



RULE OF LAW, GOVERNANCE, AND HUMAN RIGHTS IN AFGHANISTAN, 2002 TO 2016

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ABOUT THE REPORT

This report examines successes and failures in Afghan reconstruction in the fifteen years since 2002 to suggest potential paths forward for Afghan stakeholders and the international community to consolidate gains in rule of law, human rights, and good governance for the long term. Funded by the United States Institute of Peace and implemented by the Institute for International Law and Human Rights, the report was developed under the leadership of several contributors to the 2002 CRAFT report plus key Afghan partners. It is based on field research, extensive interviews with government figures, civil society activists, key justice and human rights actors in Afghanistan, desk research from primary and secondary sources, and consultations with the Afghan diaspora and members of the international community.

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[The legal, practical, and functional capacity deficits in Afghanistan resulting from thirty-five years of conflict, collapsed institutions, and a tradition of informal and localized power structures cannot be overcome in a mere fifteen years.]

Summary

- The legal, practical, and functional capacity deficits in Afghanistan resulting from thirty-five years of conflict, collapsed institutions, and a tradition of informal and localized power structures cannot be overcome in a mere fifteen years.
- The strategic “light footprint” envisioned by the international community in 2001 resulted in undercoordinated and underplanned reconstruction efforts, even as donor funding and international troop levels steadily increased.
- Since the departure of the majority of foreign forces, a resurgent Taliban and thriving drug trade have contributed to the highest civilian casualties since the UN began tracking them in 2009.
- The 2004 Constitution includes numerous internal contradictions and ambiguities and skews authorities toward the president at the expense of other branches of government.
- Afghanistan has held eight elections for public office between 2004 and 2014, resulting in broadly representative governing bodies. The peaceful and democratic transition of power from Hamid Karzai to Ashraf Ghani in 2014 was the first of its kind in Afghan history.
- The constitutionality of the sitting parliament and National Unity Government is both debated and questionable.
- Periodic reform agendas overemphasize expected outcomes and underemphasize processes to build inclusive coalitions rooted in a common vision.
- Civil society and media have proliferated, contributing to service delivery, access to information, advocacy, and accountability. Yet a significant number of organizations rely on foreign funding. As the donor pool shrinks, so does the availability of critical services they provide.
- Corruption remains pervasive and affects all sectors and all levels of government.
- The judiciary is perceived as one of the country’s most corrupt institutions and the application of justice is at best uneven.
- Egregious human rights violations are committed by a range of state actors who face virtually no accountability.
- Afghanistan’s economy has made uneven progress since 2001. Despite improvements, macroeconomic health remains fragile.

Introduction

In January 2002, the Consortium for Response to the Afghan Transition (CRAFT) took a snapshot of Afghanistan immediately after the fall of the Taliban and agreement on provisional arrangements in Bonn.¹ At the time, much of the information available on Afghanistan focused on military and other hard security issues. The CRAFT team, with representatives from four organizations, looked at soft security, seeking to complement existing reporting. The team's report, "Filling the Vacuum: Prerequisites to Security in Afghanistan," focused on the country's electoral, human rights, and rule of law landscape. It was released in May 2002.

Fourteen years later, members of the CRAFT team returned to Kabul to assess the changes and new challenges since that first report. Kabul in 2016 was a very different city from what it had been in 2002. High rise buildings and wedding halls had been constructed and freshly paved streets crisscrossed the lively city. Children with backpacks were running to school and women in traditional and modern dress could be seen on sidewalks tending to their daily activities.

Physically, the city of Kabul is noticeably different due to tremendous migration from rural areas to the urban center. Informal settlements built in the surrounding hills and the city itself have changed the character of the area through both general overcrowding and overstressing government services. A bewildering maze of blast walls that line Kabul's streets create blind corridors and deprive drivers of a sense of direction or sight lines. These walls also demonstrate the sapping and destructive power of terrorism in today's Afghanistan.

Afghans expressed real concern about political instability, rising unemployment, and the deteriorating security situation. They also, however, expressed hope that their lives would improve, a reflection of the indomitable spirit of the Afghan people.

This report is a follow-up to the original CRAFT report of 2002. It aims to provide a benchmark by which to measure progress, identify lessons learned, and clarify opportunities for the future since 2002. Its goals are threefold:

- To summarize progress and lessons learned in strengthening the three priority conditions for long-term security in Afghanistan identified in the 2002 CRAFT report and under the 2001 Bonn Agreement: rule of law, human rights, and governance.
- To give voice to Afghan views and plans regarding progress and challenges to strengthening institutions, frameworks, and leadership in these priority areas.
- To identify paths for the future to strengthen coordination and better tailor interventions supported by the donor community and Afghan leadership.

Background

Fifteen years on from the fall of the Taliban and the signing of the Bonn Agreement in 2001, Afghanistan is undoubtedly in a better place. The country has enacted a constitution that protects fundamental human rights and recognizes international obligations. It has adopted a system of governance based on balance of powers and has made strides in reforming the civil service to promote merit-based hiring, equitable pay, and gender balance. Parliament has begun to build a legal framework that protects and enforces rights and regulates the workings of the state. Rule of law has also improved through an independent Supreme Court with the power of constitutional review, an independent prosecutor's office, and the establishment of special courts that address narcotics trafficking and juvenile justice. In 2014, after contested elections and broad public discontent, Hamid Karzai peacefully transferred power to President

Ashraf Ghani and Chief Executive Officer Abdullah Abdullah. Taken as a whole, Afghanistan's transition—from a failed state devoid of governance and justice institutions and the most minimal human rights protections—is a cause for celebration.

Yet Afghanistan's progress is broadly understood by even the most generous measures as a series of missed opportunities, poor planning, uncoordinated execution, and a sinkhole of foreign donor spending. Corruption in Afghanistan is a metastatic cancer, infecting all public institutions and a significant portion of the private sector. Local police forces are viewed by many as oppressors and abusers of the local communities they are charged to protect, and women and girls face continuing systemic discrimination, harassment, and violence at the hands of family, officials, insurgents, and criminals. As one US official put it, "Afghanistan is not an abject disaster, but the needle points in that direction."

This report seeks to incorporate both successes and lessons learned, applying the most appropriate perspective for each sector to the extent possible. This approach does limit internal consistency and undoubtedly ignores important topics and developments, but it provides an anchor for the broader story of Afghanistan's transition in terms of governance, human rights, and rule of law development.²

The critiques include the light footprint approach, doing it on the cheap, prioritizing counterinsurgency and counterterrorism, and top-down approaches:

- The light footprint approach (contrasted with massive but fragmented humanitarian assistance) limited the availability, quality, and coordination of technical assistance across all sectors and in all areas. This policy framework enabled piecemeal planning and persistent diversion away from stated development priorities even as donor funding and assistance programs steadily expanded over time.
- Doing it on the cheap under the poorly conceived Marshall Plan approach resulted in ad hoc and disjointed programming that not only lacked an overarching strategy but also cost more than post-World War II reconstruction in western Europe.
- Counterinsurgency and counterterrorism were consistently prioritized over human rights and rule of law development. Mistakes and gaps in underlying assumptions guided related policies, and resulted at times in counterproductive and conflicting approaches.
- Early top-down development approaches incorporated questionable partners (including former war lords and criminals) into governance structures and expanded executive reach into judicial and legislative functions. Despite a shift to more bottom-up and participatory development paradigms around 2007, particularly for rule of law, this approach entrenched imbalanced power dynamics and expanded opportunities for corruption and the exploitation of political and financial leverage.

Neither mutually exclusive nor exhaustive, these critiques highlight foundational assumptions, frameworks, and planning gaps that exacerbated implementation problems on the ground and set a course for reconstruction that subsequent paradigm adjustments and revised compacts have not been able to effectively correct. Although significant challenges remain, the new administration has signaled renewed commitment to international collaboration and reform—an opportunity to apply lessons learned during Afghanistan's decade of transformation more effectively, efficiently, and strategically.

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Frameworks Since the Bonn Agreement

Following the intervention of the United States and fall of the Taliban in late 2001, Afghanistan, with international cooperation, has periodically adopted frameworks to enable rebuilding the country.

Current national policies and strategies more broadly reflect a series of commitments made after the 2001 Bonn Agreement. These include increasingly urgent efforts to address glaring gaps in accountability and oversight on the part of both the Afghan government and the international community, and to correct deficiencies in Afghanistan's development trajectory. Financial management and fiscal policy, anticorruption, human rights, and governance processes have been variously targeted for renewed attention and reform.

The 2006 London Conference, for example, resulted in the Afghanistan Compact and marked an end to the Bonn process. It established the Joint Coordinating and Monitoring Board to monitor development progress and improve communication among stakeholders,³ and set commitments to develop merit-based appointment processes for civil service. The Compact operated as a contract-like agreement setting mutual obligations between the international community and the Afghan government that has been reflected in subsequent agreements.⁴ The Compact met with limited success, but resulted in the drafting of the 2008 National Development Strategy and the Afghanistan National Priority Programs (NPP) document. The NPP identifies twenty-two thematic plans across six clusters including governance, agriculture and rural development, private sector, infrastructure, human resources, and security.⁵

The National Development Strategy and NPP were a basis for discussions at the 2010 London and Kabul conferences, which restructured the mechanism for development aid to reach the country—aiming for 50 percent to flow through the Afghan budget within two years and for 80 percent of monies to align with the NPP's identified priorities.⁶ Combined, these agreements focused on reforms in governance, rule of law, human rights, gender and children's rights, economic and social development, peace, reconciliation and reintegration, security, regional cooperation, and counternarcotics.⁷

Failure to adequately assess the feasibility of the NPP and gather cross-sectoral input for implementation processes before it was adopted, however, compromised the effectiveness of these efforts and has resulted in an overall failure to effectively roll out identified reforms. Rather than setting achievable goals and timelines based on mutual priorities, the NPP was a political wish list for line ministries that favored new projects and infrastructure over capacity-building and development—once again reflecting a failure of strategy and planning.⁸ Costs for implementation far exceeded donor pledges, and poor monitoring and evaluation systems complicated assessments of whether donors and the government had met mutual commitments. Subsequent meetings in Istanbul and Bonn in 2011 focused on regional security and economic development that similarly met with limited progress.

In 2012, a conference in Tokyo again set to revise strategic development plans, monitoring and evaluating processes, and mutual commitments and priorities. The resulting Tokyo Mutual Accountability Framework (the Tokyo Framework) reflected many of the priority elements from previous agreements and featured a strategy paper to guide development commitments titled *Towards Self-Reliance*.⁹ The conference framed Afghanistan's current period as the transformation decade and marked a symbolic end to the decade of transition. Donors enhanced commitments to improve aid effectiveness founded on the New Deal for Engagement in Fragile States, which focuses on country-led transitions out of fragility and the international community's self-reflection of success and lessons learned over the previous twenty-odd years.

Under the Tokyo Framework, implied conditionality of aid in response to improved accountability and development was made explicit. It provides aid incentives for Afghanistan as the country improves security and governance measures developed by Afghan leaders and the donor community.¹⁰ It also provides portions of \$16 billion through 2016 and sustaining support through 2017, which is channeled through the Afghanistan Reconstruction Trust Fund and in turn moved directly to ministries.

Included in the Tokyo Framework are mechanisms to monitor and review performance on commitments and timelines for reforms in elections, human rights, gender, public finance, banking, government spending, and development.¹¹ Progress is reviewed under the earlier-established Joint Coordinating and Monitoring Board and Senior Officials Meeting held every other year. Biennial ministerial meetings also assess commitments and resource requirements.

In December 2014, President Ghani launched an outline paper to support implementation of objectives identified in the Tokyo Framework titled *Realizing Self-Reliance*. The paper is similar to one developed by Ghani a decade earlier at a Berlin conference with the World Bank, *Securing Afghanistan's Future*, which sought to address fiscal gaps and create a self-sustaining economy.¹²

Since then, efforts to improve governance under the Tokyo Framework have met with mixed results. Overall assessments reveal progress in budget transparency, revenue growth, and meeting Millennium Development Goals such as school enrollment and access to healthcare. However, substantial improvement remains to be made in electoral reform, anticorruption, and local governance.¹³

[The] first and most significant [achievement] is the establishment of a constitutionally independent judiciary.

Building the Rule of Law

Key Achievements

Achievements in developing the rule of law in Afghanistan since the 2003 US-led invasion are considerable. First and most significant is the establishment of a constitutionally independent judiciary—including a Supreme Court with the power to interpret the Constitution. The work of the judiciary was elaborated in 2005 with the enactment of the Law on the Organization and Authorities of the Courts. Currently, the Supreme Court houses an internal judicial integrity monitoring unit that investigates charges of corruption and ethical violations among judges and court administration staff. Additionally, Afghanistan has developed a unified criminal procedure code that incorporates all criminal laws enacted since 2001, including those on counterterrorism, anticorruption, anti-money laundering, anti-human trafficking, and elimination of violence against women.¹⁴

Beyond this, constitutionally mandated legal aid ensures a level of due process protection for criminal defendants. This was strengthened through the 2008 establishment of a legal aid department in the Ministry of Justice (MOJ), which is buttressed by legal aid nongovernmental organizations (NGOs) and private attorneys registered with the Afghanistan Independent Bar Association (AIBA). Legal aid is organized under the 2007 Advocates Law, which authorized the AIBA to certify all defense advocates. Financial support is drawn primarily from the international community.

Additionally, institutional structures, policies, and procedures have been developed to facilitate coordination between the judiciary, the Attorney General's Office (AGO), the MOJ, and the Afghan National Police (ANP). The AGO is organized under a 2012 Law on the Structure and Authorities of the Attorney General's Office. In 2005, the Police Law came into force, and Afghan National Police forces have been expanded to include more than 150,000

law enforcement officers. More recently, payment structures for police forces have been revised to use mobile phone transfers rather than cash payments in an effort to curb corruption.

Finally, the government has also enacted laws to address some key justice needs of women and juveniles, including requirements for separate detention facilities for both groups under the 2007 Law on Prisons and Detention Centers, and specific protections for juveniles under the 2005 Juvenile Code.

Key Challenges

Challenges for rule of law, of course, remain. Chief among them are limited accountability of officials to the Afghan people, as evidenced by public mistrust; abuses of power and discriminatory treatment; uneven application of justice; endemic corruption; and influence by political and economic elites on judicial outcomes. Violations of international and domestic laws in processes related to crime detection, investigation, prosecution, and incarceration are flagrant and considerable. Prison conditions are deplorable, due process violations are commonplace, and statutory limitations on detentions are often ignored. In sum, the tradition of “ruler’s law” has not yet been trumped by a tradition of state law that transcends regimes and is binding on executive authorities.¹⁵

Additionally, paper-based planning and strategic priorities repeatedly fail to translate into measurable and functional reforms. This is evidenced, for example, in failures to meet depoliticization objectives of the National Priority Program established under the Tokyo Mutual Accountability Framework and earlier commitments.¹⁶

Local buy-in and strategic approaches to address harmful practices within traditional and customary justice mechanisms are inadequate. The early top-down approach to centralized rule of law actually expanded and exaggerated the role of customary dispute resolution and the authority of local war lords in some areas, but the transition to bottom-up approaches have not adequately mitigated harmful traditional practices.

A mismatch is ongoing between community policing aims intended, in theory, to reinforce rule of law and aid the court system, and the in-practice prioritization of security and countering terrorism. This conflict—paired with inadequate training, oversight, and accountability—has resulted in well-documented human rights abuses, corruption, and discriminatory practices. It has also impeded efforts to establish the ANP as a professionalized law enforcement agency rather than a paramilitary force.

Meanwhile, political will to enforce the law and combat a culture of impunity at the highest levels of governance is unfortunately limited. Recent National Unity Government (NUG) efforts show a renewed commitment to combat corruption, appoint qualified leaders and technocrats, and establish merit-based hiring, but change is slow. Supreme Court justices continue to serve beyond constitutional term limits, control of the Ministry of Interior remains solidly in the hands of former Northern Alliance affiliates, and prosecutions for high-level corruption and human rights violations have not begun as promised. Combined, these challenges present a significant hindrance to consolidating rule of law in Afghanistan and the effective functioning of justice institutions.

Key Justice Institutions

Structurally, Afghanistan’s justice sector broadly includes the judiciary, traditional and customary resolution dispute mechanisms, the Ministry of Justice, the Ministry of Interior, the

Attorney General's Office, the Afghanistan Independent Bar Association, and the Ministry of Defense. Other justice-related state institutions include the Afghanistan Independent Human Rights Commission (AIHRC), the High Office of Oversight, and various specialized anticorruption, human rights, and gender equality institutions or commissions.

Legal education institutions help professionalize jurists and staff. Additionally, the Independent Commission to Oversee the Implementation of the Constitution is notable for its role in legal interpretation and its potential to influence the functions and authorities of justice sector institutions.

Judiciary

Afghanistan's judiciary is led by a nine-member Supreme Court appointed by the president and subject to confirmation by the Wolesi Jirga (the lower house of parliament). Three of the justices currently serve ten-year terms, three serve seven years, and three serve four-year terms.¹⁷ The system includes the Supreme Court, appeals courts, courts of first instance (primary courts), and special courts—including narcotics and anticorruption courts.¹⁸ The judiciary is independent and the Supreme Court has the power of constitutional review.¹⁹ The 2005 Law on the Organization and Jurisdiction of the Courts (Law on Courts) establishes the structure, jurisdiction, and authorities of Afghanistan's court system.²⁰

A Supreme Court organizational chart in July 2016 includes official position slots (*tashkeel*) for 2,471 judges in 449 courts; the *tashkeel* in 2015 reported 2,320 slots.²¹ Currently, according to the chief justice, around 522 judicial positions across the country are vacant; the *tashkeel* in 2015 reported 422 vacancies.²² Approximately 216 to 283 judges are women, though courts in seven provinces have no female judges.²³

These institutions—relative to 2001 when they had all but collapsed under the Taliban—have significantly improved in capacity, function, and legitimacy. The courts play a critical if still developing role in resolving cases and interpreting the Constitution. Improvements in case management, professionalism, and administration have improved through internal reforms and technical assistance from the international community. Overall, however, the judiciary remains weak and its independence is limited.

In reality, improvements in judicial functioning, though notable, are largely symbolic and do not adequately address the roots of systemic problems that challenge both the administration of justice and public trust. These include, among others: systemic lack of oversight and accountability, overly complex procedures that maintain opportunities for bribery and extortion, and the influence of political and economic elites within the justice sector. A recent assessment of the Supreme Court, funded by the US Agency for International Development (USAID), noted significant limitations in strategic thinking, planning, and documentation that hinders the Court's ability to effectively address its many challenges.²⁴

According to the Supreme Court, critical assistance needs for the judiciary include but are not limited to continuing legal education for judges and other training support, and both infrastructure and equipment.

Traditional and Customary Mechanisms

Up to 80 percent of all disputes in Afghanistan are resolved through traditional dispute resolution (TDR) mechanisms, which include a mix of customary law and sharia. These address both community and personal disputes and operate outside, but occasionally in coordination

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with, the formal justice system.²⁵ TDR mechanisms include community councils, known as *jirgas* and *shuras*, as well as negotiations with local leaders such as *mullahs* (religious scholars), *ulema* (traditional village heads), *maliks*, and *khans* (both influential members of the wealthy landowning class).

In practice, the formal and informal sectors operate as a pluralistic rather than a dualistic justice system. The choice for disputants does not lie between formal courts and an informal mechanism. Rather, resolutions can be forged through a variety of local councils, local notables, religious leaders, formal courts, local government officials, local offices of central government officials, or some combination. Participation in the informal justice sector stems either from direct request by disputants or through ad hoc referral by district authorities, who often do not have the resources or technical capacity to effectively resolve disputes.²⁶

For most Afghans, resolution through the informal justice sector remains both more accessible and, according to some surveys, more trusted than the formal system. Despite this, the formal sector remains broadly supported for practical purposes; local councils lack the resources to detain criminals and some dislike administering punishments. Many elders also note that resolutions approved or acknowledged by both government officials and local communities are more likely to endure.²⁷

Starting around 2009, internationals and the Afghan government increasingly pressed to regulate coordination between the formal and informal systems, seeking to build a hybrid model or series of models. Work to date includes the development of a draft policy on relations between the formal judicial system and dispute resolution councils, a draft law on dispute resolution *shuras* and *jirgas* (also known as the Conciliation Law), and several large-scale donor-funded pilot programs to improve legal awareness and coordination between the two systems.²⁸

Several NGOs, international organizations, and Afghan institutions such as AIHRC and the Ministry of Women's Affairs have criticized the draft law. They argue that it fails to protect vulnerable women and children by allowing the continuation of harmful traditional practices such as *ba'ad* (exchange of a female as compensation for a wrong) and *badal* (early or child marriage) within resolution mechanisms.²⁹ Allowing and endorsing such practices in TDR conflicts with human rights protections under the Afghan Constitution and the country's international legal obligations. Similarly, the draft policy lacks funding, leadership, and political will for effective implementation. Nevertheless, interviews revealed that many NGOs and formal justice institutions support the idea of formalizing and regulating coordination between the two systems.

Among internationally supported programs seeking to facilitate coordination in practice, results have been largely positive. However, implications for sustained engagement are mixed given the lack of a legal and policy framework, district-level variations in will, capacity and security, and maintenance challenges following gaps in outside support. A USAID-funded program, "Rule of Law Stabilization – Informal," for example, sought to improve the TDR system and facilitate collaboration through trainings and coordination meetings in fifteen pilot districts. This was expanded to thirty-three districts over two years. The program successfully improved knowledge of laws, rights, and jurisdictions of respective authorities and noted a reduction in the incidence of harmful traditional practices. It also assessed improvement in general coordination between the two systems and the registration of some TDR decisions with formal institutions. The Ministry of Justice confirmed in an interview that some TDR resolutions are registered with its *huquq* (essentially a department of rights and civil dispute

mediation within the ministry) at the district level, but baseline data on such registrations prior to program intervention are unclear. No policies or procedures on standards for such registration or other referrals and related collaborations are in place.

Although this program was broadly successful, the sustainability of gains is uncertain without regular maintenance, a clear policy, and political will. The quality of data on reductions in harmful traditional practices remains poor. The USAID program noted that retention of knowledge and maintenance of coordination over time appeared to diminish without regular engagement with program implementers.³⁰ Additionally, other observers note that some TDR assistance programs have had the unintended consequence of increasing corruption within the informal system by creating new bribery opportunities through engagement with the formal sector.³¹

Ministry of Justice

The MOJ is the lead rule of law agency in the executive branch. It oversees directorates of legislative development (*taqin*), legal aid, and civil dispute mediation (*huquq*), as well as the Juvenile Rehabilitation Directorate. Under the Government Cases Law, the MOJ is authorized to represent the government in civil litigation and to recover government lands. In total, it employs more than two thousand professional and administrative staff across the country.³²

The **Directorate of Taqin** is responsible for drafting legislation and reviewing all bills, regardless of origination, before they are referred to the National Assembly. It also provides legal and legislative drafting advice to the executive branch, ministries, and government offices. It is organized into seven legal departments and charged with ensuring draft laws are consistent with the Constitution, sharia, and international agreements to which Afghanistan is a party. It is responsible for ensuring internal consistency among all Afghan laws.³³

The Taqin directorate is broadly respected and staffs professional and experienced legal experts. It has received international support through the Afghanistan Justice Sector Support Program, funded by the US State Department, and other donors and initiatives. A criminal law reform working group has supported review and amendment of penal legislation. Despite capacity assistance over the past fifteen years, MOJ officials reported during interviews that the directorate remains overwhelmed by the scope and volume of its work and competing priorities.

Afghanistan's Constitution provides for legal aid to indigent defendants in criminal cases; a 2007 presidential decree and the Advocates Law grant responsibility for legal aid to the MOJ through its **Legal Aid Department**. As of 2016, the ministry employs 303 legal aid lawyers across the country with funding from the World Bank, UN Development Program, and the ministry budget. All legal aid lawyers must be licensed by the Afghan Independent Bar Association. The ministry has reportedly provided legal assistance in more than eight thousand cases to date. These are mainly criminal cases, interviews revealed, but also include assistance to women and children in civil claims. Ministry-funded legal aid lawyers carry a maximum of four cases at any given time; the caseload for World Bank-funded legal aid attorneys is six.³⁴

Although the current status of legal aid marks a significant improvement in access to justice since 2001, the availability of legal aid lawyers provided by the ministry and the quality of service remains inadequate. Interviews revealed a continuing hesitation among judges and prosecutors to effectively collaborate with legal aid attorneys, including poor communications on scheduled court dates and limited understanding of the role of defense attorneys during hearings. According to some surveys, the legal aid system faces challenges with corruption,

exploitation, and gender discrimination. The MOJ's work is supplemented by legal aid NGOs, many of which focus on women and girls. Funding and capacity support for NGO-provided legal assistance is limited, and shrinking, despite current UN Development Program and US-AID programming.

Under the 1999 Law on the Procedure for Obtaining Rights, the **Directorate of Huquq** is the exclusive government agency outside the courts charged with addressing civil petitions, largely focused on obtaining payments for debt.³⁵ In practice, mediation of civil disputes has been diffused more broadly since 2001, to include the national police forces as well as line ministry departments—particularly for disputes over land.

The Huquq central office is located in Kabul in a building shared with seventeen municipal Huquq offices for the city. An additional thirty-four offices operate in each provincial capital. Each district should also have an office, but many of these are reportedly not staffed or fully operational.³⁶ A recent assessment found that little about the Huquq's mandate and functions are in writing beyond terms of reference documents on its website; the work of branch offices is largely undefined and varies by location, and the central office considers its role in providing oversight and support to provincial and district offices as limited. This has resulted in significant variations in the quality and function of local Huquq offices ranging from staffing levels to office space to technical capacity. No written procedures specify case management protocols or thresholds for types of cases that should be transferred upward for review. At the local level, case files are often maintained through handwritten logs, leading to missing information and errors.³⁷

Because the MOJ does not allocate its budget by department, the Huquq can make funding requests only as part of the annual ministry budgeting process. Local offices are managed as part of MOJ provincial branch offices, so it is unclear whether their fiscal needs are addressed under separate budget processes.³⁸ Reportedly, the Huquq is at least partly self-funded through legal fees collected for the resolution of civil claims.

The directorate has received capacity support through multiple donor-funded programs over the years.³⁹ It will receive additional technical assistance through a new USAID rule of law program, Assistance for the Development of Afghan Legal Access and Transparency, which includes support to improve coordination with TDR mechanisms.⁴⁰

Huquq coordination with TDR mechanisms reportedly occurs on major cases. A backlog of civil cases within the courts, estimated in the thousands, have been resolved since 2001. This includes, according to a ministry interview, the return of more than ten thousand hectares of confiscated land to property owners. Coordination processes with the informal sector are unclear, however, and data on informal resolutions registered with the agency are not readily available.

The **Juvenile Rehabilitation Directorate** is responsible for all juvenile rehabilitation centers (JRCs).⁴¹ The 2007 Law on Prisons and Detention Centers requires juveniles to be held in separate detention facilities. According to the Juvenile Code of 2005, the juvenile offenders are those between the ages thirteen and seventeen.⁴²

Currently, only three JRCs are operational—in Kabul, Herat, and Jalalabad. Juveniles detained outside these areas are housed in facilities rented by the Ministry of Justice. The minister reports that approximately 1,300 juveniles are currently held in JRCs. As of January 2014, JRCs held around 1,103 boys and 130 girls.⁴³ Updated numbers are not readily available.

By all measures, conditions of juvenile detention fail to meet basic international standards and requirements under Afghan law. Juveniles are regularly comingled with adult detainees

and are often held longer than statutorily permitted timelines.⁴⁴ Housing conditions—particularly in the provinces—are inadequate to meet standards established under domestic and international law. According to interviews with the minister of justice, only ten provinces have standardized government buildings for juvenile detentions, and the quality of facilities rarely meet recognized standards. The minister reported that he has asked the international community to assist in updating infrastructure for juvenile detention, including building MOJ-run facilities in the provinces. Reportedly, these requests have been denied out of fear that improving facilities will increase the rate of juvenile detention in Afghanistan. The minister has also requested technical and material assistance to improve juvenile detention conditions, but noted in interviews that the international community seems hesitant to expand work on juvenile detention issues generally.

Ministry of Interior

As the epicenter of law enforcement, the Ministry of Interior (MOI) has received extensive donor support and training over the past fifteen years, primarily from international military forces. Attention has largely focused on the MOI's role in counternarcotics, counterinsurgency, and corruption. Efforts to build a national police force under the MOI did not begin in earnest until 2009, and even then, training took place simultaneously with fighting a growing insurgency.⁴⁵

As foreign forces have withdrawn, the capacity of police to protect Afghans and adhere to professional law enforcement standards has been disappointing. The MOI exhibits rampant corruption, human rights violations, and extraconstitutional influence at the subnational level that have gone largely unreformed. Challenges stem not only from a lack of coordination among donors and implementers, which dates to early reconstruction, when justice-sector reforms were divided among “lead countries,” but also from weak oversight of the Law and Order Trust Fund of Afghanistan, which followed the Afghanistan Reconstruction Trust Fund administered by the World Bank and separated funding for police from the civilian budget.⁴⁶

The **Afghan National Police** encompasses several forces that include the Afghan Local Police, the Afghan National Civil Order Police, and the Afghan Border Police, among others.⁴⁷ The target size of the ANP is 157,000. At the time of writing, the force included around 148,000 personnel, including approximately 2,500 women (1.8 percent of the force).⁴⁸ Its authorities, duties, and organization are structured under the 2005 Police Law, which requires the ANP to take “guidance of the governors and district chiefs in the provinces and districts respectively.”⁴⁹ In practice, the ANP was developed largely as a lightly armed paramilitary force.⁵⁰ As of 2016, according to Ministry of Interior interviews, approximately 75 percent of all ANP activities focus on counterinsurgency and terrorism. The post-2014 NATO Resolute Support Mission outlines plans for continuing mentorship and training to support ANP professionalization. However, these plans require significant MOI structural reforms to achieve designated aims, and the number of international trainers and experts has decreased.

The ANP runs a series of detention centers outside the purview of the General Directorate of Prisons and Detention Centers (GDPDC).⁵¹ Although these are intended as temporary holding cells, in practice ANP detainees often remain in custody beyond legally mandated time frames, and oversight of due process and human rights protections is limited.⁵²

The ANP faces significant challenges with corruption; human rights violations such as extra judicial killings, rape, assault, and other crimes; as well as major capacity gaps.⁵³ More than 60 percent of forces are illiterate and attrition is a major challenge.⁵⁴ Since 2001, officers

paid higher-ranking MOI officials for positions and promotions, and a significant proportion of Afghans report paying bribes to police officers during regular transactions.⁵⁵ Women police are regularly harassed and subjected to rape and abuse by fellow officers and superiors.⁵⁶

International and Afghan authorities have dedicated significant material, financial, and technical resources to the ANP over the years through trainings, organizational capacity assistance, and developing personnel management systems. A 2015 SIGAR report found that despite \$15 billion in US-funded assistance, personnel and payroll data remain inaccurate and the Afghan Human Resource Information Management System and Electronic Payroll Systems are still neither fully functional, integrated, or complete. These limitations continue to contribute to corruption and mismanagement within the ANP.⁵⁷

The need for local police forces in Afghanistan was not agreed to until late 2008 after multiple police training efforts failed.⁵⁸ Today, the target level of the **Afghan Local Police (ALP)** is thirty thousand; about twenty-nine thousand personnel are documented in twenty-nine of thirty-four provinces.⁵⁹ Despite official estimates, actual force size is difficult to verify and thousands of “ghost” officers are on the books.⁶⁰ Although the ALP is overseen by the MOI, its numbers are not included in the Afghan National Defense and Security Forces authorized levels. A number of reports have noted significant problems with ALP oversight, ongoing human rights violations, sexual exploitation, and lack of accountability.⁶¹ As a newly developing institution, the ALP’s challenges require time and assistance to address, and security threats to officers remain a critical issue: ALP officers were six times more likely to be killed in the line of duty in 2014 than their counterparts in other security forces. Today, the need for a functional local police force in Afghanistan is commonly recognized. However, coordinated support and interventions are required to transform the current organization into an effective community police force, not least of which is targeted support to strengthen oversight, hold violators accountable, and better train, vet, and discipline personnel.⁶²

Afghanistan’s prisons fall under the purview of the **General Directorate of Prisons and Detention Centers**. According to the UN Assistance Mission in Afghanistan (UNAMA), the total prison population is estimated at 27,859, including 7,555 individuals detained or convicted of conflict-related crimes (15,638 total convicted plus 12,221 detainees).⁶³ Of these, 778 detainees are women and girls, many of whom are held for so-called moral crimes.⁶⁴

The GDPDC is an independent directorate under the MOI.⁶⁵ Under the 2007 Law on Prisons and Detention Centers, the GDPDC serves as the central administration agency for all civilian corrections facilities for both men and women.⁶⁶ It oversees thirty-four provincial prisons and 191 district detention centers (Nuristan does not have a prison). Afghanistan’s largest prison, Pol-e-charki, holds approximately eight thousand prisoners. Additionally, a specialized detention facility for narcotics is colocated with the Counter-Narcotics Justice Center (CNJC) in Kabul.⁶⁷

In practice, multiple civilian detention centers not overseen by the GDPDC are run by the Afghan National Police, the Afghan National Border Police, the National Directorate of Security, and the Ministry of Defense. The MOJ runs juvenile detention facilities. Additionally, there are reports of private prisons run by members of the Afghan National Defense and Security Forces used for abuse and torture of detainees outside the regulated system; this includes reports of “secret” prisons run by the Kabul Provincial Police Chief.⁶⁸

Overcrowding is a major problem; the rate of incarceration has increased by an average of 21 percent per year since 2008.⁶⁹ Other challenges include lack of standardized design across provincial and district detention facilities, access to consistent electricity, access to adequate

health care, adequate sanitation facilities, access to adequate bedding, and access to potable water.⁷⁰ Pervasive corruption and lack of awareness of legal rights also affect the lives of detainees.⁷¹ Assessments of these challenges note a lack of financial resources within the MOI to adequately reform and supervise detentions, as well as limited technical and resource capacity of legal aid providers and independent monitors.⁷² Reports by UNAMA have found pervasive torture and other forms of illegal interrogation techniques, particularly at prisons run by the National Directorate of Security, ANP, Afghan National Border Police, Afghan National Army, and ALP.⁷³

Office of the Attorney General

The Office of the Attorney General (AGO) is an independent body of the executive branch charged with investigating and prosecuting crimes.⁷⁴ The attorney general is appointed by the president and confirmed by the Wolesi Jirga. The activities and duties of prosecutors (*saran-wals*) are governed by the 2013 Law on Structure and Authority of the Attorney General's Office (AGO Law), which establishes central and local (provincial and district) directorates and departments.⁷⁵ Under the 2007 Law on Prisons and Detention Centers, the AGO is also charged with supervising the legality and human rights conditions of Afghan civilian prisons.⁷⁶ An AGO high council includes the attorney general as chair, the deputy attorney generals, and directors of various prosecution directorates established under the law.⁷⁷

Currently, according to the AGO, approximately two thousand professional staff are employed across Afghanistan, roughly one prosecutor for every 15,700 people. Among those, about four hundred are female prosecutors.⁷⁸ Prosecutors earn Afs 8,000 (approximately \$120) per month.

The AGO's Elimination of Violence Against Women (EVAW) unit was established in 2010 after the EVAW law was adopted by decree. The main EVAW prosecution office is in Kabul and is staffed by sixteen men and seventeen women; most sources indicate that these units have had a positive impact on related cases, though the vast majority of family violence cases remain unreported and ways of assessing the impact of EVAW units are limited.

The AGO also indicated in interviews that it has more than a thousand active corruption cases, including those involving ministers, dating back to 2001. Under the 2015 decrees establishing the High Council on Anti-Corruption and the Anti-Corruption Justice Center, the AGO has an active role in vetting backlogged corruption cases for prosecution.

The AGO has received significant assistance over the years from various partners focused on internal organization, capacity building, and infrastructure support.⁷⁹ However, according to interviews with the office, major capacity gaps remain that impact the quality of work, effective monitoring and oversight of prosecutors in the provinces, as well as case management and processing. Infrastructure is cited as a key priority.

Afghanistan Independent Bar Association

Established in 2008 and governed by the 2007 Advocates Law, the AIBA is an independent, nongovernmental, and nonpolitical organization.⁸⁰ It provides licensing exams and certification for defense attorneys and private practice transactional attorneys in the private sector, NGOs, and the MOJ's Legal Aid Department; the organization maintains a roster of practicing advocates. Its licensing procedure does not apply to government lawyers (or judges) except

MOJ legal aid attorneys. Those employed as Huquq attorneys, AGO prosecutors, and government legal advisers are not covered by the AIBA.

According to the AIBA head, the organization's current membership is 2,974 lawyers, which includes 697 women. Membership has grown steadily since the AIBA was established, though women's representation has recently declined.⁸¹ Qualifications include Afghan citizenship; no criminal conviction; a valid bachelor's degree from a law or sharia faculty or a higher degree from another country approved by the Ministry of Higher Education; and passing training course and certification processes established by the AIBA.⁸² Bar members are also required to provide three pro bono cases per year, though in reality the AIBA lacks the capacity to effectively monitor and enforce the pro bono policy.

The AIBA has received assistance from multiple donors, including, for example, the US-funded the Justice Sector Support Program, the US Institute of Peace, International Development Law Organization, and others.⁸³ However, organizational leadership asserts multiple continuing support needs, including infrastructure, trainings, and equipment. The new USAID-funded Assistance for the Development of Afghan Legal Access and Transparency program found similar needs in a recent capacity assessment, including a lack of specific departmentalization to serve its members; procedures and processes for issuing licenses, administering bar exams, and holding "stage" trainings; permanent committees to support services and members; adequate staff trainings and technology support; and capacity to prepare annual budgets.⁸⁴ Funding for the AIBA comes predominantly from international donors, as well as member fees and licensing fees, which are approximately \$53 per year and \$15 respectively.

The AIBA, according to interviews with its chair, reports ongoing challenges with representing clients in criminal cases, and particularly between defense counsel and prosecutors in cases with female clients. No functional disclosure procedures for evidence are in place, and communications on trial schedules are ad hoc.

Ministry of Defense

The Ministry of Defense is charged with overseeing the national internal and external security of Afghanistan. It operates two official detention facilities: the Afghan National Detention Facility (ANDF) and the ANDF-Parwan, which are not addressed under the 2007 Law on Prisons.

The ANDF is colocated in Kabul's Pol-e-charkhi prison but does not fall under the purview of the GDPDC. Both facilities house national security detainees and convicts, often in comingled facilities. As of 2014, the ANDF held five hundred detainees, and ANDF-Parwan held three thousand.⁸⁵

Afghanistan Independent Human Rights Commission

The Afghanistan Independent Human Rights Commission is constitutionally mandated to receive and investigate complaints of human rights violations (Art. 58). Under its 2005 establishment law, judicial and prosecutorial authorities are obliged to cooperate with AIHRC activities and investigations.⁸⁶ Additionally, core duties of the AIHRC include, among others, monitoring the performance of legal and judicial institutions, visiting and investigating detention centers, and planning and implementing programs that include the investigation of crimes and human rights abuses.⁸⁷

The AIHRC has been instrumental in monitoring and reporting on government performance in rule of law, including due process rights, status of prisons and detention centers, and implementation of laws and decrees. A 2013 report on implementation of Presidential Decree No. 45 on access to justice, for example, documented critical shortcomings in access to legal defense, performance of judges and courts, performance of prosecutors, quality of detention facilities, and respect for statutory time frames for detention. Over a one-year monitoring period, the AIHRC also recorded 162 violations of fair trial principles during discovery, investigation, and prosecution stages.⁸⁸ These challenges and others recorded by the AIHRC highlight Afghanistan's rule of law development gaps and the limited capacity for speedy reform.⁸⁹

Legal Education

Access to and quality of legal education and continuing legal education (CLE) in Afghanistan has improved exponentially since 2001. Whereas only about five public universities provided legal education in 2000, as of July 2016 twenty-five public universities are operational, seventeen of which include law or sharia faculties. Private institutes of higher education total 122, ninety-six of which offer law or sharia faculties, or both. Combined, as of 2015, some fourteen thousand students have enrolled in legal education in public institutions, including 2,252 women. The role of women in providing legal education has also expanded. Among approximately 380 law and sharia professors, twenty-seven are women and 353 are men.⁹⁰ Some public and private universities have also formed partnerships with foreign law schools, such as Stanford University and the University of Washington in the United States.

By many measures, according to interviewees, access to and quality of legal education has improved in both law and sharia faculties, and students from both faculties are increasingly able to access employment as judges, government lawyers, defense advocates, and advisers. Quality of curriculum, experience of professors, teaching methodologies, computer literacy, and the number of women law students represent positive and laudable developments.⁹¹

CLE opportunities have also increased, though these are largely supported by the international community. This includes, for example, “stage” judicial training programs supported by the Max Planck Foundation, the International Development Law Organization, and others, and similar programs are supported by the University of Washington School of Law and Stanford University. CLE programs are offered through various implementers to judges, AIBA advocates, law professors, prosecutors, constitutional advisers, and government lawyers. Interviews with justice-sector officials showed overwhelming support for CLE programs, but the future of donor commitments is uncertain. Overall, these efforts have reportedly improved teaching methodologies and professor knowledge within universities, and have strengthened legal professionalism among practitioners.⁹²

Additionally, numerous donor-funded projects have supported the establishment of legal clinics, research centers, information technology centers, moot court and mock trial competitions, and other projects in partnership with law schools.⁹³ Measuring the sustainability and efficacy of these programs over time, however, remains difficult.⁹⁴

Building a Democratic Framework

Key Achievements

The most visible achievement in democracy and governance in Afghanistan is the successful and democratic transition of presidential power from Hamid Karzai to Ashraf Ghani in

2014. Under a US-supported agreement that established the National Unity Government, Dr. Abdullah Abdullah was appointed as chief executive officer. This is the first such democratic transition of power in Afghanistan's history.

Merit-based recruitment and promotion, and improvements in establishing job descriptions and salary scales among civil servants, have helped professionalize the civil service—efforts guided largely by the Afghan Independent Administrative Reform and Civil Service Commission (IARCSC). Improvements in the Afghan budget process are also notable, including increased transparency, execution, and effective service delivery in some sectors. Additionally, revenue collection and management has increased since 2013 following a fiscal crisis, largely spearheaded by a competent and responsive Ministry of Finance. Although budgeting at the provincial level remains challenged, steps at the central level show improvement.

An increasingly proactive parliament is willing to hold the executive accountable, demonstrated through votes of no-confidence, questioning ministers, and refusal to endorse several presidential decrees. This has not always benefited governance and legal reform, but the actions largely reflect democratic processes and a balance of powers.

Institutional and legal status improvements in local governance, despite limited implementation, include establishing the Independent Directorate for Local Governance, coordinating this body with the IARCSC, and increasing merit-based appointments among local officials.

Additionally, renewed NUG efforts to combat corruption signal the potential for meaningful reform in coming years. The Ghani administration has reopened the Kabul Bank scandal for investigation and established a high-level Anti-Corruption Council and Anti-Corruption Justice Center to coordinate with the Karzai era Independent Joint Anti-Corruption Monitoring and Evaluation Committee, Major Crimes Task Force, and other institutions.

Key Challenges

Challenges to democracy and governance are varied.⁹⁵ Growing insecurity and increasing civilian casualties hamper development across all sectors and in all areas. The impact of decisions in Kabul and provincial capitals are rarely felt in daily life, where access to services, employment, political participation, and civic life are challenged by insurgency and crime. Civilian casualties have spiked to the highest levels in a decade since the withdrawal of international forces.⁹⁶

A predatory elite and pervasive, endemic corruption are evident in numerous high-profile scandals coupled with virtually no accountability. These include multiple examples in which the government has awarded favorable development contracts that result in limited infrastructure improvement but benefited political or economic elites. Graft and waste are extensive across all levels and all sectors of government, and efforts to combat corruption continue to largely ignore cross-sectoral, bottom-up approaches.

Beyond this, the structure of authorities and clarity of specific provisions in the 2004 Constitution—which provides monarch-like powers to the president and creates legal and functional confusion about the relative relationship between sharia, state-made law, and the international conventions and treaties to which Afghanistan is a party—are both fraught and problematic.

The current parliament and National Unity Government raise numerous constitutional legitimacy issues. The parliament has overstayed its constitutional mandate—raising questions about the status of recently enacted laws. The NUG includes the controversial new post of chief executive officer, which requires legitimization through a Loya Jirga and constitutional amendment under the NUG agreement. Despite the agreement, no plans to convene a Loya

A predatory elite and pervasive, endemic corruption are evident in numerous high-profile scandals coupled with virtually no accountability.

Jirga and amend the Constitution are yet under way. Additionally, district elections have never been held. This raises questions about the composition of parliament and the validity of earlier Loya Jirga decisions because a Loya Jirga should, under the Constitution, include representatives from district councils.⁹⁷

Capacity gaps in lawmaking, particularly in terms of legal analysis and research skills, are significant. In practice, legislation remains weak, contradictory, and underenforced, and the president's decree authorities intrude on parliament's lawmaking power. Ethnic, geographic, religious, and economic divisions continue to guide both lawmaking and governance activities, which exacerbate the limited technical capacities of both the executive and legislative branches. As a whole, parliamentary oversight is weak in both status and function.

Separately, women's participation in governance and peacebuilding remains extremely low. The quota for women in provincial councils was lowered from 25 percent to 20 percent in 2013 during debates in which conservative factions sought to eliminate the quota entirely.

Governance reform remains largely urban focused and highly centralized, stemming from the early prioritization of strengthening central institutions over local development. As a result, persistent "lack of organic connections with rural areas" remains.⁹⁸ This challenge, paired with insecurity, has compromised both rural and urban development, undermined legitimacy of local governance, and crippled local service delivery.

The Afghan government's capacity to prioritize reforms and establish feasible processes is weak. Both the government and the international community continue to overemphasize expected results and to underplan for subsequent implementation. This predicament, paired with a mismatch between many off-budget donor-funded programs and established national priority plans, has muddled objectives and challenged outcome measurement.

Branches of Government

The 2004 Afghan Constitution establishes a tripartite system of governance balanced between an executive headed by a president, a bicameral parliament, and an independent judiciary.

Executive

The executive branch consists of the president, two vice presidents named to the same ticket in elections, twenty-five ministries and eleven departments, five commissions, and a number of independent directorates and high offices.⁹⁹ The president is directly elected and must receive more than 50 percent of votes cast.¹⁰⁰

The president has enormous constitutional authority: he is the head of state and functions as the head of government; he is also the country's commander in chief and most powerful political figure. The president is elected every five years and may serve a maximum of two terms. In practice, the government has limited authority independent from the president and serves broad administrative functions.¹⁰¹ The role and authorities of the vice presidents are not defined in the Constitution; in practice, each vice president is assigned a sector-based portfolio at the discretion of the president.¹⁰²

The president has express authorities extending into the legislative and judicial sectors through appointments and the issuance of decrees. He appoints one-third of the members of the Meshrano Jirga (upper house of the National Assembly) to five-year terms, which provides significant influence over the composition of the legislative body. He also appoints justices to

The president is directly elected and must receive more than 50 percent of votes cast.

the Supreme Court with the endorsement of the Wolesi Jirga (lower house of the National Assembly), and approves the appointment of judges on proposal from the Supreme Court.¹⁰³

Regarding lawmaking, the president has the ability to adopt regulations and issue decrees based on “immediate need” during recesses of the Wolesi Jirga, and to assume broad powers in a state of emergency. The president also has the authority to call for referenda on issues of national importance.¹⁰⁴

The president is required under Article 79 of the Constitution to present legislative decrees to the National Assembly within thirty days of convening its first session. If a decree is rejected by the National Assembly, it becomes void. This process is limited to a negative check and does not include an approval requirement. In practice, this has proven ineffective; any consequences for the legal status of presidential decrees should the presidency fail to present them to parliament within thirty days, or should the National Assembly fail to act on a submission, are unclear.

Under the terms of the National Unity Government Agreement signed on September 21, 2014, Ashraf Ghani became president and Abdullah Abdullah chief executive officer (CEO). The role of the CEO is not clearly defined; in practice he oversees the Council of Ministers (his authority is limited to making recommendations to the president) and the day-to-day running of government affairs. The CEO position was created by presidential decree immediately after Ghani took office. Under the agreement, a Loya Jirga was to be convened within two years to amend the Constitution to formalize (or eliminate) the role. The government has since struggled with questions of unconstitutionality—and extra constitutionality—of the agreement and its full implementation; plans to convene district council elections or call a Loya Jirga (or both) are not yet under way.¹⁰⁵

National Assembly

The bicameral National Assembly consists of a directly elected 249-member Wolesi Jirga (House of the People), and a 102-member Meshrano Jirga (House of Elders) that is both appointed and elected.¹⁰⁶ One-third of the members of the Meshrano Jirga are appointed directly by the president for a five-year term; half of these should be women. Another one-third are elected from among provincial councils to a four-year term and the last third from among district councils to a three-year term. District council elections have not yet been held. The difference in term limits affords the presidential appointees a degree of seniority within the Meshrano Jirga.

Some argue that the adoption of the single nontransferable vote electoral system has produced a fragmented parliament.¹⁰⁷ Observers note that the single nontransferable vote has inhibited the formation of political alliances and a party-based electoral system, which further undermines parliament’s ability to effectively hold the executive accountable.¹⁰⁸ Political parties remain weak, as do concepts of parliamentary majority and opposition. Civil society and government interviewees agree that ethnic alliances and patronage networks, rather than ideology, dominate political organization, which is highly transient.

Judiciary

The Constitution provides that the judiciary is an independent organ of the state comprising one Supreme Court, courts of appeal, and primary courts, as well as a General Directorate of Administration and Central Departments.¹⁰⁹ Under interpretations of the Court’s Article

121 authority, it has the power to review the constitutionality of proposed laws and executive actions, which it has exercised on request—occasionally pitting the Court against parliament.

Constitutional Implementation and Challenges

The 2004 Constitution, as discussed earlier, reflects a complicated and contradictory legal framework that tried—but did not fully succeed—to embody both Afghanistan’s Islamic and customary traditions, and its international obligations. The document layers civil law and sharia jurisprudence traditions in a manner that has proven impossible to effectively reconcile in practice, and has left gaping loopholes that have been exploited by officials in both central and provincial structures. Because amending the Constitution is not a feasible option at this time, challenges with its construction necessitate practical solutions.

The balance of powers under the Constitution is structurally and functionally skewed toward the presidency. However, the Constitution also provides meaningful checks and balances authority to the National Assembly that, though limited by internal contradictions and capacity weaknesses, have effectively checked executive action in key instances.¹¹⁰ Parliament’s power to question executive officers and vote no-confidence has been used increasingly, by both the previous and current parliament, to express displeasure with ministry performance and the president, to remove or censure officials perceived as political cronies, and to block appointments for those lacking merit or adequate political support. These actions and disputes should be taken as positive signs:

It has been suggested that these constitutional battles are merely the “growing pains” of a new democracy. That the prolonged battles between the executive and the legislature, and in particular the practice of repeatedly using no-confidence votes, are in fact evidence that inter-branch checks are indeed working.¹¹¹

These promising signs, however, have come at a heavy cost; parliament’s use of its constitutional authorities to reject cabinet and Supreme Court nominees has been criticized as demonstrating the weakness of the institution—particularly given that Karzai overrode many vetoes by appointing his nominees through decree. In other instances, terms expired without Karzai submitting nominations for successors, effectively leaving incumbents in the position as “acting” authorities outside the scope of the Constitution or other Afghan law.

The power to veto appointments has also highlighted the increasing weight of conservative and traditionalist forces within parliament, as well as its failure to develop a culture of respect for women’s human rights and equality clauses within the Constitution. In July 2015, for example, parliament rejected President Ghani’s nomination of a woman to the Supreme Court. Clerics and conservatives within parliament criticized the nomination of Judge Anisa Rasouli, who had served as a judge for twenty-four years and headed Kabul’s juvenile court at the time of her nomination, based in significant part on her gender.¹¹² Reportedly, those opposed to the appointment claimed that the post was only suitable for a man and that, because judges must touch the Quran each day, a menstruating woman would be unable to perform her duties under the principles of Islam.¹¹³

The gaps and flaws of the Constitution are increasingly revealed in public battles between the branches and the extra-constitutional construction of the current government. The post of CEO has no formal status under the Constitution, though some claim that the president has legally delegated some of his authorities in his decree establishing the post of CEO; the sitting parliament has exceeded its constitutional term by over a year; and the Meshrano Jirga is composed of double representation from provincial councils rather than, as called for, one-third district council representatives.

These actions and disputes should be taken as positive signs.

Amending or revising the 2004 Constitution requires, under Article 111, convening a Loya Jirga of National Assembly members as well as presidents of provincial councils and district councils; the latter have never been elected. In discussions with representatives of the Afghan government and courts, most officials balked at the idea of amending the Constitution, citing both the strength of the document as written and the logistical and political challenges associated with convening a Loya Jirga.

In general, despite the Constitution's flaws, pursuing amendment or revision would likely stoke further political tensions and open a political Pandora's Box. However, open questions about separation of powers and the extra-constitutional composition of current bodies raise serious concerns. Although the institutions of democracy appear on several levels to be working, concerted efforts should be made to clarify open questions and to settle, with authority, separation of power issues that to date have weakened the function of the state and undermined the legitimacy of all three branches.

Subnational Governance

The 2004 Constitution provided limited instruction on when and how political, administrative, and fiscal authorities would be extended and exercised at the subnational level.¹¹⁴ The rationale favoring a centralized state is evident throughout the document and has persisted, in practice, to hamper attempts to strengthen the professionalism, capacity, and representativeness of local governance institutions.¹¹⁵

Three-quarters of all Afghans live in rural areas where local warlords and strongmen often maintain significant influence both as part of, and parallel to, formal institutions. The lack of a framework and vision for subnational governance development early in Afghanistan's transition planning and support interventions have resulted in relatively ad hoc assistance to local institutions. This, in turn, has challenged more recent attempts to improve access to and quality of services, justice, economic opportunity, accountability, and effective human rights protections in much of the country.

Subnational governance is divided into four levels: 34 provinces, 398 districts, up to 217 municipalities, and roughly 40,020 villages. This structure predates the 2004 Constitution and can be traced to those of 1923 and 1964. On paper, each level of subnational governance includes elected bodies and some administrative and financial authorities. In practice, local governments operate as local representatives of line ministries and central entities, and play a coordination rather than governance role; horizontal accountability is weak and largely ineffective. As an exception, municipalities are granted concrete authority to generate revenues and are expected to be self-sufficient.¹¹⁶

In 2007, in an attempt to strengthen local governance capacity, the government empowered the Independent Directorate for Local Governance (IDLG) as the lead agency for local governance institution building, and tasked them to provide a link between local governments and the executive.¹¹⁷ The IDLG became responsible for selecting local leadership from the provincial governor level and lower. This effectively removed this authority from the Ministry of Interior, which had until then controlled all such appointments. To date, only about half of the high-level subnational leaders have been appointed through merit-based procedures developed by the IARCSC and implemented by IDLG; power-holders at the national level remain influential in selecting subnational appointees.

Three-quarters of all Afghans live in rural areas where local warlords and strongmen often maintain significant influence both as part of, and parallel to, formal institutions.

Despite constitutional requirements, provincial councils are the only elected subnational governance structure. Elections for district councils, municipal councils, village councils, and mayors have never been held; in practice, the president continues to appoint mayors. The government, supported by various donors, has undertaken multiple initiatives to launch elected district councils, but such elections appear indefinitely delayed. In effect, this has left local communities with limited political and practical influence over both local affairs and national issues.

Local service delivery, for example, is provided through provincial line departments of centralized ministries, and appointments are more or less controlled by the president. Planning and execution decisions are made at central offices in Kabul, which limits the accountability of local authorities to people in their communities. Provincial-level ministry offices effectively control national budget allocations to the local level, since there are no provincial or district budgets. In practice, money is disbursed through provincial ministry offices and local authorities have little input into the budget planning process until the money is released. The expenditure authority granted to governors and ministry department heads is not transparent and may be used to improve local infrastructure and service delivery, or to consolidate power, fund off-budget projects, and control access.¹¹⁸

Building an Effective Civil Service

Reforming the civil service is a core priority of the Afghan National Development Strategy and is one of six programs defined under the National Priority Programs. The IARCSC is the lead agency for civil service reform and human capital development. It was established by presidential decree in 2002, which was reinforced under a 2011 law.

This program was followed by the Public Administrative Reform project, which included the development of a legal framework for systemic salary reform passed through the 2011 revised Civil Service Law, along with plans to develop the requisite human resources capacities for implementation.¹¹⁹ The 2011 law also provided the legal underpinning for the IARCSC's work. The IARCSC established the Pay and Grading Reform program to organize the structure and remuneration framework for civil service. This included the development of rules-based and meritocratic civil service management. To date, the IARCSC has redefined more than eighty thousand civil servant job descriptions.¹²⁰ The reformed pay grade system, however, remains under development. Salary scales are not competitive relative to the donor and private sector, and multiple and concurrent pay scales in the public sector continue to challenge reform efforts. Steady progress has been made to harmonize governmental and nongovernmental salaries; harmonization of specific salary scales began in November 2015, when the Council of Ministers formally requested alignment.

To date, merit-based appointment frameworks have been instituted for senior positions including provincial governors, deputy provincial governors, and district governors. This approach is intended to convert these roles from political appointments to civil service positions.¹²¹ As of 2014, more than half of Afghanistan's 407 district governors have been appointed under such frameworks, along with about half of its provincial governors.¹²² However, the scope of merit-based appointments has not extended to all ministries and agencies. Although improvements have been made, nepotism and cronyism continue in most government appointment processes and the IARCSC lacks the capacity to implement a consistent, transparent merit-based appointments process across all levels of government.

Although reforms in civil service have significantly improved Afghanistan's public administration framework, the IARCSC continues to struggle with internal structural gaps. These include weaknesses and ambiguities within its organizational framework; an unsystematic legal and policy framework that lacks a cohesive strategic approach; poor communications infrastructure to coordinate with the government, the donor community, and the Afghan public; a deficient human resources infrastructure that lacks the capacity to meet established aims; and weak information and communications technology to collect and maintain personnel data and link activities to the payroll disbursement framework under the Afghanistan Financial Management system.¹²³

Public Financial Management

The public financial management (PFM) roadmap was developed in 2010 as part of the Financial and Economic Reforms pillar of the National Priority Programs document.¹²⁴ Its goal is to strengthen public financial management systems, reduce the opportunity for corruption, improve budget execution, and develop a finance strategy for development.¹²⁵ Activities are rooted in the Procurement Law and the Law on Public Finance and Expenditure Management. The Afghanistan Financial Management Information System, supported by the World Bank, is a success story for the country's financial reform efforts. Available in all primary budgetary units in Kabul and in the provinces, it captures 99 percent of the government's budget execution.¹²⁶

Despite significant improvements in technical capacity and system developments since 2002, challenges with implementing PFM reforms remain. These stem from limited technical financial capacity, incomplete coverage, overly optimistic expectations for reform, inaccuracy of short-term forecasting, weak coordination and communication mechanisms, unclear budgetary and financial relations between the central government and provincial offices, and—perhaps most important—a lack of sustained political will.¹²⁷

Poor forecasting, corruption, and security concerns have resulted in fiscal deficits through multiple budget cycles, and will likely continue to some degree given ongoing security concerns despite improved revenue generation and collection systems, and ongoing international assistance. Additionally, the budgeting process remains highly centralized; only limited efforts to establish a provincial budgeting process (as required under the Tokyo Framework) have taken place.

Though implementation of the PFM reform package has not met expectations, there have been important improvements. According to a 2013 World Bank survey using the Public Expenditure Financial Accountability framework, Afghanistan has made “remarkable progress on the fiscal front.”¹²⁸ In particular, the survey noted that despite security, political, and capacity pressures, the government has strictly enforced and maintained fiscal discipline and improved transparency. Afghanistan ranked above average on a number of indicators for a low-income developing country, and scored an A rating on several measurements. Domestic revenues have increased overall, and public financial resources are tracked and reported with transparency. As a parallel, public procurement procedures have also improved throughout much of the government; President Ghani recently demanded that ministries file procurement contract paperwork with the National Procurement Authority, part of the administrative Office of the President, as an additional measure.

According to a 2013 World Bank survey, Afghanistan has made 'remarkable progress on the fiscal front.'

Combating Corruption

Corruption in Afghanistan is a key driver of conflict and the poor performance of governance and judicial structures. It is pervasive in all levels and in all sectors of government, and the rate and costs of corruption in the private sector appear to be growing.¹²⁹ Research indicates that corruption also contributes to the expansion of Taliban authority and capacity, further destabilizing the security environment.¹³⁰ Moreover, corruption is becoming increasingly institutionalized and perceived as “acceptable” within society.¹³¹

Looking ahead, comprehensive reforms of anticorruption institutions, including the investigation, arrest, and adjudication of corruption cases, are imperative for effective governance. This includes streamlining the work of new and older anticorruption mechanisms, improving transparency, and aggressively combating the influence of corrupt elites on the judiciary.

Drivers of and opportunities for corruption differ horizontally across sectors and institutions as well as vertically across levels of authority.

Key Drivers

Drivers of and opportunities for corruption differ horizontally across sectors and institutions as well as vertically across levels of authority. Observers note several common factors that may contribute to corruption problems at the local level and systemically. These include but are not limited to economic need, lack of sanctions and enforcement, weak government presence in rural areas, land competition, illegal mining, and illicit narcotics.

Poverty in Afghanistan has stagnated at around 35 percent.¹³² Some observers site low public servant salaries, compounded by skimming on the part of higher level officials, as an incentive for bribery and other forms of corruption.¹³³ However, Integrity Watch Afghanistan warns of the logical fallacy in putting too much weight on the poverty factor because it “implies that the well-off are not as corrupt as the poor,” which most evidence demonstrates is untrue.¹³⁴

Both effective sanctions and government enforcement are lacking. Although legal frameworks and institutions have been strengthened over the years, few elites have stood trial or fulfilled sentences for corrupt activities. A culture of impunity and political pressure underlie the failure of anticorruption institutions to effectively investigate, prosecute, and adjudicate corruption crimes committed by economic and political leaders.

Functional governmental presence and influence in rural areas remain limited, particularly in southern provinces where much of the narcotics trade is centered. In these and other areas, government officials and law enforcement face credible accusations of complicity in the drug trade, land grabbing, illegal mining, and other corrupt activities. The influence of warlords, strongmen, the Taliban, and criminal organizations remains strong in these areas.

Implementation of electronic human resources, payroll, accounting, and e-governance systems have made inroads but remain incomplete. Multiple cross-sectoral efforts have been supported by the international community in partnership with local authorities to develop electronic payroll and human resources management systems, as well as e-governance, to support data management and auditing. These include the Afghanistan Human Resource Information Management System and electronic payroll systems used for the ANP, the pilot Mobile Salary Payments system for civil servants, and other electronic public administration systems developed or planned within various ministries, such as the recently launched Afghanistan Payment Systems consortium. However, recent reports note that existing systems for law enforcement are not fully functional or integrated, and e-governance and payment systems for civil servants remain under development. These limitations have a critical impact on ongoing efforts to mitigate corruption at all levels of government and across all sectors, and significantly hinder both Afghan and international auditing efforts.¹³⁵

Land competition is linked to both conflict and corruption. Growing urbanization and the complexity of Afghanistan's land management regime have increased the number and intensity of land disputes over fifteen years both within and between families.¹³⁶ The bureaucratic complexity of processes to register land or apply for construction permits is prohibitive and presents many opportunities for connected elites to claim state land for private gain. Between 50 and 70 percent of conflicts addressed in TDR mechanisms involve land and property. Moreover, urbanization, restructuring legal and social frameworks, and returning refugees and internally displaced Afghans have disrupted customary settlement and ownership patterns since 2002, which in turn exaggerates competition.¹³⁷ The state's capacity to manage land registration and disputes is low, and officials are often complicit. "Illegal distribution of land in effect has become a form of currency, used by the executive to buy the allegiance of political elites."¹³⁸

Illegal mining is also a key driver of corruption. Afghanistan has an estimated \$1 trillion in extractive mineral reserves, including: tourmaline, chromite, lapis lazuli, marble, opals, emeralds, coal, crude oil, rubies, and other goods. Competition for these resources rests mainly between local political elites and strongmen, with funding channeled to insurgent groups. Illegal mining is thought to provide the second largest source of revenue to the Taliban, though mining contributed to less than 1 percent of the state's revenue in 2013. Despite promises by the NUG, movement to strengthen the Mining Law, publish mining data, reinforce oversight capacity, or support community monitoring mechanisms has been limited.¹³⁹ Notably, after a 2014 insurgent takeover of a lapis mine in Badakhshan Province, the government canceled the mining company's contract for failure to perform, and has made no effort to retake the mine or provide security for legalized extraction.¹⁴⁰

The value of Afghanistan's opium crop in 2016 was equivalent to around 5 percent of gross domestic product, production having risen by 43 percent over 2015 levels through expanded use of land for cultivation.¹⁴¹ Although the rate of opium cultivation and production has fluctuated—linked largely to international profitability, climate conditions, and control of poppy-growing areas—recent trends represent “a worrying reversal of efforts” to stem and combat illicit narcotics.¹⁴² The drug trade contributes to increased civilian casualties, human rights violations (including a noted rise in bride prices for women and girls), and endemic corruption within the security and governance sectors.¹⁴³ Corruption among police, central, and local officials is highly associated with opium trafficking.¹⁴⁴

Frameworks and Mechanisms

Afghanistan's anticorruption policy and legal framework is broad, and requires systemic revisions to strengthen authorities and enforcement across sectors, improve coordination across institutions, and sustain political will. The Ghani administration has made strides in meeting commitments dating to the 2010 London and Kabul conferences, as well as the Tokyo Mutual Accountability Framework, but progress has been uneven and incomplete.

In 2016, President Ghani elevated the Governance and Justice Council to the **Higher Council of Governance, Justice and Fight against Corruption** (Higher Council). The Higher Council supervises the National Anti-Corruption Strategy and is chaired by the president.¹⁴⁵

The **Anti-Corruption Council** was established by decree in 2016 and reports to the Higher Council.¹⁴⁶ Its core activities include prevention, awareness, and promoting public accountability. Duties include drafting the National Anti-Corruption Strategy, directing and monitoring ministry implementation of anticorruption programs, and supporting legislative drafting. The agency is led by the president and includes the CEO, both vice presidents, the

chief justice, presidential advisers on justice and transparency, the MOJ, the attorney general, the director of the Supreme Board of Audit, the director of the High Office of Oversight and Anti-Corruption (HOOAC), the director of the IARCSC, and the director of the IDLG.

Established by decree in June 2016, the **Anti-Corruption Justice Center** is mandated to investigate and address major crimes derived from administrative corruption. This is similar to the investigative authority previously granted to the HOOAC under President Karzai. The Supreme Court, AGO, and MOI are charged with establishing “special courts, special prosecution offices and corruption crimes detection police under supervision of the major crimes unit of the center,” as well as determining the jurisdictions of the special courts and units.¹⁴⁷ The administrative and financial affairs of the Center are regulated by the AGO with a separate budget. Staff will be appointed by the Supreme Court, AGO, and MOI. The center may receive case referrals from the Higher Council as necessary. It will, government and judicial interviewees agreed, likely be modeled after the Counter-Narcotics Tribunal. It is unclear how the Justice Center will coordinate with the existing Anti-Corruption Unit of the AGO or the Anti-Corruption Tribunal under the Supreme Court.

Established in 2008 to identify and refer high-level corruption cases to state prosecutors and to catalogue declared overseas assets of Afghan officials, the **High Office of Oversight and Anti-Corruption** made early progress in registering assets, but verification processes lagged and disappointed donors.¹⁴⁸ In 2010, President Karzai provided the HOOAC with direct investigative and prosecutorial powers by decree.¹⁴⁹ From 2011 to 2013, USAID provided financial and capacity support.¹⁵⁰ In August 2015, however, President Ghani stripped the HOOAC of its investigative and prosecutorial authorities but did not cancel the agency. Ostensibly, HOOAC’s investigative and prosecutorial powers were transferred to the Anti-Corruption Justice Center in a presidential decree on June 30, 2016. The director of the HOOAC is a member of the new Anti-Corruption Council. It is unclear what authorities remain to the HOOAC relative to the Higher Council of Governance and the Anti-Corruption Council.

Established in 2010 by decree within the framework of the HOOAC, the **Joint Anti-Corruption Monitoring and Evaluation Committee (MEC)** is intended to be functionally and financially independent.¹⁵¹ Despite falling under HOOAC, the MEC is seen as a somewhat duplicative agency.¹⁵² The MEC is charged with developing anticorruption recommendations and benchmarks; monitoring and evaluating anticorruption efforts; and reporting to the president, parliament, Afghan people, and international community. In 2011, the MEC recommended Afghanistan develop a comprehensive national anticorruption strategy plus an UNAMA-led international anticorruption strategy.¹⁵³ In November 2015, USAID and other donors threatened to withdraw funding for the MEC amid reports of corruption and waste among committee members, including expensing personal and luxury goods and billing nonworking days.¹⁵⁴ Under the September 2015 Self-Reliance through Mutual Accountability Framework, a key indicator is to “put in place mechanisms to review and implement the MEC’s national plan to reduce corruption.” It is not currently clear how the MEC will coordinate with the Anti-Corruption Council or the Higher Council on Governance.

Situated within the MOI, the **Major Crimes Task Force** is charged with investigating public corruption, organized crime, and kidnapping. The office was established in 2010 with funding from several US law enforcement agencies, British law enforcement, and the Australian Federal Police. As of 2015, according to US officials, it had a staff of 169 investigators. Its status relative to the Anti-Corruption Council, like that of other agencies, is unclear.

The AGO Anti-Corruption Unit and Supreme Court Anti-Corruption Tribunal are investigative and prosecutorial bodies established in 2009 by decree. The eleven-judge tribunal falls under the Supreme Court to adjudicate cases referred by the Anti-Corruption Unit of the AGO. It began hearing cases in Kabul in January 2010 and has since branched to include additional tribunals in primary and appeals courts in at least seven provinces.¹⁵⁵ In early 2012, the US Department of Justice suspended training for the AGO Anti-Corruption Unit because of “lack of seriousness.”¹⁵⁶ As of early 2015, only twenty-eight of the approximately two thousand cases investigated had resulted in conviction. It is currently unclear how the tribunals or units will operate relative to the Anti-Corruption Justice Center.

Established by the Supreme Court in 2006, the **Judicial Surveillance Department** (also translated as the Judicial Integrity Monitoring Department) investigates misconduct of judges, administrative staff, and others “who facilitate corruption in the courts of the judiciary.” The department answers to the chief justice and, in practice, is involved in all aspects of corruption response, from receiving and logging complaints, to conducting investigations, and referral for trial directly to the Court. Although arrest of judicial staff is reportedly conducted by the AGO, handling of judges’ cases appears to remain in-house. A 2015 department report showed that 426 judicial personnel had been arrested, including ninety-one judges, seventy-five court staff, and 260 “other persons who have misused the Supreme Court’s name.” In a July 2016 interview, the chief justice said that number had risen to 659, including an additional thirteen judges and seventy staff. Although the department, the AGO, and the MOI or police coordinate to some extent, efforts to do so are largely ad hoc and most corruption issues are handled internally. Department representatives report instances of pressure to protect accused from investigation. Evidence is often collected through sting operations, where judges are filmed accepting bribes. The legal framework for these operations is unclear, as are procedures to authorize video or audio surveillance.

Authorized under the 2005 Counter-Narcotics Law, the **Counter-Narcotics Justice Center and Tribunal** (CNJC) is meant to prosecute all drug cases reaching specified thresholds. These include two kilograms of heroin, ten kilograms of opium, or fifty kilograms of hashish, precursor chemicals, and other substances. The CNJC houses both the Criminal Justice Task Force—a self-contained unit of prosecutors, investigators, and primary and appellate judges—as well as the tribunal. The CNJC is broadly respected, according to judicial and government interviewees, and is a model for the new Anti-Corruption Justice Center. From January 2014 to January 2015, CNJC prosecutors processed 609 cases involving 775 suspects.¹⁵⁷ Most convictions led to detention in Kabul’s infamous Pol-e-Charkhi prison. The tribunal’s high rate of conviction and imprisonment, around 98 percent, has raised questions about due process protections. Adjudications rarely involve the submission or review of evidence, and instead focus on discussions between prosecutors and judges.¹⁵⁸ Although private defense attorneys occasionally participate, they are not mandated and have not received capacity support under US-sponsored assistance for the CNJC.

Following the 2010 Kabul Conference, parliament enacted a law on the Supreme Board of Audit in 2013 that mandates the **Supreme Audit Office** to undertake audits of government institutions.¹⁵⁹ This was paired with a 2012 parliamentary revision to the Public Finance and Expenditure Management Law, which removed the Ministry of Finance’s authority to audit government institutions.¹⁶⁰ Afghanistan’s Supreme Audit Office had lost membership in several auditing organizations in the past due to noncompliance with international standards. Since 2013, it has regained memberships.¹⁶¹ The MEC noted, however, that “the Audit

Evidence is often collected through sting operations, where judges are filmed accepting bribes.

Law lacks enforcement mechanisms to ensure compliance with the Supreme Audit Office's recommendations."¹⁶²

In 2011, parliament ratified a revised civil service law that instituted merit-based hiring and provided a statutory framework for the **Independent Administrative Reform and Civil Service Commission**. Integrity Watch Afghanistan has noted in multiple surveys that patronage-based appointments are the main form of corruption when it comes to recruitment of high officials. The IARCSC has redefined more than eighty thousand civil servant job descriptions and pay grades, many of which will represent a pay increase for personnel.¹⁶³ Observers note that the capacity of the IARCSC teams, the quality of service revisions, and insufficient budget, has hindered implementation. Human resources teams within ministries and agencies impacted by the reforms lack the capacity to effectively fill the positions.¹⁶⁴

Established by decree in 2015, the **National Procurement Authority (NPA)** acts as the Secretariat for the **National Procurement Commission (NPC)** and is situated within the Office of the President.¹⁶⁵ The NPA incorporates the duties and responsibilities of the former Procurement Policy Unit, Contract Management Office, and Afghanistan Reconstruction and Development Services. The NPC was established under two decrees in 2015, supplants the former Special Procurement Commission, and is chaired by the president. The CEO, second vice president, and ministers of finance, justice, and economy are members. The establishment of the NPC and NPA coincide with the revision of the Public Procurement Law, by presidential decree, in October 2015.¹⁶⁶

National Unity Government Response

Efforts to combat corruption have been mixed and repeatedly revised. Over fifteen years, legal and institutional developments have been largely ad hoc, disjointed, and without an overall strategy that included a coordinated national and international approach. The Karzai era saw the establishment of numerous anticorruption oversight mechanisms and tribunals, including duplicative systems. Many of these were supported by the United States and other donors, though none delivered on expectations. The HOOAC and MEC, for example, were created separately but functioned essentially as parallel structures.

The international push for reform has come mainly through the 2012 Tokyo Mutual Accountability Framework.¹⁶⁷ The National Unity Government has pledged to prioritize anticorruption, particularly through the 2015 Self-Reliance through Mutual Accountability Framework. It showed significant promise early on: the NUG reopened the Kabul Bank case, conducted surprise visits to government offices, fired officials perceived as incompetent or corrupt, and have begun streamlining governmental structures.¹⁶⁸

However, President Ghani has also appointed former ministers of finance and education as senior advisers despite records of suspected corruption.¹⁶⁹ It also remains unclear how the new anticorruption institutions established in 2016 will coordinate with or supplant earlier structures. Without concerted efforts to streamline or unify, the anticorruption framework itself risks becoming a source of waste and opaqueness.

The Ghani administration has taken several key actions to date:

- October 2014, reopened investigations into the Kabul Bank scandal of 2010 resulting in the loss of nearly \$900 million in deposits.
- December 2014, dismissed administrative officials and police chiefs in Herat Province, stating that all but the police and chief attorney would face corruption charges.¹⁷⁰

- February 2015, created the National Procurement Agency, which effectively centralizes nearly all government procurement through its office, which is chaired by the president.
- May 2015, fired the Minister of Urban Development for allegedly accepting \$900 million in bribes.¹⁷¹
- August 2015, stripped the Karzai era High Office for Oversight and Anti-Corruption of its investigative and prosecutorial powers.
- October 2015, issued directive to transition from cash-based to electronic payments for salaries, tariffs, utilities payments, taxes, and other fees via mobile money or electronic bank transfers,¹⁷² a commitment linked to efforts since 2009 to electrify salary payments within the Afghan National Police, and a more recent Mobile Payment System pilot within the civil service.
- April 2016, established the Anti-Corruption Council and promoted the Governance and Justice Council to the Higher Council of Governance, Justice and Fight Against Corruption, which oversees the Anti-Corruption Council.
- June 2016, established the Anti-Corruption Judicial Center and charged it with investigating and “addressing” major corruption cases”; decree calls on the Attorney General and Supreme Court to establish special courts, special prosecution offices, and corruption crimes detection centers (thought to be modeled from the special narcotics court).

Although these steps are promising, other indicators reveal continuing technical and material capacity shortages—particularly in the Attorney General’s Office and related anticorruption institutions, as well as with implementation of electronic payment systems. Currently, implementation of anticorruption institutional mandates are under way despite a lack of clarity about coordination mechanisms and potential duplication of both mandates and authorities.

Protecting Human Rights and Building Society

The groups and human rights issues discussed here are not exhaustive: critical issues, cross-cutting themes, and entire communities are necessarily excluded because of space constraints. Not being included neither diminishes the experiences of particular groups, nor lessens the importance of particular human rights challenges.

Key Achievements

The Afghanistan Independent Human Rights Commission is broadly respected and has twice received an A grading by the international national human rights accreditation body. It has also produced dozens of regular and thematic reports on human rights issues ranging from detention conditions, to violence against women, persons with disabilities, press freedoms, and access to justice, among others. Although its credibility was challenged in 2012 and 2013 when processes to remove and replace commissioners did not adequately align with the Paris Principles, the commission has continued its work and remains broadly independent.

Since 2002, proliferation of civil society organizations registered and operating throughout Afghanistan has been massive. Civil society and nongovernmental organizations (NGOs) serve a variety of roles ranging from service delivery to human rights monitoring and reporting, to advocacy and lobbying, and technical roles. The 2005 Law on Non-Governmental Organizations, and the 2013 Law on Associations, establish registration and operational requirements

The Afghanistan Independent Human Rights Commission is broadly respected and has twice received an A grading by the international national human rights accreditation body.

for a variety of civil society organizations, and many NGOs report that government interference in registration is limited.

Media outlets—including independent media—have also expanded exponentially and operate in television, radio, print, social media, and other mediums. This growth has in turn dramatically increased access to information and widened the public debate space for governance, human rights, and rule of law progress and challenges. Afghanistan's media diversity is a major success story, and has resulted in improved professionalization and a decline in legal harassment. Journalists continue to be targeted for extrajudicial discrimination, harassment, and other forms of persecution, including murder, however. Women journalists remain particularly targeted.

Additionally, numerous laws and presidential decrees to expand human rights protections have been enacted, just as international instruments on the rights of persons with disabilities, women, children, and refugees have been ratified. These frameworks, along with the 2004 Constitution, provide a strong foundation for human rights protections for key vulnerable groups, and for the exercise of fundamental civil, economic, political, social, and cultural rights. Although implementation of these laws faces significant challenges, the expanded status of legal protections marks a notable improvement.

Access to education, employment, and political participation for women and girls has also increased over fourteen years. Millions of girls attend school, 3,700 women are medical doctors, and approximately 1,500 women serve as police officers. In addition, sixty-eight women serve in parliament, and more than two hundred serve as judges. Although these numbers are far from equitable relative to men's, they are an important shift from the Taliban era.

Key Challenges

Deeply entrenched traditional and customary practices continue to subordinate women and girls, legitimize control by male family members, and link family and community honor to the real and perceived attitudes, behaviors, and activities of its women. These harmful structures and dynamics cannot be successfully modified through top-down, state-imposed reforms. Meaningful engagements with local leaders and collaborative, incremental interventions must be developed that both account for the reality of the Afghan experience in specific contexts and specific areas, and recognize the long-term processes and investments required to reshape beliefs, practices, and structures.

Legislation is weak in both planning and drafting, while training and resource provisions for implementation are inadequate and oversight is ineffective. Despite numerous laws, decrees, and regulations, human rights and state obligations are largely ignored in practice. Many government officials—particularly at the local level—are unaware of new laws and lack the resources to effectively implement and monitor even where knowledge is complete. They do not have proven mechanisms for oversight and implementation by design, and activities often do not align with constitutional and international standards.

Prioritizing and planning for human rights reforms by both the Afghan government and the international community are also inadequate. As in many other countries, human rights reforms are easily sidelined by other issues perceived as more urgent or politically popular. In Afghanistan, this has resulted in a race to the bottom, where stated human rights priorities are regularly negotiated away in exchange for other agreements, and commitments on paper are rarely implemented.

Security challenges and abuses by both state and nonstate actors are increasing. Although the Taliban continues to target women, minorities, other vulnerable groups, civil society, and the media, so do government forces. A significant proportion of civilian casualties and abuses are attributed to government security forces, army and police, prison guards, defense attorneys, prosecutors, judges, and other civil servants who regularly abuse their authority to extort, pressure, and violate people.

Political will and government capacity for systemic reform are both lacking. Human rights improvements are challenging to measure, and require changes in attitudes, beliefs, interpersonal relations, and social structures. Paper-based reforms, such as legislation and policy, are easy to write and fulfill many common indicators set by donors and governments. Because the NUG is facing increased scrutiny on its efforts to combat corruption, improve public administration, and strengthen fiscal policy, human rights is easily subsumed into broader themes. Although human rights are cross-cutting and cross-sectoral, this practice allows reform objectives to be overshadowed by more tangible activities and a high-tides-lift-all-boats approach. Renewed attention and more vigorous and clearly stated objectives are required to strengthen political will and improve capacity.

By many measures, the human rights situation in Afghanistan has improved since 2002, given fundamental legal, institutional, and practical developments. Yet the country's overall human rights record remains dismal. Normative and strategic errors in assistance planning and implementation among the international community have resulted in fifteen years of uneven—and potentially unsustainable—human rights developments. Afghanistan's bleak record stems not only from capacity gaps and corruption across most sectors, but also from endemic social and institutional patterns of discrimination. This is exaggerated by de jure and de facto conflicts between Afghanistan's international human rights obligations, the supremacy of sharia, and entrenched customary practices. Although criticism of Afghanistan's human rights record should not diminish the country's important gains in this area, it is important to understand how precarious those gains actually are. Consolidating improvements in human rights requires a renewed and non-negotiable commitment to prioritizing human rights processes and indicators that mitigate opportunities to bargain away fundamental rights and liberties behind closed doors.

Human Rights Legal, Policy, and Institutional Framework

Afghanistan's 2004 Constitution is the supreme legal instrument guiding human rights protections and state obligations. The preamble and Articles 6, 7, and 48 commit Afghanistan to respecting the Universal Declaration of Human Rights, the UN Charter, and a range of civil, political, economic, social and cultural rights. Articles 29 and 49 prohibit forced labor, torture, and other inhumane punishments; Articles 52 and 43 provide for free health care and education respectively. Articles 62, 72, 85, and 118 prohibit the election or appointment of a president, vice presidents, ministers, members of parliament, or Supreme Court justices that have been convicted of crimes against humanity. Article 58 provides the right to file complaints of human rights violations with the AIHRC; and Article 31 provides for free legal aid for indigent defendants.¹⁷³

The Constitution, however, also embraces a legal pluralism that complicates interpretation and implementation of its provisions. Article 3 provides that “no law can be contrary to the beliefs and provisions of the sacred religion of Islam” and Article 149 states that “the provisions of

The Constitution lacks clarity as to which tenets of Islam or jurisprudences of Islamic law apply.

adherence to the fundamentals of...Islam...cannot be amended.”The Constitution lacks clarity as to which tenets of Islam or jurisprudences of Islamic law apply, and provides no guidance on how conflicts between domestic, international, and Islamic legal obligations shall be resolved. This, combined with the historic influence of informal customary practices (some of which also violate sharia), weaken the legal status of rights and obligations under the Constitution and hinder effective implementation.

Beyond this, the country has adopted numerous laws, presidential decrees, policies, and frameworks to regulate specific behaviors, obligations, rights, and liberties. These address, for example: persons with disabilities, violence against women, care of minors and child soldier recruitment, freedom of assembly, labor, and other issues. Laws and decrees on prisons, police, defense advocates, the AGO, courts, torture allegations, and juvenile justice protect due process and access to justice rights; laws on mass media, NGOs, and public demonstrations assist the independent functions of civil society and journalists; and development policies and national action plans seek to empower historically marginalized groups. Afghanistan has also ratified many key international human rights instruments.

Yet implementation of all laws and policies remain inadequate and uneven. Central and local governments lack the financial, human, and institutional resources to monitor compliance and effectively implement obligations and protections. In some cases, officials are not even aware that laws have been passed. In others, political will for implementation is totally lacking.

The constitutionally mandated AIHRC has long been seen as the great success story among post-2001 Afghan institutions. It was awarded an A status grading by the International Coordinating Committee for National Human Rights Institutions in 2007.¹⁷⁴ Commissioners during this period were widely seen as independent of government influence and actively engaged in human rights promotion, monitoring, and reporting. After Karzai’s 2011 removal of three long-standing and widely respected commissioners, the process to appoint new commissioners in 2013 undermined the legitimacy of the AIHRC’s independence and its compliance with the Paris Principles.¹⁷⁵ By several measures, the new commissioners lacked experience and qualifications in the human rights field, and as a group lacked political independence. Combined, the new body of commissioners effectively gutted the AIHRC’s role in promoting transitional justice.¹⁷⁶

These challenges harmed the AIHRC in the eyes of both the Afghan public and the international community. The UN High Commissioner for Human Rights noted that the handling of the entire process put the AIHRC at risk of a downgrade by the Coordinating Committee in 2014.¹⁷⁷ Although the AIHRC’s work is both critical and laudable, the institution has not fully recovered its reputation. The 2013 appointment process highlights the legal and functional vulnerability of the AIHRC to executive influence.

Women’s Human Rights

By almost any measure, much work remains to be done on women’s human rights in Afghanistan. As of 2016, approximately 51 percent of women detainees were incarcerated for so-called moral crimes—many of which are not codified in the Afghan penal code or other laws.¹⁷⁸ Illustrative examples are numerous. Around 60 to 80 percent of marriages are arranged, for example.¹⁷⁹ A significant number of brides are under the statutory age of sixteen.¹⁸⁰ The practice of *badal* (the exchange of women between families) and *baad* (the “giving” of women to settle disputes) remain prevalent despite legal prohibitions.¹⁸¹ Spousal rape is not criminalized under

the law.¹⁸² Murder in the name of honor remains prevalent.¹⁸³ Women's human rights defenders are high-profile targets for harassment and murder.¹⁸⁴

International and domestic prioritization of counterinsurgency and counterterrorism, paired with the “light footprint” approach to development, set the stage for disjointed and ad hoc efforts to broaden women's inclusion and protect their human rights in the absence of an overarching strategic vision.¹⁸⁵ Over time, this has enabled increasingly powerful opponents to undermine gains and block advancements through openly hostile dialogue and actions.¹⁸⁶ Recent examples of this backslide are numerous. The Elimination of Violence against Women law, for example, was withdrawn from parliamentary debate after it was contentiously adopted by decree in 2009.¹⁸⁷ The same year, parliament adopted a highly discriminatory Shiite personal status law that significantly limited women's rights within marriage.¹⁸⁸ In 2013, women's political representation in elected office was effectively reduced when legislated women's quotas for provincial councils were lowered from 25 to 20 percent, and were eliminated entirely for district councils; during debates, conservative factions sought unsuccessfully to eliminate the provincial council quotas as well.¹⁸⁹ In 2015, conservative factions successfully obstructed the appointment of a woman to the Afghan Supreme Court through arguments centered on women's fitness to serve rather than merit.¹⁹⁰

State agencies charged with gender-mainstreaming and advocacy have not fared much better. A 2014 Afghanistan Research and Evaluation Unit report noted that “the over-politicized, symbolic, isolated and urban women's rights rhetoric has resulted in the creation of unsuccessful institutional roles, such as MOWA [Ministry of Women's Affairs] and its subsequent Gender Units, which cannot miraculously transform Afghanistan's patriarchal social structures and women's secondary status, particularly in just 12 years.”¹⁹¹

Children's Human Rights

Approximately half of Afghanistan's thirty-two million people are children younger than seventeen; an estimated 12.2 million children are under fifteen. Since 2001, the situation of Afghan children has improved by many indicators. More children attend school than during any of the past thirty years, including 3.5 million girls; approximately 2,500 schools are dedicated entirely to girls' education. Afghanistan has also worked to improve infrastructure for juvenile justice, including a policy focus on rehabilitation, education, and social services, despite infrastructure and monitoring challenges. Afghanistan has also ratified the Convention on the Rights of the Child and numerous International Labor Organization instruments on banning specified child labor practices. It has also enacted laws on education and child marriage, and developed a national policy against child trafficking. Child mortality has decreased and access to health care has improved.¹⁹² Yet children continue to face significant impediments due to resurgent conflict, displacement, poor service delivery and infrastructure, and entrenched poverty, which has remained at around 35 percent since 2008.¹⁹³

Despite developments, critical provisions of many laws are not implemented and Afghanistan has not incorporated the Convention on the Rights of the Child into domestic law. Many government institutions continue to apply customary law and sharia across a host of issues affecting children, including early marriage.¹⁹⁴ Seventy-three percent of children with disabilities are out of school, versus 51 percent of those without disabilities.¹⁹⁵ Significant numbers of children also have health challenges, including stunted growth, wasting, and anemia.¹⁹⁶ Despite statutory prohibitions, 53 percent of juvenile detainees are housed with adults and 71 percent are sentenced to a year or more.¹⁹⁷

Approximately half of Afghanistan's thirty-two million people are children younger than seventeen.

Beyond this, lack of enforcement and accountability have left many children exposed to sexual and physical abuse and exploitation, forced labor, recruitment by insurgents and the Afghan Local Police, and limited access to adequate nutrition, health care, education, and other services. Child abuse remains underreported and largely unpunished, and is committed by families, government authorities, religious figures, insurgent groups, and security forces.¹⁹⁸ Most children born in Afghanistan are not registered with the government, which challenges future access to government services, as well as education and employment opportunities. This is particularly difficult for children born to nomadic tribes and children born out of wedlock.

According to a report supported by Save the Children Sweden, “Afghanistan continues to be one of the worst places in the world to be a child.”¹⁹⁹

Rights of Persons with Disabilities

Unofficial estimates from 2013 suggest that up to two million Afghans are disabled, 61 percent of whom are women and children.²⁰⁰ Physical disability is the most common (36.5 percent), followed by sensorial (25.5 percent).²⁰¹ Most of those with disabilities live in central and western regions, including Kabul and Herat, and Samangan in the north; southern areas, though, have a higher proportion of disability relative to population density.²⁰² A majority of disabilities (26 percent) originate at birth or during the first year of life; 17 percent are conflict related.²⁰³ The continuing presence of landmines and explosive devices around the country also affect incidents of disability.²⁰⁴

The 2004 Constitution prohibits discrimination of any kind and requires the state to assist persons with disabilities and protect their rights.²⁰⁵ In 2013, the government enacted a disabilities law and continued to implement a five-year national disability action plan.²⁰⁶ The lead agency on disability issues is the Ministry of Labor and Social Affairs, Martyrs and Disabled. Other stakeholders include the Ministry of Public Health—responsible for medical treatment and physical rehabilitation, and the Ministry of Education. The AIHRC also has an Advocacy Committee for the Rights of Persons with Disabilities within its secretariat. An interministerial Taskforce on Disability, chaired by the Ministry of Public Health and hosted by the Ministry of Labor and Social Affairs, Martyrs and Disabled was established in 2014 and is in the process of developing a national disability policy.

Overall, assistance to persons with disabilities has improved, having been virtually nonexistent in 2001. This includes progress in inclusive education, psychosocial support, peer-to-peer support, and the development of a community-based rehabilitation network.²⁰⁷ Civil society and disabled persons’ organizations have also flourished, interviewees report, though most have struggled to sustain activities as donor support has been reduced in recent years. However, efforts to assist, rehabilitate, and integrate persons with disabilities have been hampered by a severe lack of services, poor infrastructure, gaps in technical capacity, insecurity, and inadequate funding.²⁰⁸ Beyond this persons with disabilities remain a socially and economically marginalized group and continue to face discrimination in access to employment and services. The situation of women and children with disabilities remain especially dire.

Rights of Minorities and Other Marginalized Groups

The Constitution establishes Islam as the official state religion but allows followers of other faiths to practice their religion within the limits of the law. According to Supreme Court interpretations of the Constitution and Islamic law, conversion from Islam to another religion

is apostasy, which is punishable by death. Apostasy is not defined in the criminal code but falls under the seven offenses making up the *hudud* as defined by sharia.²⁰⁹ Publication of materials contrary to the principles of Islam or offensive to other religions is prohibited, as is proselytizing.

In practice, the courts reportedly discriminate against non-Muslims, often applying Hanafi jurisprudence in cases where claimants are not Muslim. Christians avoid situations that may be interpreted as proselytizing for fear of retribution. Sikhs and Hindus report harassment and administrative barriers in cremating their dead and in access to land. They also report ongoing discrimination, including unequal access to government jobs and harassment in education institutions, as well as physical and verbal abuse in public spaces. No recent cases of government prosecution for apostasy or blasphemy have been reported, but one person convicted of blasphemy in 2013 continues to serve a twenty-year prison sentence.²¹⁰

With regard to political rights, the Constitution provides a minimum quota for minority nomads in the upper house of the National Assembly; the president's appointees to the Meshrano Jirga should include two nomads.²¹¹ The participation of nomads is also required in provincial and district councils, though minimum quotas are not established.²¹²

Conflict among Afghan communities has resulted in killings, displacement, and societal discrimination for years, particularly against Shi'a Hazara and nomadic groups. Perpetrators include not only insurgent groups, the Taliban, and local authorities, but also outsiders such as the self-proclaimed Islamic State.²¹³ Hazaras face extortion of money through illegal taxation, forced recruitment and forced labor, physical abuse, kidnapping, and detention.²¹⁴ In July 2016, Hazaras were specifically targeted in the single deadliest attack in Kabul since 2001.²¹⁵ NGO reports also indicate that Hazaras face discrimination in the armed services; police personnel, for example, are reportedly posted to insecure areas of the country and to positions of symbolic authority with little real power.²¹⁶

Stateless persons in Afghanistan as well as ethnic and religious minorities face challenges. Although demographic and other information on the stateless population is highly limited, observers note that challenges with the Citizenship Law, combined with procedures to obtain the national identity card (*tazkera*), have exacerbated the statelessness problem by setting up de facto barriers.²¹⁷ This has enabled the government and local strongmen to displace some nomadic groups who lack citizenship status or identity documents. Reports indicate that local authorities have concluded that some nomadic groups—such as the Bangriwala, Vangawala, and Mosulis (nomads originally of Iraqi origin who have lived in Afghanistan for centuries) whose women work outside the home and reportedly engage in begging in some urban areas—are not Afghans and can be forcibly removed from their areas.²¹⁸

Discrimination against particular nomadic groups is also evident within the legal framework. Afghanistan's 2014 Law on Registration of Population Records, for example, includes a focus on the nomadic Kochi peoples but does not address the status of other nomads. Article 14 allows *tazkera* to be issued to Kochi based on their summer or winter living location after their identity has been verified by a lawful relative and certified by the approval of a registered Kochi representative. In practice, this does not apply to other nomadic groups such as Mosulis, Bangriwala, and Vangawala. According to a recent report, the central government has told provincial authorities not to issue *tazkera* to the Mosulis, "to avoid future security threats."²¹⁹

Most refugees in Iran and Pakistan have been in refugee status for more than three decades, making them the largest protracted group worldwide.

Refugees and Internally Displaced Persons

Afghanistan was the world's top producer of refugees for most of the thirty-three years between 1981 and 2013. As of 2015, around 2.7 million Afghans remained forcibly displaced outside the country, new asylum claims having increased in 2014 and 2015.²²⁰ Despite these trends, Afghanistan has also seen nearly 4.7 million voluntary returns since 2002.²²¹

The majority of Afghan refugees live in Pakistan (1.6 million) and the Islamic Republic of Iran (951,000), in addition to Germany (30,000), Austria (17,500), Sweden (13,100), Italy (12,200), and India (10,200).²²² Iran and Pakistan also host significant numbers of undocumented Afghans, estimated at 1.5 to 2 million in Iran and 1 million in Pakistan.²²³ These estimates, however, are potentially inaccurate given that neither UN High Commissioner for Refugees nor the US government can independently verify the number of Afghan refugees or the number of annual refugee deaths reported by the Pakistani and Iranian governments.²²⁴ Most refugees in Iran and Pakistan have been in refugee status for more than three decades, making them the largest protracted group worldwide.²²⁵

For refugees seeking protection within Afghanistan, the country does not currently have a system for registering refugee status and granting asylum, nor for providing protection. This is despite Afghanistan's accession to the 1951 Convention on Refugees. Approximately 221,432 Pakistani refugees currently live in Khost and Paktika provinces.²²⁶

An estimated 1.3 million Afghans are internally displaced, 492,600 in 2015 alone.²²⁷ Approximately 948,000 of these are displaced due to conflict.²²⁸ Internally Displaced Persons reportedly suffer from lack of access to basic government-provided protection, including personal and physical security and shelter, as well as discrimination, inadequate sanitation, and limited economic opportunity often leading to secondary displacement. Domestic violence remains a problem for women living in Internally Displaced Persons camps.²²⁹

Civil Society

The number of registered civil society organizations (CSOs) in Afghanistan, including human rights defenders, has grown exponentially since 2001. According to a 2015 study, Afghanistan hosts approximately seven thousand CSOs, including more than two thousand NGOs registered with the Ministry of Economy and five thousand associations (including social organizations, foundations, and unions) registered with the Ministry of Justice.²³⁰ Civil society also includes numerous informal and unregistered community organizations, including village-based councils, and youth movements.

Because the government was unable to provide critical public services early in Afghanistan's transition, civil society has since 2001 consistently filled the gap across a host of areas. Civil society also plays an important monitoring and reporting role on human rights developments and abuses. The proliferation and professionalism of local CSOs is one of Afghanistan's great success stories and reflects the early prioritization of and attention to this sector during and following the Bonn Conference.

Although public perceptions of civil society have improved by recent measures, many Afghans report that the sector is burdened by corruption.²³¹ In 2013, Transparency International found that 34 percent of Afghans felt the NGO sector is extremely corrupt.²³² This perception has since begun to improve, the Asia Foundation finding that confidence in NGOs increased from 52 percent in 2013 to 57 percent in 2014.²³³ Recognition of CSO contributions in service delivery and improving governance remains limited, however.²³⁴

Media, Freedom of Information, and Access to Information

Like civil society, Afghanistan's media diversity is often cited as a major post-2001 success story.²³⁵ Before 2001, Afghanistan hosted virtually no broadcast and few print media outlets.²³⁶ Today, constitutional guarantees for freedom of the press and expression and a relaxed mass media law have enabled the proliferation of hundreds of diverse media outlets.²³⁷ These include roughly ninety local and national television channels, 174 radio stations, two hundred print outlets, and twelve news agencies.²³⁸ Afghanistan currently has a 75.7 percent radio penetration, 61.6 percent television penetration, and 9.6 percent internet penetration for news and information.²³⁹ This is matched by increased professional standards among journalists and a decline in legal harassment and censorship over pre-2001 levels.²⁴⁰

President Ghani signed a Freedom of Information law in December 2014, a step that Integrity Watch Afghanistan labeled “a positive step for promoting transparency and accountability” while noting the need for “further improvements.”²⁴¹

Despite these improvements, Afghanistan continues to rank among the bottom in freedom of the press surveys—particularly for protection of journalists. Journalists are regularly arrested, threatened, harassed, and detained by government actors seeking to silence opposition and critical reporting.²⁴² Local authorities have occasionally forced the closure of media outlets in retaliation for reporting on corruption and other sensitive issues.²⁴³ Warlords and strongmen also use intimidation and threats to constrain freedom of speech, particularly in the provinces. Targeted threats and assassinations by the Taliban have increased recently, the Taliban having declared several outlets as “legitimate military targets” in 2015.²⁴⁴ Women journalists, who make up approximately 30 percent of media workers, face particular threats and harassment from both state and nonstate actors.²⁴⁵

Transitional Justice

Today, despite formally acceding to the International Criminal Court's Rome Statute in February 2003, Afghanistan has no comprehensive policy on transitional justice and efforts in this area are largely disjointed. A large-scale donor-supported reintegration program was started in 2010 to encourage insurgents to lay down arms, adhere to the Constitution and domestic law, and reintegrate into social and economic life. To date, the program has made only marginal progress; it fails to effectively integrate reconciliation as part of its overall mission and activities, and it suffers from a lack of shared vision on the part of Afghan officials and international donors.

In 2007, the Afghan parliament promulgated legislation offering amnesty to fighters who laid down their arms.²⁴⁶ The law does not include any temporal limitations or exceptions for war crimes, crimes against humanity, or other serious human rights violations, though it grants victims the right to file criminal complaints. The law thus effectively transferred the state's obligation to address serious international crimes to individual victims, and essentially eliminated both the motive and need under domestic law for the government to investigate and hold perpetrators accountable. This has left the AIHRC, along with several civil society umbrella groups and individual complainants, as the only actors with a mandate to investigate and redress past and ongoing human rights violations.

In September 2016, the government concluded an agreement with Gulbuddin Hekmatyar, leader of the Hezb-e-Islami group, promising immunity for past political and military acts in exchange for an end to his activities against the government.²⁴⁷

In November 2016, International Criminal Court (ICC) prosecutors began evaluating investigations in Afghanistan, and have specifically referenced the actions of US soldiers and intelligence officials.²⁴⁸ Past ICC preliminary examination reports suggest that alleged abuses by the Afghan government will also receive scrutiny. In last year's report, the prosecutor's office described a range of alleged crimes by Afghan forces, including torture and mistreatment of thousands of detainees.²⁴⁹ Senior Afghan officials indicated in interviews that they would welcome investigators to Kabul and look forward to determining the details of any ICC investigation.

Recommendations

These recommendations target the government of Afghanistan, Afghan civil society and media, and the international community. They address core rule of law, governance, and human rights issues that require coordination across sectors and institutions. The final set targets the international community, focusing on issues related to strategic assistance frameworks and implementation planning. The recommendations do not attempt to address all challenges or needs, but instead provide an overview of potential next steps (for detailed related action items, see the appendix).

Rule of Law

Existing rule of law frameworks need to be strengthened to combat judicial corruption—particularly among judges, prosecutors, and defense attorneys—and to improve transparency of accountability processes. The judiciary currently investigates and responds to judicial corruption in-house. Transparency and accountability mechanisms, however, are both lacking. To ensure that processes in Afghanistan better align with recognized standards, the international community should expand the technical and material resources available to the Supreme Court. It also needs to support awareness of ongoing efforts in coordination with the judiciary and civil society watchdogs. The judiciary needs to assess the influence political and economic elites have on judicial outcomes, and to develop strategies and processes to increase transparency, monitoring, and reporting.

A coherent strategy and feasible, adequately resourced mechanisms should be developed to regulate coordination between formal and informal justice systems. Whether legislative or otherwise, these mechanisms need to incorporate local and civil society input and buy-in, mitigate opportunities for corruption, and combat human rights violations and the subjugation of women and girls.

The roles, capacities, and legitimacy of community policing need to be reinforced to undergird the rule of law and help the court system, and to prevent police efforts from being diverted away from these goals and toward security and counterterrorism activities. The international community should expand its technical assistance to improve the quality of recruitment, remuneration levels and distribution processes, training, monitoring, accountability, and community engagement in partnership with the Ministry of Interior, and work to expand the role of women and combat gender-based violence.

Legal education warrants renewed focus, especially continuing legal education and legal clinics. At the same time, the sustainability and efficacy of legal education needs to be better monitored and evaluated, just as the capacity of the Afghanistan Independent Bar Association to certify, monitor, and support Afghan lawyers needs to be strengthened. Although the quality and availability of legal education in Afghanistan has improved dramatically since

Mechanisms need to incorporate local and civil society input and buy-in.

2002, practical skill-building and attention to the role of defense attorneys remain limited. Expanded technical assistance and international partnerships to support curriculum and clinic development—in coordination with the bar association—could further consolidate already important gains.

Governance

Improving strategies and streamlining institutional coordination are essential to more comprehensively and transparently combating pervasive corruption. The international community should provide technical and material support to current Afghan government initiatives to reform and develop new anticorruption bodies—such as those established by the NUG—while assisting officials to streamline duplicative institutions, clarify mandates, improve coordination, and enhance transparency in anticorruption efforts across all sectors. Building Afghan and civil society capacity to provide better monitoring of administrative and procurement processes and government contract implementation should continue and include integrating better conditionality into the contracting process. Efforts to improve enforcement of existing law need to be reinforced, even while establishing and implementing effective, consistent sanctions against perpetrators of corruption at all levels of government and in the private sector.

The Afghan government's ability to prioritize reforms and develop strategies that include feasible and inclusive processes for implementation and monitoring need to be strengthened. Reform agendas and planning should include less emphasis on immediate expected results—often organized as lists of mutual obligations—and more on ways to develop political consensus and facilitate inclusive implementation processes and feasible timelines at the local and national level—with an eye toward long-term sustainability of both processes and outcomes. Both the Afghan government and international community should expand roles for historically marginalized groups, such as women and minorities, in both establishing priorities and monitoring follow-up on stated commitments, as well as strengthening the role for media in improving public awareness of agreed priorities, implementation processes, and timelines.

Women's effective participation in government institutions and peacebuilding, including the Afghan National Police, needs to be a mandated priority, whether through legislated or regulatory quotas (or both), as well as improved institution-level strategic planning and national policies. The security sector should develop strategic plans and standard operating procedures for the effective recruitment, training, and promotion of women that effectively address gender-based violence and gender-bias, adequately monitor implementation, and hold violators accountable. Local and national governance institutions should similarly strengthen strategic plans and standard operating procedures to expand women's roles in leadership across sectors and focus on girls' secondary education, through statutory or regulatory reform, paired with public outreach strategies coordinated with civil society and media.

The NUG needs to promote the legitimate roles of political parties relative to elections processes and as credible lobbying and opposition groups in healthy democracies. This should be matched within the international community by technical support to parties on organizational development, platform formation, and public outreach. Despite improvements in consolidation and organized campaigning ahead of the 2014 presidential elections, parties lack clear ties to the political process and continue to show limited capacity; the single nontransferable vote system also contributes to their weak positions. As youth and women increasingly mobilize toward parties, they expand the diversity of voices in the political process, and could be a mechanism for party expansion around policy platforms relevant for these groups.

Both the NUG and international community should ensure that development agendas are harmonized with—but not subservient to—counterterrorism and counterinsurgency goals.

Both the NUG and international community should ensure that development agendas are harmonized with—but not subservient to—counterterrorism and counterinsurgency goals. In many cases, development—and particularly human rights interventions—have taken second place. These relative frameworks, however, are not always mutually reinforcing and are sometimes contradictory. Clarity of priorities and frameworks are critical.

Human Rights

All parties to the conflicts confronting Afghanistan need to comply—strictly—with applicable international humanitarian law and respect international human rights law, especially instruments to which the Islamic Republic of Afghanistan is a party. Relatedly, the Afghan government has the responsibility to take all reasonable precautions and to develop effective standard operating procedures to protect civilians from hostilities and acts of terror. It also needs to take all necessary measures—without discrimination—to respect, protect, and meet the basic needs of the civilian population. Such measures include facilitating a safe operating environment for media and civil society actors to monitor and report on human rights and humanitarian developments.

Afghan and international civil society organizations with expertise in international humanitarian and human rights law, including monitoring mechanisms, should work to strengthen coordination and expand outreach at the local and national level. Concepts and practices embodied in public international law are often not easily understood or implemented, and mechanisms to enhance compliance need to be tailored to the local context if they are to be effective. Prioritizing knowledge-building and practical solutions at the community level could make these efforts both more palatable and more operational over time.

Inclusive planning and accountable implementation of human rights reforms need to be prioritized, within both Afghan government and international community activities, particularly those affecting women and children. Stated human rights priorities have been regularly negotiated away in exchange for other agreements and political wins. Commitments on paper, including legislation, are seldom fully implemented and are often overshadowed or undermined by other political and security priorities. This has led not only to marginal and uneven progress, but also to the recent diminution of hard-won gains. In reviewing and revising national reform agendas, the international community needs to better coordinate a unified vision on human rights priorities, and ensure that measurable progress against defined benchmarks are hard cast. The uneven progress to date stems from a range of complex political, security, and ideological challenges, but human rights protections need to be reframed as earnest priorities rather than tools for negotiation if they are to be meaningful and ensured. Afghan civil society and media also need to play an expanded role in identifying and prioritizing needs, and can assist in tailoring implementation plans within urban, rural, local, and national contexts.

International Community

The international community needs to continue to provide adequate and sustained support to Afghanistan and redouble its efforts in the rule of law and human rights sectors. This would include committing to longer-term horizons when planning and coordinating interventions and support. As history has shown, the focus on shorter-term, disconnected, and undercoordinated programming has limited the sustainability of efforts and frustrated both Afghans and donors alike. Although increased technical, material, and financial support is critical in some

areas, longer-term, bottom-up, and more coordinated planning that includes increased Afghan civil society inputs could help mitigate duplication of efforts and waste.

Alliances with potentially harmful local authorities who do not share agendas should be limited, weighing any possible gains from such relationships against the risk of endangering progress on human rights, governance, rule of law or anticorruption initiatives. Working with local partners who have the needed credibility, willingness, and capability to implement programming is ideal. Programming should be calibrated so as not to allow partners to abuse their positions, attack opponents, or expand control over resources, processes, and territory.

Initiatives and programs need to be better coordinated within the international community, the government of Afghanistan, and inside the Afghan government. More planning, due diligence, consultations and data sharing can produce more feasible and impactful activity. Donor states should bring a high-level political commitment to their programming. They should, as needed, adopt policies and laws that make combating corruption a national priority, authorize sanctions against foreign government officials who engage in corruption, and better vet potential and current recipients of funds among both international and local implementers.

Again, development and human rights agendas need to be harmonized with counterterrorism and counterinsurgency goals rather than subservient to them. In many cases, development and human rights priorities have taken second place to security priorities. The relative frameworks are not always mutually reinforcing, however, and are sometimes contradictory. Better understanding is imperative in regard to Afghanistan's historic legal, social, cultural, economic, and governance traditions as they relate to ethnic, geographic, and tribal identities and gender dynamics, and how those identities and traditions affect relations between communities and the state.

Better understanding is imperative in regard to Afghanistan's historic legal, social, cultural, economic, and governance traditions.

Appendix: Key Action Items

Rule of Law

- Expand assistance to the Office of the Attorney General, judiciary, and corrections institutions to further automate and better track case management.
- Provide material and infrastructure support to public prosecutor offices in the provinces.
- Improve complaints receipt, handling, and investigation of public prosecutors, police, judges, and defense counsel to better combat corruption in the justice sector; develop standard operating procedures among judicial institutions to adjudicate cases, coordinated with other Afghan anticorruption institutions.
- Promulgate a multiyear strategic plan to improve and expand the role of women in law enforcement.
- Develop programs for judicial institutions to recruit and retain foreign-trained Afghan legal professionals.
- Build better legal research, legal writing, and comparative analysis skills inside the Ministry of Justice's Taqnin, the Office of the Attorney General and Judiciary, including establishing a legal research center; expand assistance for continuing education "stage" courses for judges, prosecutors, and Ministry of Justice officials, especially those from insecure provinces; expand support for the Afghanistan Independent Bar Association.

- Provide technical and resource support for the Ministry of Justice's Juvenile Rehabilitation Directorate; enhance case management systems to better protect children's due process rights.
- Implement monitoring and reporting procedures for Afghan National Police detention centers.
- Provide resource assistance to build consensus around and support implementation of the national policy on relations between the formal judicial system and dispute resolution councils.

Governance

- Prioritize planning for district council elections, including establishing feasible timelines, allocating necessary resources, and coordinating with election monitors; assess the feasibility and resource needs to convene a Loya Jirga under the NUG Agreement and develop a strategic plan for implementation following district elections.
- Expand support for local governance structures and capacities; develop legislation and regulations to underpin local autonomy in revenue generation, financial management, administration, and service delivery.
- Clarify roles and responsibilities of civil service and political appointees at the local level and redouble efforts to ensure that merit-based appointment procedures are in place in all localities.
- Assess anticorruption institution mandates, authorities, resources, jurisdictions, and audit processes; further identify challenges related to duplication of effort, governance, transparency, operations, financial management, and human resources; streamline institutions, including coordination and communication structures and relations with external stakeholders; improve coordination of anticorruption efforts targeting illegal mining and the drug trade.
- Provide technical and material assistance to the Ministry of Interior to develop a strategy to expand women's participation and leadership and combat gender-based violence within the Afghan National Police.
- Develop an independent, transparent complaints handling and investigation system to address legal violations committed by Afghan security forces, including monitoring and reporting mechanisms and enhanced accountability.

Human Rights

- Provide targeted assistance to civil society human rights awareness-raising, monitoring, and reporting organizations to strengthen research, documentation and reporting skills, and community outreach and consensus-building.
- Prioritize building public-civil society partnerships to develop and implement human rights policy and institutional reforms to better reflect community-level needs and challenges and facilitate a common vision.
- Expand material and technical support to the Ministry of Women's Affairs and the Afghan Independent Human Rights Commission; strengthen transparency of appointment processes for new commissioners; enhance its political, functional, and

resource independence; develop coordinated initiatives and programs that highlight the role of women and girls in leadership, decision making, and peacebuilding at the local and national levels.

- Support independent monitoring, investigation, and reporting on arrests, harassment, threats, detentions, and killings of journalists and civil society representatives by government and nongovernmental actors.
- Provide technical support for implementation and enforcement of legislation on citizenship, persons with disabilities, elderly, women, children, and minorities in line with Afghanistan's constitution and international human rights obligations; ensure that policy and statutory developments in these areas are backed by adequate and coordinated institutional and financial resources, including targeted capacity building as appropriate.
- Mandate equitable representation for disadvantaged and vulnerable groups in all high-level planning and policymaking bodies relating to governance, security, the justice system, and human rights, including clear eligibility and qualification criteria and transparent selection processes.
- Develop policies and rules for Afghan interaction with the International Criminal Court, refer cases as appropriate, and coordinate activities with investigations when feasible.
- Develop and implement clear, measurable targets for human rights developments under the Tokyo Framework and related agreements; establish concrete links between performance against targets and provision of financial and material support in other areas.

Notes

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- 1 The original 2002 CRAFT group comprised the Asia Law Initiative of the American Bar Association, the International Human Rights Law Group (now Global Rights), the International Foundation for Electoral Systems, and the International Resources Group.
- 2 For an additional overview of broad frameworks and lenses through which to view the Afghan transition to date, see Scott Smith and Colin Cookman, eds., *State Strengthening in Afghanistan: Lessons Learned, 2001-2014*, Peaceworks no. 116 (Washington, DC: US Institute of Peace, 2016), www.usip.org/publications/2016/05/24/state-strengthening-in-afghanistan.
- 3 Trent Ruder, "Lessons and Opportunities from the Tokyo Mutual Accountability Framework," Special Report no. 378 (Washington, DC: US Institute of Peace, 2015), www.usip.org/sites/default/files/SR378-Lessons-and-Opportunities-from-the-Tokyo-Mutual-Accountability-Framework.pdf.
- 4 See Astri Suhrke, "The Case for a Light Footprint: The International Project in Afghanistan," eighth annual Anthony Hyman memorial lecture, School of Oriental and African Studies, University of London, March 2010, www.cmi.no/file/?997.
- 5 Ruder, "Lessons and Opportunities."
- 6 Ibid.
- 7 See Kabul International Conference on Afghanistan, "Conference Communiqué," July 20, 2010, www.rs.nato.int/images/stories/File/official-texts/Communique%20-%20Kabul%20International%20Conference%20on%20Afghanistan%20-%2020%20July%202010.pdf; Afghanistan: The London Conference, "Conference Communiqué," January 29, 2010, www.mec.af/files/2010_London_Conference_Communique.pdf.

- 8 Ruder, "Lessons and Opportunities."
- 9 Ibid.
- 10 Ibid.
- 11 Ibid.; Carol Wang, "Rule of Law in Afghanistan: Enabling a Constitutional Framework for Local Accountability," *Harvard International Law Journal* 55 (2014): 211, 219; Kenneth Katzman, "Afghanistan: Politics, Elections, and Government Performance," CRS Report no. RS21922 (Washington, DC: Congressional Research Service, 2015), 31, www.fas.org/sgp/crs/row/RS21922.pdf.
- 12 Ruder, "Lessons and Opportunities."
- 13 Katzman, "Afghanistan."
- 14 Ibid.
- 15 American Institute of Afghan Studies, "Rule of Law in Afghanistan: Conference Report," Boston University, September 23–24, 2011, 8, www.bu.edu/aiaa/reports/AIAS_ROL.pdf.
- 16 Katzman, "Afghanistan."
- 17 Constitution of the Islamic Republic of Afghanistan 2004 (Afghan Constitution 2004), Art. 117. All new members of the Supreme Court serve ten-year terms. Qualifications for Supreme Court membership include being not less than forty years old at time of appointment and a citizen of Afghanistan; having a higher education in legal studies or Islamic jurisprudence as well as adequate experience in Afghanistan's justice system; having a good character and reputation; having no conviction for crimes against humanity, crimes, or deprivation of civil rights; and not being a member of a political party during term of duty.
- 18 See Kristine Ziemis, "Afghanistan's Formal Justice Institutions," in *The Rule of Law in Afghanistan: A Primer for Practitioners*, vol. 1 (Washington, DC: US Department of State Bureau of International Narcotics and Law Enforcement Affairs Afghanistan/Pakistan Office, 2014), 7, http://touchpointidg.com/wp-content/uploads/2015/01/2.1-Afghan-Justice-Institutions_FEB_2014.pdf. Thirty-four appeals courts are located in the center of each province, with the number of judges varying by population. Appeals are organized into five *diwans*—central finance departments: general criminal, public security, civil and personal affairs, public rights, and commercial. The appeals court in Kabul also includes a juvenile *diwan*. Primary courts include thirty-four city courts of first instance (comprising civil, public rights, public security, general criminal, and traffic criminal *diwans*) in the center of the provinces, plus 364 district courts. Specialized primary courts include juvenile, family (personal affairs), and commercial. In practice, only provincial capitals in Kabul, Balkh, Herat, Nangarhar, and Kunduz have juvenile, family, and commercial primary courts. In areas without juvenile courts, the general criminal *diwan* of urban courts have jurisdiction. Under the Law on Courts, the Supreme Court has established a specialized Counter-Narcotics Tribunal in the Kabul Court of Appeals as well as eight anti-corruption tribunals in Balkh, Bamiyan, Herat, Kabul, Kandahar, Kunduz, Nangarhar, and Paktia appeals court structures. The continuing status of the anticorruption tribunals must be reassessed based on recent presidential decrees that establish new anticorruption institutions that arguably have overlapping mandates with the current tribunals. In addition, the Supreme Court has established a Court of Crimes against Internal and External Security in the Parwan Court of Appeals. Appeals judges review both the factual and legal aspects of a case.
- 19 Afghan Constitution 2004, Art. 116 and 121. The Court's power to interpret the constitution, however, has been the subject of much debate in recent years, and has given rise to the establishment of the Independent Commission for the Supervision of the Implementation of the Constitution (ICSIC). The ICSIC is a constitutionally mandated commission imagined as overseeing implementation. In enacting its establishment law, however, parliament expressly granted the body the power of constitutional interpretation. This was widely understood as retaliation for the Court's siding with the President over several no-confidence votes and related acts of parliament against members of the cabinet. Today, the Court and ICSIC co-exist in relative harmony, though scopes of authority and jurisdiction remain unresolved. See Sari Kouvo, "Six years late, the Constitutional Commission is formed; but will it take on president and parliament?," *Afghanistan Analysts Network* (2010), www.afghanistan-analysts.org/six-years-late-the-constitutional-commission-is-formed-but-will-it-take-on-president-and-parliament/.
- 20 Law of the Organization and Authorities of the Courts of the Islamic Republic of Afghanistan, Article 18, May 19, 2005, http://supremecourt.gov.af/content/media/documents/law_on_org_juris_courts_english_112011121448474.pdf.
- 21 Data provided by the Supreme Court of Afghanistan in July 2016 detailing 366 primary district courts, thirty-seven primary urban courts (thirty-three provinces plus four in Kabul City), thirty-four appeals courts (one in each province), one juvenile primary court (Kabul only), one juvenile appeals court (Kabul only), one newly established High Anti-Corruption Court, one serious crimes court, and eight chambers (officially counted as separate courts), in the Supreme Court. The number of courts reported in other sources varies slightly. The *tashkeel* provides the organization chart of the Supreme Court detailing staffing levels, types, and numbers under the Court organization chart. An assessment in December 2016 cited 2015 *tashkeel* data on the number of judicial positions and vacancies that differ slightly from numbers reported in interviews for this report. The assessment noted a total of 1,898 existing judges (1,625 men and 283 women) and 422 vacancies, for a total of 2,320 judge slots for 2015. However, the *tashkeel* noted that, officially, the

- number should be 2,445 judges, 540 of which are currently vacant. See Checchi and Company Consulting, Assistance for the Development of Afghan Legal Access and Transparency, “Human & Institutional Capacity Development (HICD) Report for the Supreme Court: General Directorates of Administration/ Finance and Human Resources,” Appendix IV (Washington, DC: US Agency for International Development [USAID], 2016), on file with author.
- 22 Ibid.
- 23 The chief justice of the Supreme Court cited in an interview 216 female judges. An assessment of the Supreme Court in December 2016 cited 283 women judges using 2015 data (Checchi, “HICD Report”). This assessment and the interviews indicate gaps in updated record-keeping on judicial appointments.
- 24 Checchi, “HICD Report.”
- 25 Community issues include, for example, local infrastructure development or maintenance and use of local spaces, as well as declarations of hostilities against other communities. Personal disputes often involve local property, water rights, family disputes, personal status issues, murder, and other crimes. Thomas Barfield, “Afghan Customary Law and Its Relationship to Formal Judicial Institutions” (Washington, DC: US Institute of Peace, 2003), 9, www.usip.org/sites/default/files/file/barfield2.pdf.
- 26 Noah Coburn, “Informal Justice and the International Community in Afghanistan,” *Peaceworks* no. 84 (Washington: US Institute of Peace, 2013), 23, www.usip.org/sites/default/files/PW84-Informal%20Justice%20and%20the%20International%20Community%20in%20Afghanistan.pdf; Checchi, “Final Report, Rule of Law Stabilization Program—Informal Component” (Washington, DC: USAID, 2014), 1, on file with author.
- 27 Afghans were asked in a 2014 survey whether they think *buquqs* (government mediation offices), state courts, and *jirgas* and *shuras* are fair and trusted, follow local norms and values, are effective at delivering justice, and resolve cases promptly. In every case, more Afghans think *shuras* and *jirgas* have these qualities; *buquqs* came in second, followed by the state courts. Zach Warren, “Afghanistan in 2014: A Survey of the Afghan People” (San Francisco: The Asia Foundation, 2014), <https://asiafoundation.org/resources/pdfs/Afghanistanin2014final.pdf>; Coburn, “Informal Justice,” 24.
- 28 Key provisions of the draft Law on Dispute Resolution Jirgas and Shuras include formal recognition of customary mechanisms as dispute resolution councils (DRCs), official recognition of DRC decisions registered with the MOJ’s Huquq or primary courts, and an individual right to appeal DRC decisions to the formal system within certain bounds. The bill also regulates the jurisdiction of DRCs: civil and legal disputes between natural persons but not issues linked to marriage, divorce, separation, revocation of divorce and lineage, endowed property, will and trusteeship, legal incapacity or bankruptcy. DRCs also may not hear criminal cases except for children’s obscenity crimes and adult and juvenile offenses that do not require imprisonment. DRCs cannot detain people. The bill further obligates DRC members to apply sharia, Afghan law, international human rights standards, and proper traditions (Ziems, “Informal Dispute Resolution,” 4; see also Coburn, “Informal Justice”). Programs include the USAID-funded, Checchi-implemented, Rule of Law Stabilization Program Informal Component.
- 29 Observers note that all extant versions of the draft law ban these practices, and concede that the critical issues are enforceability and the ability of formal institutions to monitor informal practices.
- 30 Checchi, “Final Report.”
- 31 Erica Gaston and Erik Jensen, “Rule of Law and Statebuilding in Afghanistan,” in *State Strengthening*, 71.
- 32 See Ministry of Justice, “About the Ministry,” Islamic Republic of Afghanistan (Republic of Afghanistan), <http://moj.gov.af/en/page/7943>; Afghanistan Justice Sector Support Program, Ministry of Justice, <http://jsspaafghanistan.com/index.php/wwork/sections/ministryofjustice.html>; Ziems, “Formal Justice Institutions.”
- 33 Taqin subdepartments include labor and economics, civil and commercial, penal and administrative, international, private sector, research, and legal leadership (Ziems, “Formal Justice Institutions”).
- 34 Sarah Han, “Legal Aid in Afghanistan: Context, Challenges, and the Future,” Afghanistan Analysts Network, April 2012, www.afghanistan-analysts.org/wp-content/uploads/downloads/2012/09/legalaid.pdf.
- 35 Law on the Procedure for Obtaining Rights (Hoqooq), *Official Gazette* no. 786 (1999), Art. 4, “According to the provisions of this law, all administrations except courts are duty bound to refer received petitions on civil rights to the relevant office of Hoqooq.” Additionally, “the Huquq is responsible for promoting legal rights awareness as well as “defending the ownership rights, the rights of work, family rights and other civil rights of citizens based on their complaint taking measures to enforce the judgments issued by the courts on civil rights disputes by mixed and private government departments and institutions and the citizens when required.” Law on Remuneration and Rights of the Cadre Members of the General Presidency of Legislation Affairs, *Official Gazette* No. 787, as amended in *Official Gazette* No. 791, Article 7, part 8, www.aisa.org.af/Content/Media/Documents/787TaqinRemuneration511201417148594553325325.pdf.
- 36 Ziems, “Formal Justice Institutions.”
- 37 Checchi, “HICD Assessment of the Huquq Department of the Ministry of Justice” (Washington, DC: USAID, December 2016), on file with the author.

- 38 Ibid.
- 39 The Huquq has received assistance from, for example, USAID, International Narcotics and Law Enforcement Affairs, Deutsche Gesellschaft für Internationale Zusammenarbeit, International Development Law Organization, and others.
- 40 According to the JSSP, complainants purchase a petition form from the Ministry of Finance seeking assistance from the MOJ. The revenue goes to the Ministry of Finance, which submits the request to the Huquq. If the Huquq finds the complaint valid and the parties willing to mediate, the Huquq will address the case or send it to a *shura* or *jirga* for resolution. Legal fees collected in these cases are enough to make the Huquq financially self-sufficient. If the parties reach a resolution, they can register it with the Huquq with no fee. If a resolution is not reached, the dispute may be referred to the courts. See Ziems, “Formal Justice Institutions,” 14–15, citing JSSP, “Assessment of the Revenue Collection System of the Huquq Department,” Ministry of Justice, July 2011, <http://jsspafghanistan.com/index.php/wwork/sections/ministryofjustice.html>.
- 41 To address juvenile detention needs, the MOJ established the High Council for Rehabilitation and the Central Department for Juvenile Education and Rehabilitation as agencies separate from the Supreme Council of Prisons and Detention Centers. The mission of the High Council for Rehabilitation is to facilitate coordination across government institutions to foster the protection of children. The High Council is chaired by the Minister of Justice and includes members from the Supreme Court, Juvenile Court, Ministries of Education, Interior, and Public Health, as well as the MOJ’s Taqin. The Central Department for Juvenile Education operates as an MOJ directorate and is charged with overseeing access to education, health, and social services for detained juveniles. It has entered into memoranda of understanding with various stakeholder line ministries to facilitate this process (Ziems, “Organization and Structure of Afghanistan’s Correctional System,” in *Rule of Law*, 6).
- 42 Juvenile Code, *Official Gazette* no. 846, 19/12/1383, published 1384/01/03 (2005), Art. 4, 5.
- 43 Ziems, “Organization and Structure,” 6.
- 44 Timelines for detention are set at twenty-four to forty-eight hours during police investigations prior to turning the files over to prosecutors, and up to forty days from time of arrest to completion of trial. Juvenile Code 2005, Art. 11 and 13.
- 45 Thomas Barfield, “Statebuilding, Counterinsurgency, and Counterterrorism” in *State Strengthening*, 15.
- 46 William A. Byrd, “Macroeconomic and Public Financial Management in Afghanistan,” in *State Strengthening*, 90. In 2014, President Ghani demanded that UNDP hand over control of Law and Order Trust Fund of Afghanistan to Afghan authorities. See Sune Engel Rasmussen, “Afghan police struggle as US watchdog finds holes in payroll data,” *Guardian*, January 12, 2015, www.theguardian.com/world/2015/jan/12/afghanistan-police-payroll-data-watchdog-report.
- 47 Under the Police Law of 2005, various branches of the ANP are charged with detecting crimes; maintaining public safety; protecting individual legal rights and property; combatting narcotics, organized crime, and terrorism; assisting in emergencies; and safeguarding the borders. ANP forces are organized under the MOI and are to take “guidance of the governors and district chiefs in the provinces and districts respectively” (Police Law, *Official Gazette* No. 862, September 22, 2005, Art. 4, <http://moi.gov.af/Content/files/PoliceLaw.pdf>).
- 48 Information provided by the Office of the President indicates that 1,300 police officers are women (on file with author). However, in 2015 Kenneth Katzman cited around two thousand, and the U.S. Department of Defense in 2016 cited 2,600 (Katzman, “Afghanistan: Post-Taliban Governance, Security, and U.S. Policy,” CRS Report no. RL30588 [Washington, DC: Congressional Research Service, 2015], 35, www.fas.org/sgp/crs/row/RL30588.pdf; US Department of Defense, *Enhancing Security and Stability in Afghanistan*, June 2016, 37, www.defense.gov/Portals/1/Documents/Enhancing_Security_and_Stability_in_Afghanistan-June_2016.pdf).
- 49 Under Article 5 of the Police Law of 2005, various branches of the ANP are charged with detecting crimes; maintaining public safety; protecting individual legal rights and property; combatting narcotics, organized crime, and terrorism; assisting in emergencies; and safeguarding the borders.
- 50 Michelle Hughes, “The Afghan National Police in 2015 and Beyond,” Special Report no. 346 (Washington, DC: US Institute of Peace, 2014), www.usip.org/sites/default/files/SR346_The_Afghan_National_Police_in_2015_and_Beyond.pdf.
- 51 Ziems, “Organization and Structure”; see Interim Criminal Procedure Code, *Official Gazette* No. 820, published 2004/02/25 (1382/12/06 A.P.), Art. 6(3), <http://ago.gov.af/en/documents>.
- 52 The JSSP and EUPOL supported the Case Management System, which tracks detainees from the moment of arrest until time of release, is assisting to monitor and address violations of statutory time limits for detainees. As of May 2016, the system docket included 234,785 unique criminal cases. Review of these cases assists in detecting and addressing detainees held in detention beyond the statutory limit (Justice Sector Support Program Case Management Overview presentation, PAE, June 2016, on file with the author). On oversight, see UNAMA and OHCHR, *Update on the Treatment of Conflict-Related Detainees in Afghan*

- Custody: Accountability and Implementation of Presidential Decree 129*, Kabul, February 2015, www.ohchr.org/Documents/Countries/AF/UNAMA_OHCHR_Detention_Report_Feb2015.pdf.
- 53 See Bureau of Democracy, Human Rights, and Labor (BDHRL), “Country Reports on Human Rights Practices for 2015: Afghanistan” (Washington, DC: US Department of State, 2015).
- 54 Ali A. Jalali, “Afghanistan National Defense and Security Forces: Mission, Challenges, and Sustainability,” Peaceworks no. 115 (Washington, DC: US Institute of Peace, 2016), 18, www.usip.org/sites/default/files/PW115-Afghanistan-National-Defense-and-Security-Forces-Mission-Challenges-and-Sustainability.pdf.
- 55 Zachary Warren and Nancy Hopkins, eds., *Afghanistan in 2015: Survey of the Afghan People* (San Francisco: The Asia Foundation, 2015), <http://asiafoundation.org/publication/afghanistan-in-2015-a-survey-of-the-afghan-people/>.
- 56 See, for example, Alissa J. Ruben, “Afghan Policewomen say sexual harassment is rife,” *New York Times*, September 16, 2013, www.nytimes.com/2013/09/17/world/asia/afghan-policewomen-report-high-levels-of-sexual-harassment.html; Human Rights Watch (HRW), “Afghanistan: Urgent Need for Safe Facilities for Female Police,” April 25, 2013, www.hrw.org/news/2013/04/25/afghanistan-urgent-need-safe-facilities-female-police.
- 57 See Special Inspector for Afghanistan Reconstruction, “Afghan National Police: More than \$300 Million in Annual U.S.-funded Salary Payments Is Based on Partially Verified or Reconciled Data,” SIGAR 15-26 Audit Report, January 2015, www.sigar.mil/pdf/audits/SIGAR-15-26-AR.pdf.
- 58 The ALP began through several pilot programs in Wardak and Kandahar provinces in 2008 and 2009. In 2012, these were transformed and expanded into the ALP program. Initially, around three hundred local police forces were trained under the control of district police chiefs (Katzman, “Afghanistan”; see also International Crisis Group (ICG), “The Future of the Afghan Local Police,” Asia Report no. 268, June 4, 2015, www.crisisgroup.org/asia/south-asia/afghanistan/future-afghan-local-police).
- 59 See Katzman, “Afghanistan”; ICG, “Future of the Afghan Local Police.”
- 60 See ICG, “Future of the Afghan Local Police”; Jalali, “Afghanistan National Defense.”
- 61 See, for example, Ernesto Londono, “Afghanistan sees rise in ‘dancing boys’ exploitation,” *Washington Post*, December 30, 2013, www.washingtonpost.com/pb/world/asia_pacific/afghanistans-dancing-boys-are-invisible-victims/2013/12/30/bb8e8a5a-7c2b-11e1-8f65-4cbb23028e62_story.html; HRW, “Just Don’t Call It a Militia,” September 12, 2011, www.hrw.org/sites/default/files/reports/afghanistan0911webwcover.pdf; BDHRL, “Afghanistan”; Afghan Analysts Network, “Local Police an Uncertain Player in Afghan Future,” December 31, 2012, www.afghanistan-analysts.org/miscellaneous/aan-in-media/local-police-an-uncertain-player-in-afghan-future/.
- 62 ICG, “Future of the Afghan Local Police.”
- 63 UNAMA and OHCHR, *Update on the Treatment*.
- 64 See United Nations (UN), “Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights in 2013,” UNGA A/HRC/25/41, January 10, 2014, www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-41_en.doc.
- 65 The GDPDC was originally called the Central Prisons Directorate (CPD). In 2003, it was moved from the MOI to the MOJ because the MOI faced significant international criticism for human rights abuses and a growing corruption problem. The need to move oversight of prisons from a militarized ministry to a civilian one was broadly agreed. In 2012, however, the president transferred CPD back to the MOI. This was deemed necessary because the MOJ lacked resources to adequately develop and supervise prison infrastructure. Today, the international community remains concerned that the administration of policing and administration of corrections are housed under the same ministry. The GDPDC is ostensibly independent and reports directly to the Minister of Interior. Ziems, “Organization and Structure,” 2; see also Presidential Decree No. 85 (2012) amending the Law on Prisons to move the GDPDC from the MOJ to the MOI.
- 66 Law on Prisons and Detention Centers, 2007, unofficial UNODC English translation, www.unodc.org/documents/afghanistan/Government_of_Afghanistan_LAW_ON_PRISONS_AND_DETENTION_CENTERS_2010.pdf. The GDPDC also serves as secretariat of the Supreme Council of Prisons, which is responsible for leading all affairs of detention centers and prisons all over the country. Other members include the MOI; Supreme Court; MOJ; Ministry of Public Health; Ministry of Education; Ministry of Labor, Social Affairs, Martyrs and Disabled; MOWA, NDS, Ministry of Hajj and Islamic Affairs, the AIHRC, and one member of civil society as recognized by the MOI. The Supreme Council is obligated to meet once every three months, but in reality meets once annually (see Ziems, “Organization and Structure,” 2).
- 67 Ziems, “Organization and Structure,” 4. As of 2014, the counternarcotics detention center held forty-nine individuals charged with narcotics-related crimes under the jurisdiction of the CNJS.
- 68 BDHRL, “Afghanistan”; Ziems, “Organization and Structure,” 3n10.
- 69 See Ziems, “Challenges Facing Afghanistan’s Correctional System,” in *Rule of Law in Afghanistan*, 1; Afghanistan Independent Human Rights Commission (AIHRC), “The Situation of Detention Centers and

- Prisons in Afghanistan,” 2009, 7, www.aihrc.org.af/media/files/Reports/Thematic%20reports/rep_25_jun_2010.pdf. The 2009 AIHRC report noted severe overcrowding up to “three or even four times more than the standard norm established.”
- 70 Ziems, “Challenges,” 1; see also AIHRC, “Situation of Detention Centers.”
- 71 See, for example, Han, “Legal Aid in Afghanistan.”
- 72 Ziems, “Challenges,” 3, addressing GDPDC’s budget shortfalls and support from the international community.
- 73 UNAMA and OHCHR, *Update on the Treatment*.
- 74 Under the AGO law, the AGO is organized into three offices (Supreme Court Prosecution Office, Appellate Prosecution Office, and Primary Prosecution Office), four departments (Deputy Attorney General for Investigation, Deputy Attorney General for Judiciary, Deputy Attorney General for Military, and Deputy Attorney General for Administration), and fifteen central directorates. The Supreme Court Prosecution Office is further organized into a general criminal office, a public security office, an internal and external security and National Directorate of Security (NDS) staff duty crimes office, a duty for related crimes of armed forces, police, NDS and other entities with military structure office, an anticorruption office, a counternarcotics and intoxicants office, and a juvenile crimes office.
- 75 Law on Structure and Authority of the Attorney General’s Office, *Official Gazette* No. 1117, October 7, 2013, http://inprol.org/system/files_force/resource-content/resources/ago_law_2013.pdf.
- 76 Law on Prisons and Detention Centers, 2007.
- 77 The High Council is charged with approving the strategies and work plan of the AGO, as well as reviewing and evaluating criminal statistics, enhancing prosecutors’ operational and professional capacity, overseeing disciplinary actions, and other responsibilities. Law on Structure and Authority, Art. 9
- 78 See also EUPOL, “Security still remains the main challenge for prosecutors,” December 2015, www.eupol-afg.eu/node/688.
- 79 Assistance to the AGO includes, for example, training and organizational support from the JSSP program, trainings and case management support, including the Cooperation of Police and Prosecutors course, funded by the European Union, a pay and grading reform project led by Adam Smith International and funded by the Canadians, and IDLO projects, among others. As a result, hundreds of prosecutors have received training, the AGO has a functional cases management system linked to the country-wide system supported by JSSP, an internal legal education department, a gender policy and action plan to recruit more women prosecutors, and improved human resources policies, among other gains.
- 80 AIBA Bylaws, Art. 3. See also the Advocate’s Law, Art. 4, on the establishment of “an independent non-governmental Association of Advocates.” The organizational structure includes a general assembly, leadership council, executive board, monitoring board, and committees. Mandated committees include an education committee, tasked with liaising on training and capacity-building programs, organizing bar entrance exams, and delivering workshops, and an election committee charged with organizing elections to the Leadership Council. At least one member of the Election Committee must be a woman. Additionally, according to interviews with the AIBA chief executive, the AIBA has established a women’s committee, though it currently has no written mission statement or scope of work. The Advocate’s Law (*Official Gazette* No. 934 December 17, 2007) was enacted along with the Presidential Decree on Enforcement of the Advocates Law (*Official Gazette* No. 111, November 25, 2011). The decree requires the MOJ to establish an independent association of advocates (which became the AIBA) within three months of enforcement, as well as to establish and organize the MOJ’s Legal Aid Department. Article 11 of the Advocate’s Law prohibits state interference or opposition with the exercise of an advocate’s work.
- 81 Checchi, “HICD Assessment,” 5.
- 82 Advocate’s Law, Art. 6. Lawyers with three years of practice as a member of the judiciary, prosecutor’s office, or the MOJ are not required to take the AIBA training course. The law is silent as to whether they must pass a certification exam. Foreigners may not have a law practice in Afghanistan, but may represent clients in court and other tribunals. Under Article 7, lawyers working as judges, or prosecutors, military officers, police and security officers, civil servants and municipal employees, provincial and district council members, or advisers may not work as advocates.
- 83 JSSP supported training two hundred members in the Penal Code, Constitution, interim Criminal Procedure Code, Advocates Law, Law of Courts, as well as specific skills in family law, women’s civil rights (including defense of so-called moral crimes related to running away and adultery), and use of forensic evidence (see “About INL/JSSP,” Afghanistan Justice Sector Support Program, <http://jsspafghanistan.com/index.php/who-we-are/about-inljssp.html>). Similarly, the US Institute of Peace provides capacity support for members and the AIBA itself, as has IDLO, which has trained members practicing with NGOs in the provinces.
- 84 Checchi, “HICD Assessment.”
- 85 Ziems, “Organization and Structure,” 5.

- 86 Law on the Structure, Duties, and Mandate of the AIHRC, *Official Gazette* No. 3471, 24/02/1384, May 14, 2005, Art. 6, www.aihrc.org.af/media/files/Laws/Law_AIHRC.pdf.
- 87 Ibid., Art. 21 and 23.
- 88 Afghanistan Independent Human Rights Commission (AIHRC), “Citizens Access to Justice: Report on Monitoring of Decree no. 45 of the President of the Islamic Republic of Afghanistan,” March 3, 2013, [www.aihrc.org.af/media/files/AIHRC%20Report%20on%20Decree%2045%20\(English\)-final.pdf](http://www.aihrc.org.af/media/files/AIHRC%20Report%20on%20Decree%2045%20(English)-final.pdf).
- 89 See also, for example, AIHRC, “The situation of human rights in Afghanistan in 1393,” August 11, 2015, www.aihrc.org.af/media/files/Research%20Reports/english/English_Situation%20of%20human%20rights%20in%201393.pdf; Afghanistan Independent Human Rights Commission, *Torture, Transfers, and Denial of Due Process: The Treatment of Conflict-Related Detainees in Afghanistan*, January 11, 2014, www.aihrc.org.af/home/research_report/2266; Afghanistan Independent Human Rights Commission, “Torture and Ill-Treatments in Detention Centers in Afghanistan,” May 8, 2016, www.aihrc.org.af/home/research_report/5518; among others at <http://www.aihrc.org.af/home/research-reports>.
- 90 Rohullah Azizi and Charles A. Ericksen, “Legal Education Reform in Afghanistan,” 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2634291, 4.
- 91 See Azizi and Ericksen, “Legal Education Reform,” 14; Mohammed Mujeem, “Legal Education in Afghanistan: A Vehicle for Justice Reform,” World Justice Project, September 15, 2016, <http://worldjusticeproject.org/blog/legal-education-afghanistan-vehicle-justice-reform>.
- 92 See Azizi and Ericksen, “Legal Education Reform,” 7; ATR Consulting, “Rule of Law Stabilization—Formal 2 Performance Evaluation” (Washington, DC: USAID, 2015), on file with the author; Mujeem, “Legal Education.”
- 93 ATR, “Rule of Law Stabilization.”
- 94 SIGAR, “Rule of Law in Afghanistan: U.S. Agencies Lack a Strategy and Cannot Fully Determine the Effectiveness of Programs Costing More than \$1 Billion,” SIGAR 15-68 Audit Report, July 2015, www.sigar.mil/pdf/audits/SIGAR-15-68-AR.pdf.
- 95 See Aarya Nijat, “Governance in Afghanistan: An Introduction” (Kabul: Afghanistan Research and Evaluation Unit [AREU], 2014), 5.
- 96 David Boyer, “Watchdog says Afghanistan civilian, military casualties rising,” *Washington Times*, May 1, 2017, www.washingtontimes.com/news/2017/may/1/watchdog-says-afghanistan-civilian-military-casual/.
- 97 Interviews with government and judicial officials, Kabul, July 2016; see also Martine van Bijlert and Ali Yawar Adili, “When the Political Agreement Runs Out: On the future of Afghanistan’s National Unity Government,” Afghanistan Analysts Network, May 29, 2016, www.afghanistan-analysts.org/when-the-political-agreement-runs-out-on-the-future-of-afghanistans-national-unity-government/. Although amending a constitution should generally be a bit difficult, the Loya Jirga requirement is seen by many in the judiciary and government as a prohibitive barrier to amending the Afghan constitution in the foreseeable future. This is particularly troubling at present because the NUG is, by any reading of the 2014 agreement facilitated by US Secretary of State John Kerry, extraconstitutional. The NUG agreement assumed that a constitutional amendment would recognize the post of chief executive officer (CEO) by the end of 2016. However, a Loya Jirga as defined by the Constitution requires representation from district councils, which have never been elected. The absence of district councils creates a legal quagmire for the NUG: convening an LJ in a manner not in line with the Constitution would by definition invalidate any constitutional amendments it decides. Without such a process, however, the legitimacy of the NUG relative to the Constitution is questionable.
- 98 Nijat, “Governance in Afghanistan.”
- 99 Ibid.
- 100 Afghan Constitution 2004, Art. 61.
- 101 Vitalino Canas, “Governance Challenges in Afghanistan,” 209 CDS 10 E REV 1, NATO Parliamentary Assembly, 2010, www.nato-pa.int/default.asp?SHORTCUT=2085.
- 102 Farid Hamidi and Aruni Jayakody, “Separation of Powers under the Afghan Constitution: A Case Study” (Kabul: Afghanistan Research and Evaluation Unit, 2015), 16, <https://areu.org.af/archives/publication/1507>.
- 103 Afghan Constitution 2004, Art. 84, 117, 132.
- 104 Ibid., Art. 79, 65.
- 105 For more information, see Shamil Shams, “Understanding Afghanistan’s Chief Executive Officer,” *Deutsche Welle*, September 30, 2014, www.dw.com/en/understanding-afghanistans-chief-executive-officer/a-17965187.
- 106 Afghan Constitution 2004, Art. 84.
- 107 See Hamidi and Jayakody, “Separation of Powers,” citing Andrew Reynolds and John Carey, “Fixing Afghanistan’s Electoral System Argument and Options for Reform” (Kabul: AREU, 2012); Anna Larson, “The Wolesi Jirga in Flux, 2010 Elections and Instability” (Kabul: AREU, 2010).

- 108 See Ulla Schmidt, "Political Transition in Afghanistan: Achievements and Challenges," NATO Parliamentary Assembly, November 22, 2014, www.nato-pa.int/default.asp?SHORTCUT=3528.
- 109 Afghan Constitution 2004, Art. 116.
- 110 Such as the Article 109 limitation on parliament's action on electoral reform during its final year, combined with the president's decree-making authority and the NUG agreement. In practice, this essentially provides the president with unchecked control over electoral reform for the delayed 2015 parliamentary election. Article 79 provides the parliament with only the power to void decrees issued by the president during recesses. The parliament is not required to endorse or approve decrees for them to have the force of law.
- 111 Hamidi and Jayakody, "Separation of Powers," 1. Farid Hamidi currently serves as the attorney general on appointment by President Ghani. He formerly served as a commissioner on the Afghan High Commission for Human Rights.
- 112 See Sune Engel Rasmussen, "First female nominee fails to win seat on Afghan supreme court," *Guardian*, July 8, 2015, www.theguardian.com/world/2015/jul/08/afghan-supreme-court-female-nominee-anisa-rassouli.
- 113 Ibid.; see also Mirwais Harcooni, "Afghan clerics protest nomination of first woman to Supreme Court," *Reuters*, June 18, 2015, www.reuters.com/article/us-afghanistan-court-idUSKBN0OY1EK20150618.
- 114 Article 147 of the 2004 Afghan Constitution states that the government, "while preserving the principle of centralism, shall delegate certain authorities to local administration units for the purpose of expediting and promoting economic, social, and cultural affairs."
- 115 See Wang, "Rule of Law."
- 116 The number of districts in Afghanistan has fluctuated over the years. Prior to 1979, the number was 352. Following post-2004 reorganization, the number of districts increased to 398 (World Bank, "Service Delivery and Governance at the Sub-National Level in Afghanistan," 2007, <http://siteresources.worldbank.org/SOUTHASIAEXT/Resources/Publications/448813-1185293547967/4024814-1185293572457/report.pdf>). Today, this number is broadly agreed to as the number of districts but is not officially confirmed. A 2014 report identifies thirty-three provincial and 120 district municipalities, for a total of 153 (Nijat, "Governance in Afghanistan"). The World Bank report cites 217 ("Service Delivery," vi). See Michael Shurkin, "Subnational Government in Afghanistan" (Santa Monica, CA: RAND, 2011), www.rand.org/content/dam/rand/pubs/occasional_papers/2011/RAND_OP318.pdf.
- 117 IDLG has received technical and financial support from the United States, the United Kingdom, Denmark, and France as well as the United Nations (see Katzman, "Afghanistan," 36).
- 118 Ibid.; Shurkin, "Subnational Government," 7.
- 119 The 2011 Civil Service Law replaced the September 2005 Civil Service Law.
- 120 Katzman, "Afghanistan," 33.
- 121 Merit-based recruitment implements a July 26, 2012 decree directing the IARCS to open all deputy provincial governorship positions to competition (Katzman, "Afghanistan," 33).
- 122 Ibid.
- 123 Independent Administrative Reform and Civil Service Commission, Strategic Plan, 2012–2017 [no longer available online, website removed].
- 124 Ministry of Finance, Public Financial Management Roadmap, July 14, 2010, <http://mof.gov.af/Content/files/PFM%20Roadmap%20FINAL%2014%20July%202010.pdf>.
- 125 Nijat, "Governance in Afghanistan."
- 126 Republic of Afghanistan, "What is the Afghanistan Financial Management Information System (AFMIS)?" Ministry of Finance, Directorate of General Budget, www.budgetmof.gov.af/index.php/en/2012-12-10-12-13-57faq/226-what-is-the-afghanistan-financial-management-information-system-afmis.
- 127 Nijat, "Governance in Afghanistan."
- 128 Public Expenditure Financial Accountability, *Afghanistan: Public Financial Management and Accountability Assessment*, Report No. 80996-AF (Washington, DC: World Bank, 2013), 1, <https://pefa.org/sites/default/files/assessments/comments/AF-Aug13-PFMPPR-Public.pdf>.
- 129 UNODC and Republic of Afghanistan High Office of Oversight of Anti-Corruption (High Office of Oversight), "Corruption in Afghanistan: Recent Patterns and Trends" (Vienna: UNODC, 2012), 4, www.unodc.org/documents/frontpage/Corruption_in_Afghanistan_FINAL.pdf.
- 130 Approximately 34 percent of respondents believed that corruption facilitated the expansion of the Taliban, particularly in more insecure provinces (Integrity Watch Afghanistan, "National Corruption Survey 2014," 2014, 5–6, http://iwaweb.org/wp-content/uploads/2016/02/executive_summary_ncs2014_english.pdf). Views on this issue were approximately equal for urban and rural dwellers, though more women than men reported believing that corruption assisted Taliban expansion. See also Michael Kaplan, "Afghanistan News: Corruption Still Top Issue After Decades of War as Taliban Spreads," *International Business Times*, February 18, 2016, www.ibtimes.com/afghanistan-news-corruption-still-top-issue-after-decades-war-taliban-spreads-2313342.

- 131 UNODC and High Office of Oversight, "Corruption in Afghanistan," 27, figure 22.
- 132 Poverty is around 25 percent in urban areas and about 35 percent in rural areas. See World Bank, "Afghanistan," 2011, <http://data.worldbank.org/country/afghanistan>; UNDP Afghanistan, www.afundp.org.
- 133 See also Yama Torabi, "The Growing Challenge of Corruption in Afghanistan: Reflections on a Survey of the Afghan People," Occasional Paper no. 15 (San Francisco: The Asia Foundation, 2012), <https://asiafoundation.org/resources/pdfs/FNLcorruptionchapterOccasionalPaperJuly30.pdf>. Additionally, reports indicate that, particularly in the Afghan National Police, police commanders regularly intercepted cash intended to pay the salaries of officers under their command. Pilot programs to use mobile phone-based banking to pay salaries have reportedly mitigated this leakage. See Civil Military Fusion Center, "Corruption & Anti-Corruption Issues in Afghanistan," February 2012, 39, <http://reliefweb.int/sites/reliefweb.int/files/resources/CFC-Afghanistan-Corruption-Volume-Feb2012.pdf>; Jessica Leber, "Cashing Out of Corruption," *MIT Technology Review*, March 19, 2012, www.technologyreview.com/s/427267/cashing-out-of-corruption/; Better than Cash Alliance, "Afghanistan: Moving police salary payment to mobile accounts," June 2016, www.betterthancash.org/news/blogs-stories/afghanistan-moving-police-salary-payments-to-mobile-accounts; Robert M. Perito, "Afghanistan's Police: The Weak Link in Security Sector Reform," Special Report no. 227 (Washington, DC: US Institute of Peace, 2009), www.usip.org/sites/default/files/afghanistan_police.pdf.
- 134 Torabi, "Growing Challenge," 3.
- 135 See, for example, SIGAR, "Afghan National Police: More than \$300 Million in Annual, U.S.-funded Salary Payments Is Based on Partially Verified or Reconciled Data," SIGAR 15-26 Audit Report, January 2015, www.sigar.mil/pdf/audits/SIGAR-15-26-AR.pdf; Democracy International and USAID, "Political Economy Analysis of Afghanistan's Service Delivery Capacity," May 2016, <http://democracyinternational.com/media/PEA%20of%20Afghanistan%27s%20Service%20Delivery%20Capacity.pdf>; International Growth Centre, "Government mobile salary payments in Afghanistan," July 6, 2016, www.theigc.org/project/government-mobile-salary-payments-in-afghanistan/; USAID, "Afghanistan's Government will Strengthen Electronic Payment System," Press release, October 26, 2015, www.usaid.gov/afghanistan/news-information/press-releases/afghanistan-s-government-will-strengthen-electronic.
- 136 Afghanistan's land and property laws include multiple sources, from the constitution to sharia, civil law, and customary law. These are often contradictory (Torabi, "Growing Challenge," 6, n. 10).
- 137 Erica Gaston and Lillian Dang, "Addressing Land Conflict in Afghanistan," Special Report no. 372 (Washington, DC: US Institute of Peace, 2015), 2, www.usip.org/sites/default/files/SR372-Addressing-Land-Conflict-in-Afghanistan.pdf.
- 138 Torabi, "Growing Challenge," 7.
- 139 Global Witness, "War in the Treasury of the People: Afghanistan, Lapis Lazuli and the Battle for Mineral Wealth" (London: Global Witness, June 2016), 8n5, 10, www.globalwitness.org/en/campaigns/afghanistan/war-treasury-people-afghanistan-lapis-lazuli-and-battle-mineral-wealth/.
- 140 Mujib Mashal, "Greed, Corruption and Danger: A Tarnished Afghan Gem Trade," *New York Times*, June 5, 2016, www.nytimes.com/2016/06/06/world/asia/afghanistan-lajwardeen-mining-lapis-lazuli.html?_r=0.
- 141 UNODC, "Afghanistan Opium Survey 2016: Cultivation and Production," December 2016, 7, www.unodc.org/documents/crop-monitoring/Afghanistan/Afghanistan_opium_survey_2016_cultivation_production.pdf.
- 142 UNODC, "Afghan opium production up 43 per cent: Survey," October 23, 2016, www.unodc.org/unodc/en/frontpage/2016/October/afghan-opium-production-up-43-percent-survey.html.
- 143 Rod Nordland, "Corrupt Combatants Fight for Control of Lucrative Afghan Drug Trade," *New York Times*, April 6, 2016, www.nytimes.com/2016/04/07/world/asia/afghanistan-helmand-opium-poppy.html; see US Department of State, "2015 International Narcotics Control Strategy Report (INCSR)," 2015, www.state.gov/j/inl/rls/nrcrpt/2015/vol1/238940.htm; Torabi, "Growing Challenge," 6, n. 10, citing Republic of Afghanistan, "Anti-Corruption Strategy: A Concept Note" in Presentation of the Afghan Delegation to the London International Conference on Afghanistan, January 28, 2010.
- 144 See Department of State, "2015 International Narcotics"; Torabi, "Growing Challenge," 6, n. 10, citing Republic of Afghanistan, "Anti-Corruption Strategy."
- 145 English translation of decree by UNAMA Rule of Law on file with author. Inaugural speech by H. E. President Mohammad Ashraf Ghani, "The Way Ahead for Anti-Corruption in Afghanistan," Conference, May 5, 2016; Post Conference Report, European Union Delegation to Afghanistan and Office of the Special Representative, 2, www.eeas.europa.eu/delegations/afghanistan/documents/news/20160506.pdf.
- 146 English translation of decree by UNAMA Rule of Law on file with author.
- 147 Presidential Decree No. 53 of June 30, 2016 (10/04/1395) on Establishing Anti-Corruption Judicial Center, Art. 3, translated by UNAMA Rule of Law, on file with author.
- 148 Katzman, "Afghanistan," 41. A 2012 SIGAR report indicated that the government's progress for verification of the declarations fell short of US expectations. In July 2013, senior officials in Kabul acknowledged that

- “progress” had been made on the declaration and publication of assets, but was only limited on verifying the declarations. In March 2014, a UN report stated that the HOOAC had registered the assets of nearly three thousand government officials from January to March, and had completed asset verification for thirty-three of the highest-ranking officials, including the president.
- 149 Presidential Decree No. 61 of March 18, 2010, granting investigative powers to the HOOAC, [www.mec.af/files/PD61_English_\(translation_by_MEC\).pdf](http://www.mec.af/files/PD61_English_(translation_by_MEC).pdf).
 - 150 Katzman, “Afghanistan,” 40. The office was required under a 2012 decree to, within six months, assess “private institutions’ and government officials’ suspicious wealth” and report findings to the Office of the President every two months. USAID provided HOOAC with \$30 million between FY2011 and FY2013 to build capacity at the central and provincial level. As of early 2015, USAID paid the salaries of six senior HOOAC staff and provided some information technology systems. Since the office has been stripped of its investigative and prosecutorial authorities it is unclear whether the United States continues to fund salaries and infrastructure, or what the status of the HOOAC will be in the future.
 - 151 Decree No. 61 of March 18, 2010, Art. 8, [www.mec.af/files/PD61_English_\(translation_by_MEC\).pdf](http://www.mec.af/files/PD61_English_(translation_by_MEC).pdf).
 - 152 See Najibullah Noorzai, “Corruption: Can Afghanistan’s Government Overcome Its National Shame?” *The Diplomat*, May 14, 2016, <http://thediplomat.com/2016/05/corruption-can-afghanistans-government-overcome-its-national-shame/>.
 - 153 Independent Joint Anti-Corruption Monitoring and Evaluation Committee, “1st – 4th Sets of Recommendations and Benchmarks,” 2011–2012, www.mec.af/files/1st%20-%204th%20Sets%20of%20MEC%20Recommendations%20and%20Benchmarks.pdf.
 - 154 Jessica Donati, “Foreign Donors Threaten to Pull Funding to Afghanistan Anticorruption Group,” *Wall Street Journal*, December 4, 2015, www.wsj.com/articles/foreign-donors-threaten-to-pull-funding-to-afghanistan-anticorruption-group-1449169765.
 - 155 See Special Bulletin of the Supreme Court, Vol. 2, 2010, http://supremecourt.gov.af/Content/files/bulletin_vol2_eng.pdf.
 - 156 Katzman, “Afghanistan,” 41.
 - 157 Department of State, “2015 International Narcotics.”
 - 158 Joshua Hersh, “Afghanistan’s U.S.-Funded Counter-Narcotics Tribunal Convicts Nearly All Defendants, Records Show,” *Huffington Post*, October 6, 2012, www.huffingtonpost.com/2012/06/09/afghanistan-counter-narcotics-tribunal_n_1580855.html.
 - 159 See also SIGAR, “Afghanistan’s Control and Audit Office Requires Operational and Budgetary Independence, Enhanced Authority, and Focused International Assistance to Effectively Prevent and Detect Corruption,” SIGAR Audit-10-8 Anti-Corruption/Control Office, April 9, 2010, www.sigar.mil/pdf/audits/2010-04-09audit-10-08.pdf.
 - 160 World Bank, “Afghanistan: Public Financial Management and Accountability Assessment,” Report no. 80996-AF, August 2013, <http://documents.worldbank.org/curated/en/718411468184165971/pdf/809960E SWOwhit0EFA0Afgh020130Final.pdf>.
 - 161 Rangina Kargar, “Political Participation for Development Evaluation: An Afghanistan Perspective,” [https://wpqr4.adb.org/lotusquickr/cop-mfdr/PageLibrary482571AE005630C2.nsf/0/E37D08811526BF5F48257C6300275FFC/\\$file/13b%20Role%20of%20Parliament%20on%20M%26E_Rangina%20Kargar%20Afghanistan.pdf](https://wpqr4.adb.org/lotusquickr/cop-mfdr/PageLibrary482571AE005630C2.nsf/0/E37D08811526BF5F48257C6300275FFC/$file/13b%20Role%20of%20Parliament%20on%20M%26E_Rangina%20Kargar%20Afghanistan.pdf).
 - 162 Independent Joint Anti-Corruption Monitoring and Evaluation Committee, “Independent Joint Anti-Corruption Monitoring and Evaluation Committee considers further strengthening of the Supreme Audit Office (SAO) to be necessary,” www.mec.af/files/BackgrounderSAO.pdf.
 - 163 Katzman, “Afghanistan”; United Nations Institute for Training and Research (UNITAR), “Implementation of the Afghanistan Civil Service New Pay and Grade Reform: A Case Study,” 2014, www.unitar.org/hiroshima/sites/unitar.org/hiroshima/files/33.%20Case%20Study%20on%20Project%20Implementation%20Process_0.pdf.
 - 164 UNITAR, “Implementation.”
 - 165 Presidential Decree No. 16 of 20/7/1393, establishing the National Procurement Authority within the structure of the Administrative Office of the President, www.npa.gov.af/Beta/English/AboutUs.aspx.
 - 166 See National Procurement Authority, Procurement Law, www.npa.gov.af/Beta/English/PPU/PL.aspx.
 - 167 Tokyo Mutual Accountability Framework, July 8, 2012, www.mofa.go.jp/region/middle_e/afghanistan/tokyo_conference_2012/tokyo_declaration_en2.html.
 - 168 Noorzai, “Corruption.”
 - 169 In June 2015, the minister of education drew ire from the Special Inspector General for Afghanistan Reconstruction recently under suspicion of embezzlement and misuse of USAID funds to support education programs in Afghanistan. The minister had reported falsified school construction, student, and teacher documents. See SIGAR, letter to Alonso E. Lenhardt, acting administrator of USAID, regarding the reliability of data used by USAID to oversee and fund its education programs in Afghanistan, June 11, 2015, www.sigar.mil/pdf/special%20projects/SIGAR-15-62-SP.pdf.

- 170 Radio Free Afghanistan, “Afghan President Dismisses Officials in Western Province,” Radio Free Europe / Radio Liberty, December 27, 2014, www.rferl.org/content/afghanistan-herat-ghani-visit-dismissals-corruption/26765556.html.
- 171 Donati, “Foreign Donors.”
- 172 See, for example, International Growth Centre, “Government mobile salary payments in Afghanistan,” www.theigc.org/project/government-mobile-salary-payments-in-afghanistan/; USAID, “Afghanistan’s Government.”
- 173 Afghan Constitution 2004; Mir Hermatullah Sadat, “The Implementation of Constitutional Human Rights in Afghanistan,” Human Rights Brief, American University Washington College of Law, 2004, www.wcl.american.edu/hrbrief/11/3sadat.pdf.
- 174 GANHRI Sub-Committee on Accreditation (SCA), “Report and Recommendations of the Sub-Committee on Accreditation,” International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, October 2007, <http://nhri.ohchr.org/EN/AboutUs/ICCACCreditation/Pages/SCA-Reports.aspx>. Accreditation of national human rights institutions (NHRIs) is managed through the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights Sub-Committee on Accreditation. A-status is granted to seventy-five of 117 NHRIs accredited by the ICC, meaning the bodies fully comply with the Paris Principles and are voting and fully participating members of the ICC. Thirty-two NHRIs have a B-status, meaning not fully compliant, and ten have C-status, meaning noncompliant.
- 175 Although the 2005 AIHRC establishment law provides appointment power to the president, the Paris Principles provide overall guidance on the substantive considerations the appointment process should address. For more on the Paris Principles, see www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx.
- 176 Sari Kouvo and Martine van Bijlert, “AIHRC Commissioners Finally Announced,” Afghanistan Analysts Network, June 16, 2013, www.afghanistan-analysts.org/aihrc-commissioners-finally-announced/.
- 177 After a delay in decision making, the ICC again accredited the AIHRC with an A-status during its reevaluation in 2014. See SCA, “Report and Recommendations.”
- 178 Women are said to make up approximately 2.7 percent of Afghanistan’s total prison population (Institute for Criminal Policy Research, “Afghanistan Female prison population trend, 2014,” www.prisonstudies.org/country/afghanistan). For many years, police and prosecutors have successfully convicted and incarcerated women for crimes that are not codified in the Afghan legal code or recognized under sharia. A key example is attempted or suspected *zina* (attempted or suspected adultery). Women are often charged with this so-called crime after escaping from home—usually to escape domestic violence. In 2012, the Supreme Court and AGO ordered a stop to this practice, but this was largely ignored. In 2015 and 2016, President Ghani, the chief justice, and the new AGO coordinated to identify women prisoners incarcerated for moral crimes and ordered the release of hundreds of these women in Kabul and the provinces.
- 179 Kabeh Rastin-Tehrani and Nadjima Yassari, *Max Planck Manual on Family Law in Afghanistan*, 2nd ed. amended (Munich: Max Planck Institute, 2012), 32, www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf.
- 180 The Shiite Personal Status Law recognizes marriage for boys and girls “at puberty” but also permits marriage “prior to the mentioned ages” by a guardian before the court (UNICEF, “Children and Women in Afghanistan: A Situation Analysis,” November 2014, 38–39, www.unicef.org/afghanistan/SitAn_-_Long_Report_small_size_.pdf).
- 181 Home Office, “Country Information and Guidance: Afghanistan: Women fearing gender-based harm / violence” (London, January 2016), www.gov.uk/government/uploads/system/uploads/attachment_data/file/500838/AFG.Women.Gender_based_harm_and_violence.pdf.
- 182 The Elimination of Violence Against Women Law criminalizes rape but not spousal rape. The Shi’a Personal Status Law also arguably legalizes spousal rape.
- 183 See, for example, Home Office, “Country Information and Guidance.”
- 184 Katzman, “Afghanistan,” 16; see also BDHRL, “Country Reports on Human Rights Practices for 2015,” www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper; Amnesty International, “Too many missed opportunities: Human rights in Afghanistan under the Karzai administration,” ASA 11/004/2014, April 2014, 3, www.amnesty.org/download/Documents/4000/asa110042014en.pdf; UN, “Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights in 2013,” UNGA A/HRC/25/41, January 10, 2014, www.ohchr.org/EN/Countries/AsiaRegion/Pages/HRReports.aspx.
- 185 The 2001 Bonn Agreement included provisions for the participation of women in the transitional government and the establishment of a Department of Women’s Affairs (later the Ministry of Women’s Affairs). The agreement did not, however, establish tangible obligations for the advancement of women’s rights or promote mechanisms for participation and empowerment such as those envisioned under UNSCR 1325 on Women, Peace, and Security—which was adopted less than a year before the Bonn conference. Afghanistan did not develop a national action plan on UNSCR 1325 until 2015. The National Action Plan for the

- Women of Afghanistan (NAPWA) similarly was not developed until 2008, and virtually none of its stated priorities have been met nine years on. Additionally, despite commitments to expand women's policy-making role, they make up only seven of the seventy members of the High Peace Council, and only two to three of the twenty-five to thirty members of the Provincial Peace Council. No women have participated in negotiations with the Taliban dating back to 2005. See Nancy Kanwal, "The National Action Plan for the Women of Afghanistan: Implementation of the Security Pillar Eight Years Later," NATO Association of Canada, March 30, 2015, <http://natoassociation.ca/the-national-action-plan-for-the-women-of-afghanistan-implementation-of-the-security-pillar-eight-years-later/>.
- 186 See Amnesty International, *Their Lives on the Line: Women Human Rights Defenders Under Attack in Afghanistan*, ASA 11/1278/2015 April 2015, 19, www.amnesty.org/en/documents/asa11/1278/2015/en/; Anastasiya Hozyainova, "Sharia and Women's Rights in Afghanistan," Special Report no. 347 (Washington, DC: US Institute of Peace, May 2014), www.usip.org/sites/default/files/SR347-Sharia_and_Women's_Rights_in_Afghanistan.pdf.
 - 187 See Fawzia Koofi, "The loophole in the bill known as the Elimination of Violence Against Women Law," Al Jazeera, January 2, 2015, www.aljazeera.com/indepth/opinion/2015/01/where-afghan-law-fails-women-2015119256183362.html. Opposition focused on the law's criminalization of underage marriage, polygamous marriages contracted under certain conditions, and honor killings. As a result, the bill is in force as a decree, leaving its status precarious.
 - 188 "Shiite Personal Status Law," February 2009, unofficial English translation by UNAMA, www.refworld.org/docid/4a24ed5b2.html. This law was passed the same year the EVAW law was considered. It obligates wives to engage in sexual relations with their husbands, allows husbands to withdraw maintenance if wives refuse to submit, and limits women's rights to leave the home without a husband's permission.
 - 189 See Amnesty International, "Too many missed opportunities"; UN, "Achievements of technical assistance."
 - 190 Rasmussen, "First female nominee." One conservative MP said, "It is against Islamic Law. I will make a campaign and tell the other brothers to vote against her. It would be a crime if I voted for her." Others suggested that, because menstruation makes women unclean, she would be unable to perform her duties during her cycle because she would be unable to swear on the Quran. The nominee had served as a judge for nearly thirty years.
 - 191 Nijat, "Governance in Afghanistan."
 - 192 Sameh El-Saharty, Naoko Ohno, Intissar Sarker, Federica Secci, and Sayed Ghulam, "Afghanistan: Maternal and Reproductive Health at a Glance," World Bank Knowledge Brief, November 2014, <http://documents.worldbank.org/curated/en/781371468196765909/pdf/936160REVISED00BLIC00AfghanistanMRH.pdf>.
 - 193 The International Displacement Monitoring Center estimates that as many as 60 percent of internally displaced people in Afghanistan are children (Nina M. Birkeland, Edmund Jennings, and Elizabeth J. Rushing, eds., "Global Overview 2011: People internally displaced by conflict and violence," IDMC, April 2012, www.internal-displacement.org/publications/2012/internal-displacement-global-overview-2011-people-internally-displaced-by-conflict-and-violence; El-Saharty et al., "Afghanistan").
 - 194 See UN, "Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Convention on the Rights of the Child: Concluding Observations of the Committee on the Rights of the Child: Afghanistan," CRC/C/AFG/CO/1, February 4, 2011, para. 7.
 - 195 Janne Lexow, *Child Rights Situation Analysis (CRSA) in Afghanistan 2011*, Nordic Consulting Group, 2011.
 - 196 UNICEF and Government of Afghanistan Central Statistics Organization, *Afghanistan Multiple Indicator Cluster Survey 2010–2011*, January 2013, 26, <http://cso.gov.af/Content/files/AMICS.pdf>.
 - 197 Ziems, "Challenges," 7n40, 6n37, citing 2007 UNICEF report.
 - 198 See BDHRL, "Afghanistan"; Joseph Goldstein, "30 U.S. Soldiers told to ignore sexual abuse of boys by Afghan Allies," *New York Times*, September 20, 2015, www.nytimes.com/2015/09/21/world/asia/us-soldiers-told-to-ignore-afghan-allies-abuse-of-boys.html; Mohammad Hossein Saramad, Abdullah Abid, Mohammad Javad Alavi, Bismillah Waziri, Najibullah Babrakzai, and Latifa Sultani, *Causes and Consequences of Bachabazi in Afghanistan*, National Inquiry Report (Kabul: Afghanistan Independent Human Rights Commission, August 18, 2014), www.refworld.org/publisher,AIHRC,,,5694c3db4,0.html; UNSC, "Conclusions on children and armed conflict in Afghanistan," S/AC.51/2016/1, May 11, 2016, www.refworld.org/docid/573abb024.html.
 - 199 Lexow, *Child Rights Situation*.
 - 200 BDHRL, "Afghanistan." No national survey on disability has been taken in Afghanistan since 2005. According to that data, about 2.7 percent of Afghans (based on an estimated population of 29.9 million) live with a severe disability; the rate is 4.7 percent if also accounting for moderate disabilities. Noting that estimates of disability prevalence around the world are higher, surveyors for the 2005 report suggested that rates depend heavily on how disability is defined, level of awareness, beliefs and expectations, and formulation of questions. Given Afghanistan's history of violence and limited level of awareness, prevalence rates were expected to increase over time as the government improves service delivery and access to resources.

- Jean-Francois Trani and Parul Bakhshi, *Understanding the Challenge Ahead: National Disability Survey in Afghanistan*, (Lyon: Handicap International, 2006), www.cbm.org/article/downloads/82788/National_Disability_Survey_in_Afghanistan.pdf.
- 201 Trani and Bakhshi, *Understanding the Challenge*, 11.
- 202 Swedish International Development Cooperation Agency (SIDA), “Disability Rights in Afghanistan,” September 2014, www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/disability/rights-of-persons-with-disabilities-afghanistan.pdf.
- 203 Trani and Bakhshi, *Understanding the Challenge*, 13. A 2016 follow-on report by the AIHRC, using different methodology, found that 65 percent of those surveyed had a war-related disability. Ali Mohabati, *The Report on the Situation of the Rights of Persons with Disabilities in Afghanistan* (Kabul: Afghanistan Independent Human Rights Commission, June 2016), www.aihrc.org.af/media/files/report%20on%20the%20situation%20of%20Persons%20with%20Disability1393.pdf.
- 204 SIDA, “Disability Rights in Afghanistan.”
- 205 Afghan Constitution 2004, Article 53: “The state shall adopt necessary measures to regulate medical services as well as financial aid to survivors of martyrs and missing persons, and for reintegration of the disabled and handicapped and their active participation in society, in accordance with the provisions of the law. The state shall guarantee the rights of retirees, and shall render necessary aid to the elderly, women without caretaker, disabled and handicapped as well as poor orphans, in accordance with the provisions of the law [sic].”
- 206 Republic of Afghanistan, “Afghanistan National Disability Action Plan 2008–2011,” Ministry of Labor, Social Affairs, Martyrs and Disabled, May 2008, www.apminebanconvention.org/fileadmin/APMBC/IWP/SC_june08/Speeches-VA/SCVA-StatusImplem-3June08-Afghanistan-ActionPlan-en.pdf. This plan has not been updated. See also “Strategy for Disability and Rehabilitation: 1390–1393,” Ministry of Public Health, December 2013, http://moph.gov.af/Content/Media/Documents/DRD_Strategy_1391-13941220131105735553325325.pdf.
- 207 Land and Cluster Munition Monitor, “Afghanistan: Casualties and Victim Assistance,” updated August 18, 2015, <http://the-monitor.org/en-gb/reports/2016/afghanistan/casualties-and-victim-assistance.aspx>.
- 208 Ibid.
- 209 BDHRL, “Afghanistan.”
- 210 Ibid.
- 211 Afghan Constitution 2004, Art. 84. The reference to nomads has been widely interpreted as limited to the Pashtun Kochi nomadic group and does not extend to other tribes. Other nomadic tribes in Afghanistan include, but are not limited to, Bangriwala, Vangawala, and Mosulis. See Zarwali Khoshnook, “Afghanistan’s Marginalized Minority Fights Stateless Status,” *Gandhara*, June 29, 2015, <http://gandhara.rferl.org/a/afghanistan-mosuli-jats/27100409.html>.
- 212 Afghan Constitution 2004, Art. 140. District council elections have never been organized.
- 213 See, for example, Sudarsan Raghaven, “After suffering under the Taliban, an Afghan minority faces new threats,” *Washington Post*, April 9, 2015, www.washingtonpost.com/world/asia_pacific/after-suffering-under-the-taliban-an-afghan-minority-faces-new-threats/2015/04/08/035e1c4a-d71b-11e4-bf0b-f648b95a6488_story.html.
- 214 BDHRL, “Afghanistan.” Kuchi and Hazara groups have engaged in intercommunal conflict.
- 215 More than eighty people were killed and 230 wounded. See Pamela Constable, “The bomb that killed 80 Hazaras in Kabul also upended their nonviolent reform effort,” *Washington Post*, August 4, 2016, www.washingtonpost.com/world/asia_pacific/afghan-hazaras-mourn-bomb-victims-struggle-to-regroup/2016/08/03/025fe7ca-595f-11e6-82ea-8af882a4d163_story.html.
- 216 BDHRL, “Afghanistan.”
- 217 The law provides that people who have been living in the country for more than five years, have not committed any crimes, and are over the age of eighteen can apply for citizenship. Children born inside Afghanistan to parents with unclear citizenship status have the right to apply for citizenship. Verification of identity is required, which is challenging for some nomadic groups. Dual citizenship is prohibited, though this is not consistently applied in practice. Procedures to obtain a *tazkera*—which provides citizenship and allows access to education, health care, legal representation, and other services—requires both a permanent address and verification by a local elder who has registered as an official representative of the community to which the claimant belongs. In some nomadic groups, most of the elders have never registered and therefore cannot provide the verification required. This has resulted in the forced displacement of some groups, sometimes outside Afghanistan’s borders. Maira Kuppers, “Statelessness in Afghanistan,” *Forced Migration Review* 46 (May 2014), www.fmreview.org/afghanistan/kuppers.html.
- 218 Khoshnook, “Afghanistan’s Marginalized Minority”; Kuppers, “Statelessness.”
- 219 Khoshnook, “Afghanistan’s Marginalized Minority.”
- 220 See also UNHCR, “Global Trends: Forced Displacement in 2015,” 40–41, www.unhcr.org/576408cd7.pdf; “Asylum Trends 2014,” 2014, 16, 2014, www.unhcr.org/551128679.pdf. Afghanistan also recently produced

- the largest number of unaccompanied or separated children refugees, with 50,300 registered in 2015 versus 8,600 in 2014.
- 221 UNHCR, "Afghanistan Factsheet," August 2015, www.unhcr.org/50002021b.pdf.
 - 222 Pakistan has not acceded to the 1951 Convention relating to the Status of Refugees or the 1967 Optional Protocol. The temporary stay registered Afghan refugees is regularized by Proof of Registration Cards, all of which expired on December 31, 2012, though the government of Pakistan has issued a series of ad hoc extensions (European Resettlement Network, "Afghan Refugees in Iran and Pakistan," www.resettlement.eu/page/afghan-refugees-iran-pakistan-0); UNHCR, "Forced Displacement in 2015," 16.
 - 223 UNHCR, "Forced Displacement in 2015," 16n16.
 - 224 SIGAR, "Afghan Refugees and Returnees: Corruption and Lack of Afghan Ministerial Capacity Have Prevented Implementation of a Long-term Refugee Strategy," SIGAR 15-83 Audit Report, August 2015, www.sigar.mil/pdf/audits/SIGAR-15-83-AR.pdf.
 - 225 UNHCR, "Forced Displacement in 2015," 20. UNHCR defines a protracted refugee situation as one in which twenty-five thousand or more refugees from the same nationality have been in exile for five or more years in a given asylum country. The utility of this criterion is limited by the threshold, meaning that a group that falls below that number will not be included in the data set no matter how many years they remain in exile. Returns and new arrivals also "renew" the population in a given asylum country.
 - 226 BDHRL, "Human Rights Practices for 2015."
 - 227 UNHCR, "Forced Displacement in 2015," 30–31.
 - 228 UNHCR, "Afghanistan Factsheet."
 - 229 BDHRL, "Human Rights Practices for 2015."
 - 230 USAID, "2014 CSO Sustainability Index for Afghanistan," 2015, www.usaid.gov/sites/default/files/documents/1866/2014-CSOSI-report-Afghanistan_r.pdf.
 - 231 Ibid.
 - 232 Transparency International, "Global Corruption Barometer: Afghanistan," 2013, www.transparency.org/gcb2013/country/?country=afghanistan; see also Warren and Hopkins, *Afghanistan in 2015*, 119.
 - 233 Warren, *Afghanistan in 2014*.
 - 234 USAID, "2014 CSO Sustainability Index," 9.
 - 235 The diversity of media in Afghanistan, according to interviews with civil society and political leaders, has been a source of pride among many Afghans.
 - 236 When the Taliban seized Kabul in 1996, they banned television as un-Islamic and established Radio Sharia as their administration's main broadcast outlet. HRW, "Stop Reporting or We'll Kill Your Family: Threats to Media Freedom in Afghanistan," January 21, 2015, 6, www.hrw.org/sites/default/files/reports/afghanistan_0115_ForUpload.pdf.
 - 237 Afghan Constitution 2004, Art. 34; the 2005 Mass Media Law was replaced in 2009. The 2009 law, like the 2005 version, contains overly broad guidelines on content related to the principles of Islam and protection of reputations, and does not sufficiently protect journalists from persecution. The 2005 law established a special government-appointed commission with the power to determine whether journalists who contravene the law should face court prosecution or a fine. The 2009 law included provisions to improve the complaints process via a mass media commission with staff with journalistic qualifications. It also established a high media council to which the commission should report. However, neither the High Council nor the Mass Media Commission have yet been established. Instead, the Media Violations Investigation Commission established under the 2005 law continues to operation and focuses almost entirely on complaints by officials against journalists, furthering censorship rather than media freedom. This commission operates without journalist representation (see HRW, "Stop Reporting."
 - 238 Freedom House, "Freedom of the Press: Afghanistan," 2016, <https://freedomhouse.org/report/freedom-press/2015/afghanistan>).
 - 239 BHRDL, "Human Rights Practices for 2015."
 - 240 Freedom House, "Afghanistan."
 - 241 "Afghan President Signs Access to Information Law," FreedomInfo.org, December 9, 2014. www.freedominfo.org/2014/12/afghan-president-signs-access-information-law/.
 - 242 See BHRDL, "Human Rights Practices for 2015"; Freedom House, "Afghanistan"; Afghan Journalists Safety Committee, "Six Months Report: January – June 2016," July 1, 2016, <http://ajsc.af/wp-content/uploads/2016/07/JAN-JUN2016SixMonthsReportENGLISH.pdf>; Committee to Protect Journalists, "Getting Away with Murder," October 8, 2015, <https://cpj.org/reports/2015/10/impunity-index-getting-away-with-murder.php#7>.
 - 243 Freedom House, "Afghanistan."
 - 244 UN, "Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights in 2015," UNGA A/HRC/31/46, February 11, 2016, para. 24.

- 245 See Freedom House, “Afghanistan”; BDHRL, “Human Rights Practices for 2015.”
- 246 For an unofficial English translation, see Sarwar Danish, “National Reconciliation, General Amnesty and Stability Bill,” *Pajwok Afghan News*, May 18, 2015, <http://peace.pajhwok.com/en/laws-and-decrees/national-reconciliation-general-amnesty-and-stability-bill>; see also Sayid Salahuddin, “Afghan Assembly Grants Immunity from War Crimes,” *Washington Post*, February 1, 2007, www.washingtonpost.com/wp-dyn/content/article/2007/02/01/AR2007020100224_pf.html; see also HRW, “Afghanistan: Repeal Amnesty Law,” March 10, 2010, www.hrw.org/news/2010/03/10/afghanistan-repeal-amnesty-law.
- 247 “Afghanistan: Ghani, Hekmatyar Sign Peace Deal,” *Al Jazeera*, September 29, 2016. www.aljazeera.com/news/2016/09/afghanistan-ghani-hekmatyar-sign-peace-deal-160929092524754.html.
- 248 “US Army and CIA May Be Guilty of War Crimes in Afghanistan, Says ICC,” *Guardian*, November 15, 2016, www.theguardian.com/law/2016/nov/15/us-army-and-cia-may-be-guilty-of-war-crimes-afghanistan-says-icc.
- 249 David Bosco, “International Criminal Court Poised to Open Investigation into War Crimes in Afghanistan,” *Foreign Policy*, October 31, 2016, <http://foreignpolicy.com/2016/10/31/exclusive-international-criminal-court-poised-to-open-investigation-into-war-crimes-in-afghanistan/>.



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