poppy cultivation should be ensured;
- Large-scale projects such as big irrigation and power projects need to start to generate sufficient water for agriculture and also to generate attractive jobs for local people and lessen the local dependency of opium revenue;
- Integrated market development and market access are also pivotal for changing livelihoods and reducing the dependency of farmers from the local power-brokers;
- The politico-military networks need to be broken and dismantled to end power-locked markets and the arbitrary rule by the gun before many farmers will be able to pursue other livelihood opportunities;
- Local administration and law enforcement should be adequately resourced to address illegal production and trafficking;
- Innovative thinking, debate and systematic monitoring of assistance programmes are recommended to find the most effective and comprehensive approach.

## **7.3 Security – is still number one priority four years after the Bonn agreement**

### **Security at macro-level**

Having overthrown the Taliban regime; fighting terrorism and insurgency was the overriding security priority in terms of resources during the Bonn process. The US Coalition deployed some 20,000 combat troops through 'Operation Enduring Freedom' (OEF) mainly in the South and East of the country to fight the remnants of the Taliban and to capture senior Al-Queda figures. The International Security Assistance Force (ISAF) was authorized by the UN Security Council to secure

Kabul and the surrounding areas (where the Interim Administration and the majority of the international staff were based).<sup>68</sup> The ratio of troop contributions was one (1) international soldier per 1,115 inhabitants, which is about ¼ of the lowest ratio of peacekeeping or other international assistance troops deployed to many other recent peace support operations.<sup>69</sup> A critical mass of peacekeepers could potentially have played a positive role in terms of containing insurgency and illegal trafficking of arms and drugs, thus enhancing regional stability.

The so-called Provincial Reconstruction Teams composed of military and civilian personnel, are rather lightly equipped. They follow different national mandates and rules of engagement. The approach, which they have taken with respect to security in the province where they are operating, varies widely. Their impact on security and stability also varies, and is any case confined to the province of their deployment with limited impact on wider regional aspects.<sup>70</sup> Definition of common minimum standards for all PRTs would be a positive first step.

To build the Afghan security forces (ANA and ANP) the transitional administration was not provided with sufficient numbers of international peacekeeping personnel to improve security and stability or to extend its authority throughout the country. Greater numbers would have supported the nation- and state-building process significantly and increased state legitimacy whilst diminishing the scope for non-statutory actors to exercise *de facto* authority in their local areas. Where there is a lack of state authority the void tends to be filled out by non-state actors such as warlords and commanders, illegal transactions, and arbitrary co-opted judicial systems. Given the relatively limited commitment and support for stability and the increased level of insurgency, security remains the number one concern for Afghanistan.

Rebuilding and reform of the security sector is a resource-intensive and time-consuming process. As anticipated, the national security institutions' capacity is not yet sufficient to counter insurgency and factionalism and to ensure stability. Continued support by coalition and NATO forces will be required for some years to come. More than 1,000 people have died in militant-linked violence in southern Afghanistan this year. Armed non-statutory groups have in general more incentives to be loyal to powerful local individuals rather than to state institutions claiming political authority and control. Moreover, the large number of armed personnel employed by private companies creates an imbalance in the security sector as they almost outnumber the ANA and trained police and are paid significantly better wages.

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68 UN Security Council resolution 1386, December 20, 2001

69 Bathia, M, Lanigan, K and Wilkinson, P (2004) Minimal Investments, Minimal Results: The Failure of Security Policy in Afghanistan, Briefing Paper, Afghanistan Research and Evaluation Unit (AREU), Afghanistan:10

70 See DANIDA (2005) Multi-donor evaluation of humanitarian and reconstruction assistance, Ministry of Foreign Affairs, Denmark and DFID (2005)

"A Review of DFID involvement in Provincial Reconstruction Teams (PRTS) in AFGHANISTAN", DFID.

### **The Afghan New Army (ANA) and the domestic challenges**

A national army is needed to counter external national security threats, and this is the doctrine practiced in Afghanistan. The ANA has only a supporting role with respect to critical internal security issues such as disarmament of illegal armed groups or combating drug trade and other illegal trafficking. Primary responsibility for dealing with these threats lies with the ANP. However, the police are weak and in some places are themselves infiltrated with illegal armed groups and drug trafficking.

The ANA also has some involvement in the DDR process. Local people continue to complain about the threats posed by illegal armed groups, and say that they have more resources and power than the ANA outside the main cities. The DDR was fast and was effective with respect to regular militias affiliated with the Ministry of Defence. However, many illegal armed groups remain and oppose the expansion of the rule of law and democracy into the provinces. These groups hold on to their weapons and have significant stores of ammunition.

The security challenges facing Afghanistan are of a diverse nature and may be broadly divided into external and internal threats.<sup>71</sup>

### **External threats**

The insurgency is complicated to address, given the difficulties with controlling porous borders and the trans-national networks comprising different groups and nationalities (in particular religious militant extremism by groups of Taliban and Al Qaeda cells generally in the East, South East and South of the country).

### **Increased Islamisation**

Traditionally in Afghanistan, the reaction towards new regimes, which challenged the status quo, has been an increased Islamisation. It happened after King Amanullah in 1923, after King Shah, and after the civil war with the emergence of the Taliban.

It is therefore unsurprising that opposition to the new Afghan government should partly present itself in terms of religious mobilisation. Various fundamentalist armed groups have regrouped in opposition to the government. They have mobilised new international funding and initiated fresh recruitment from madrasas inside Afghanistan and in neighbouring countries according to the U.S. military's operational commander.<sup>72</sup> These armed movements, claiming a religious inspiration, are in many cases allied with trans-national criminal networks including drug traffickers. The fundamentalist movements are also perceived to

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<sup>71</sup> EU EOM Interview with Mr. Phillip Wilkinson, Advisor to the National Security Council, Kabul September 2005

<sup>72</sup> AP, 23 August 2005 <http://www.phillyburbs.com/pb-dyn/news/90-08232005-531461.html>

be strengthening ties with some former Jihadi political parties, which may also impact on the parliament.<sup>73</sup>

### **The regional but also the global aspects of security affect stability**

As with many other countries, the internal security threats facing Afghanistan cannot be looked at purely as a national phenomenon. Illegal networks by their nature often operate across national borders. The regional or global aspects of Afghanistan's security should therefore be addressed in a post-Bonn era.

### **Internal threats**

Political subversion and continued co-optation of rival power-brokers in the public administration undermine efforts to establish good governance and a credible government. Anti-government groups' attempts to destabilise parts of the country and the direct attacks on aid workers has resulted in a fragmented and regionally imbalanced state-building process, with greater advances in the North than in the South. The population in these affected areas does not view the new government as a service provider and may feel deliberately neglected or even punished.<sup>74</sup> No aid is reaching them, and this increases their vulnerability to manipulation by anti-government forces. The role of internal security rests primarily with the ANP, supported by the ANA. However, the reform and rebuilding of the ANP has lagged behind that of the ANA and remains inadequate for its tasks.

The **DIAG process** is seen **to be separate to the DDR programme instead of a continuation**. Many of the disarmed armed forces by the DDR programme have not been reintegrated. In fact the private security company USPI through a doubtful vetting process has hired quite a large number. The DDR process has not materialised across the Southern parts of the country because of the ongoing war against insurgents. The Disarmament of Illegal Armed Groups (DIAG) programme,<sup>75</sup> which is yet to be launched, faces several challenges:

- i) Creation of incentives to disarm and change to a civilian life when law enforcement is weak and job prospects are lacking;
- ii) Non-statutory groups involved in drug trafficking may believe that their economic interests are not served by participating;
- iii) Where and when can the DIAG programme be implemented, and
- iv) Lack of adequate governance structures.<sup>76</sup>

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73 EU EOM Interview September 2005, Kabul

74 EU EOM Interview with UN Security in a region August-October 2005

75 The DIAG programme was ready to pilot but it got entangled with the electoral process. It has set the programme back by four months. With winter approaching it is difficult to operate in many province and the programme will be further delayed.

76 EU EOM Interview with Mr. Peter Babbington, Director, Afghan National Disarmament Programme, September 02005

Different approaches for dealing with the different groups have been suggested, but there is not yet agreement.<sup>77</sup> The DIAG programme is wisely linking the process to governance by involving and demanding the support of the governors. The governors have all been requested to produce a list of IAGs at provincial and district level. Reportedly, some 30 percent of governors have not expressed an interest in collaboration so far. The provincial administration must play its part in ensuring the rule of law and ending illegal activities such as the continued existence non-statutory armed groups. Provincial governors should be supported in this regard and their performance should be assessed according to their performance in this area.

### **Alternative ways to secure communities**

Ending the culture and use of arms is obviously very complicated given the instability, continued presence of illegal commander structures and lack of forceful and effective national security institutions. Given the deficiency of local law enforcement capacity, efforts are also needed to find long-term alternative ways to secure communities, including human security through development, and physical security through localised initiatives. Efforts could entail community policing as an interim measure (such as tribal policing in Khost) , and the neighbourhood watch scheme that has recently been established in Ghazni.

The Nangarhar community council was established in 2003 as a response to the lack of state authority and acknowledgement of the community's own responsibility for solving social problems. It is headed by a democratically elected *Shura*, acting as an executive committee, representing all 22 districts of Nangarhar.<sup>78</sup> According to a member of the *Shura*, the Nangarhar community council can guarantee security for any development projects because "*the community is one single and united platform that is rooted in a grass-root democratic structure.*"<sup>79</sup> It is not a perfect set up as the council lacks support from several groups and communities, but such self-organised initiatives also covering security could be further explored.

Security in Afghanistan tends to be conceived in terms of the security of the state and of related processes such as elections. External and internal threats by armed groups threatening territorial sovereignty, disarmament, and economic development also attract significant political attention. The human security needs of the broader population seem to be more neglected. Deprivation should be addressed in a very concrete sense: ensuring adequate provision of water, electricity, shelter and housing, food, basic health facilities, education, income

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<sup>77</sup> There are approximately 2500 groups of which approximately 1600 are relatively benign. There are about 200 IAG that are classified as 'bad behaviour'. Of those 200 groups there are three sub-categories: 1) Could affect election, 2) Involved in drugs production and trafficking, and 3) Governance related threats. There are 25 groups that fall into all three categories.

<sup>78</sup> Statement for the Inaugural Grand Assembly of the Council of the Nangahar Communities and 'Message of the Council of Nangarhar Communities', Nangahar Province, April 2003.

<sup>79</sup> EU EUM interview, Nangarhar, August 2005

generating opportunities, and freedom of movement. When people do not see any signs of the new government or international assistance making a difference to their lives, their loyalty towards the state is at stake and manipulation by anti-government elements is a risk. Ensuring security is thus not only a matter of expanding international assistance forces, rebuilding an army or police, but also of responsive social and economic development and establishment of the rule of law as earlier discussed.<sup>80</sup>

## **Recommendations**

- More emphasis on the regional and global aspect of security threats. Review of Good Neighbourly Relations Declaration of 2002 and establishment of an effective monitoring system with representatives from all neighbour countries and possible NATO involvement;
- Security sector reform needs to be co-ordinated with assistance and strategies for rebuilding the judiciary, human rights and the police. Co-ordination during the preparation of strategies is essential, to develop a common cohesive plan and to target assistance more effectively;
- The stabilisation troops should have a more active role in addressing the needs for protection of borders and the adverse affects of the illegal opium production. the number of troops could be discussed in regard to the need to secure aid and provide stability;
- Establishment of support to secure communities is fundamental prior to pursuing community-level disarmament initiatives. Provision of community development in the context of any DIAG programme should not be only a reward for disarmament of illegal groups, but rather could operate as an incentive; and
- DDR and DIAG should be approached in an integrated fashion and the DIAG process needs greater political will to use enforcement should any IAG resist disbandment.

## **7.4 Management of expectations**

A current and additional challenge is management of people's expectations. After the presidential election many people anticipated that their life would change, but the needs are massive and obviously it will take a long time before the level of development has improved significantly nationwide. Disappointment and disillusionment may give rise to disengagement and suspicions about the impact of corruption and resource waste. Expectations are mainly based on subjective assumptions and are in general rather high, which is not an unusual in post-

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80 Islamic Republic of Afghanistan and UNDP (2004) Afghanistan National Human Development Report- Security with a Human Face: Challenges and Responsibilities, Army Press, Pakistan:6-7

conflict situations. It is an area that is less tangible and difficult to address in a concrete way.

The public's level of information on development plans and implementation is low.<sup>81</sup> A nation-wide public information outreach would be helpful to bring expectations to a realistic level. The provincial councils could also play an important role in this regard through dialogue with the local constituencies.

In parallel, it is obviously, also very important for the government and the international community to do whatever they can to improve the delivery of services and the effectiveness of aid.

“There is a limited window of opportunity for both the government and the international community to address the issue of human security before the Afghan people lose faith in both.”  
(International advisor to central government, October 2005)

## **Recommendations**

- Wide consultation on a draft Post-Bonn Compact to get feedback and increase public ownership;
- Wide dissemination and civic education on the Post-Bonn Compact so the public is aware of the goals and benchmarks, availability and use of resources, geographical focus, and time frames, as far as possible;
- Regular, for instance annual, reporting by government and parliament on progress and any problems that may have delayed expectations;
- Inclusion of the NGOs and relevant civil society in the national budget preparation;
- Prioritisation of large-scale public investment programmes with focus on job creation and supply of water and power; and
- More and better training of civil society actors to assess and monitor development projects.

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<sup>81</sup> EUEOM interviews August and September Afghanistan 2005

## **8. Concluding remarks and recommendations**

This report aimed to address democracy-building as an integrated perspective, as planning proceeds for the future development of Afghanistan. Several areas were analysed in this regard and could be summarised into a three-pronged approach: Institutional development and state-building, fostering of a civic culture, and dealing with the main risk factors to democratisation. These three headings cover several topics, which are all relevant to democracy-building.

It is important to devise, through consultation, a comprehensive yet selective strategy for a broad political development process and for the strengthening of democracy. The wider political context should be taken into consideration including factionalism, the co-existence of ethnic groups, extremism, and religious fundamentalism. An inclusive approach to state-building should include organisation of the administration, the role of local government, the relationship between the state and its citizens, rule of law, and human rights protection. Broader civic issues such as the need to deal with past atrocities, strengthening of civil society, the role of media, and gender equality must also be addressed. Different factors may threaten democracy-building, including corruption and lack of good governance, illegal drug production, and the lack of security. These should also be assessed in order to define appropriate counter-measures. The purpose of such a comprehensive exercise should be to create a road map for democratisation with clear and agreed targets and performance indicators.

An Independent Democratisation Monitoring Unit could be created to make periodic comprehensive reviews and serve as an advisory body on democratisation to the government. Such a unit could have representatives from the government, the UN, the Afghan Independent Human Rights Commission, and relevant civil society actors.

It is hoped that this report can contribute to a better understanding of the relevance of democracy-building in Afghanistan. It is intended to encourage a broader and coherent perspective with emphasis on why and how democracy-building should be an integrated concern for the continued nation- and state-building process. It is acknowledged that democratic processes have a long tradition in Afghanistan. A consolidated democratisation process will nevertheless demand time but also political will, assertiveness, institutional development, changes in attitudes and norms, and careful guidance.

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