



# Afghanistan: Politics, Elections, and Government Performance

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## Summary

The capacity and transparency of Afghan governance are considered crucial to Afghan stability after U.S.-led NATO forces turn over the security mission to Afghan leadership by the end of 2014. The size and capability of the Afghan governing structure has increased significantly since the Taliban regime fell in late 2001, but it remains weak and rampant with corruption. Even as the government has struggled to widen its writ, President Hamid Karzai has concentrated much authority in Kabul through his constitutional powers of appointment at all levels. Karzai is constitutionally term-limited, but some Afghan leaders are concerned that he plans to use state election machinery to support the election of a successor in the April 5, 2014 presidential and provincial elections. Fraud in two successive elections (for president in 2009 and parliament in 2010) was extensively documented, but Afghan officials, scrutinized by opposition ties, civil society organizations, and key donor countries, are taking steps to improve election oversight for the April 2014 elections.

Fears about the election process are fanned by the scant progress in reducing widespread nepotism and other forms of corruption. President Karzai has accepted U.S. help to build emerging anti-corruption institutions, but these same bodies have faltered from lack of support from senior Afghan government leaders who oppose prosecuting their political allies. At a donors' conference in Tokyo on July 8, 2012, donors pledged to aid Afghanistan's economy through at least 2017, on the condition that Afghanistan takes concrete, verifiable action to rein in corruption.

No matter how the Afghan leadership succession process works out, there is concern among many observers that governance will founder as the United States and its partners reduce their involvement in Afghanistan. An informal power structure consisting of regional and ethnic leaders—who have always been at least as significant a factor in governance as the formal power structure—has begun to plan for the 2014 end of the international security mission. Many Afghans are likely to look to the faction leaders, rather than to the government, to protect them from possible civil conflict with the Taliban after 2014. But, an increase in the influence of faction leaders could produce even more corruption, arbitrary administration of justice, and human rights abuses than has been the case since the international intervention in 2001.

President Karzai is appealing to nationalist sentiment to attract Taliban support to rejoin Afghan politics, but Afghan civil society activists, particularly women's groups, assert that a full reintegration of the Taliban into Afghan politics could reverse some of the human and women's rights gains since 2001. Those gains have come despite the persistence of traditional attitudes and Islamic conservatism in many parts of Afghanistan—attitudes that cause the judicial and political system to tolerate child marriages and imprisonment of women who flee domestic violence. Islam and tradition has also frequently led to persecution of converts from Islam to Christianity, and to curbs on the sale of alcohol and on Western-oriented programming in the Afghan media. See also CRS Report RL30588, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, by Kenneth Katzman; and CRS Report R41484, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*, by Liana Sun Wylter and Kenneth Katzman.

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## Overview: Historic Patterns of Afghan Authority and Politics

Through differing regimes of widely varying ideologies, Afghanistan's governing structure has historically consisted of weak central government unwilling or unable to enforce significant financial or administrative mandates on all of Afghanistan's diverse ethnic communities or on the 80% of Afghans who live in rural areas. These communities, many of which are separated by mountains and wide expanses, have often looked to local faction leaders for their governance. At the same time, there has always been a struggle between urban, educated "modernizers" and the rural, lesser-educated traditionalists who adhere to strict Islamic customs. The Taliban government (1996-2001) opposed modernization, but there has been substantial modernization and urbanization since the Taliban were ousted—factors that might help Afghanistan remain stable after the international security mission winds down at the end of 2014.

At the national level, Afghanistan had few, if any, Western-style democratic institutions prior to the international intervention that took place after the September 11, 2001, attacks on the United States. Under the constitution of 1964, King Zahir Shah was to be a constitutional monarch, and an elected lower house and appointed upper house were set up. The parliament during that era never reached the expectation of becoming a significant check on the king's power, although the period from 1964 until the seizure of power by Mohammad Daoud in a 1973 military coup was considered a flowering of Afghan democracy. The last lower house elections during that period were held in 1969. The parliament was suspended outright following the April 1978 Communist seizure of power. The elected institutions and the 2004 adoption of a constitution were part of a post-Taliban transition roadmap established by a United Nations-sponsored agreement of major Afghan factions signed in Bonn, Germany, on December 5, 2001 ("Bonn Agreement"),<sup>1</sup> after the Taliban had fallen. Karzai is the first directly elected Afghan president.

Since the fall of the Taliban, there has also been the growth of civil society, populated largely by educated Afghans, many of whom returned to Afghanistan from exile when the Taliban fell. Organizations and groups centered on various issues, including women's rights, law and justice, media freedoms, economics and business issues, the environment, and others, have proliferated. U.S. and international partner policy has been to try to empower these groups as a check on government power and to entrench Afghan democracy.

These newly emerging interest groups have still not been able to displace—or even necessarily substantially influence—the informal power structure of ethnic, regional, tribal, clan, village, and district structures that exercise authority at all levels. At the local level, these structures governed and secured Afghanistan until the late 1970s but were weakened by decades of subsequent war and Taliban rule. Some traditional local authority figures fled or were killed; others were displaced by *mujahedin* commanders, militia leaders, Taliban militants, and others. The local power brokers who displaced some of the tribal structures are far less popular and are widely accused of selectively applying Afghan law and of using their authority to enrich themselves. Some of the traditional tribal councils, which are widely respected but highly conservative in orientation, remained intact. Some of them continue to exercise their writ rather than accept the authority of the central government or even local government appointees. Still other community

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<sup>1</sup> For text, see <http://www.un.org/News/dh/latest/afghan/afghan-agree.htm>.

authorities prefer to accommodate local insurgents, whom they often see as potentially reconcilable members of the community, rather than help the government secure their areas.

## **Afghan Ethnicities, Communities, and Their Relationships**

Even though post-Taliban Afghanistan, particularly in urban areas, is modernizing politically and economically, patterns of political affiliation by family, clan, tribe, village, ethnicity, region, and comradeship in past battles often supersede relationships based on ideology or views. These patterns have been evident in every post-Taliban Afghan election. Candidates, including at the national level, often pursue campaign strategies designed primarily to assemble blocs of ethnic and geographic votes, although some candidates have sought to advance specific new programs and ideas. The traditional patterns have been even more pronounced in province-based campaigns such as those for provincial councils and the parliament. In these cases, electorates (voters of a specific province) are small and candidates can easily exploit clan and familial relationships.

While Afghans continue to follow traditional patterns of affiliation, there has been a sense among Afghans that their country now welcomes members of all political and ethnic groups and factions. There have been very few incidents of ethnic-based violence since the fall of the Taliban, but jealousies over relative economic and political positions of the different ethnic communities have sporadically manifested as clashes or political disputes. The major groups are discussed below.

### **Pashtuns**

Ethnic Pashtuns (pronounced POSH-toons, sometimes referred to as Pathans—pah-TAHNS), as the largest single ethnicity, have historically asserted a “right to rule” Afghanistan. Pashtuns are about 42% of the population and, with few exceptions, have governed Afghanistan. The sentiment of the “right to rule” is particularly strong among Pashtuns of the Durrani tribal confederation, which predominates in the south and is a rival to the Ghilzai confederation, which predominates in the east and has historically close ties to Pakistan. The Pashtuns speak Pashtu (or Pashto), but most in the government also speak Dari, a language akin to Persian. The Pashtuns are represented within the Afghanistan National Security Forces (ANSF) at roughly the same proportion as they are in the population.

Karzai is a Durrani Pashtun, and his cabinet and advisory circle is dominated by other Pashtuns, both Ghilzai and Durrani. However, Karzai is credited by some observers for consulting with other communities, particularly the Tajiks, before issuing decrees or reaching decisions. The Taliban is composed almost completely of Pashtuns; they oppose Karzai on the grounds that his government does not enforce all aspects of Islamic law and is supported by international forces. A table on major Pashtun clans is provided below (see **Table 1**), as is a map showing the distribution of Afghan ethnicities (see **Figure 1**).

### **Tajiks**

Tajiks, who speak Dari, are the second-most numerous and second-most powerful community in Afghanistan. Tajiks are an estimated 25% of the population and constitute a percentage slightly greater than that (about 35%) of the ANSF officer corps. Tajiks are the core of the “Northern Alliance” politico-military coalition that often opposes Karzai and his Pashtun inner circle but yet works with him in the governing structure. Karzai’s first Vice President is Muhammad Fahim, a

Tajik, and the Defense Minister, Bismillah Khan Mohammedi, is a Tajik as well; his previous post was Interior Minister.

During the anti-Soviet war and Taliban period, many Tajik leaders grouped around the prominent *mujahedin* commander Ahmad Shah Masoud and the *Jamiat Islami* (Islamic Society) *mujahedin* political party led by Burhanuddin Rabbani (assassinated September 20, 2011). Rabbani was technically Masoud's political leader although Masoud was generally perceived as having a larger following than Rabbani. Tajiks have ruled Afghanistan on only a few occasions, and Rabbani served as president of the *mujahedin* government (1992-1996), and led briefly again during November–December 2001, before Karzai became interim leader. Masoud and the other Tajiks allied with other non-Pashtun groups to constitute the “Northern Alliance” that fought the Taliban and remains active informally today. Some refer to Tajik leaders as “Panjshiris” because many of them are, like Masoud, from the Panjshir Valley north of Kabul. It should be noted that some Tajik commanders during the anti-Soviet and anti-Taliban wars were not part of *Jamiat Islami*; some fought with Pashtun parties including *Hezb-i-Islami*. The Tajiks and the Northern Alliance are discussed extensively in this paper.

Masoud, who became legendary for preventing Soviet occupation forces from conquering the Panjshir Valley, was killed by Al Qaeda supporters two days before the September 11 attacks on the United States, possibly in conjunction with that plot. Many Tajik leaders, such as Dr. Abdullah Abdullah and former parliament speaker Yunus Qanooni, have prospered politically because of their close association with the slain commander.

Karzai has tried to increase his popularity with the Tajiks by praising their leaders. In September 2012, he commemorated the first anniversary of the Rabbani assassination by renaming Kabul Education University as “The Martyr of Peace Professor Burhanuddin Rabbani University. He simultaneously renamed a major street in Kabul and the airport and Qandahar after Rabbani. The university renaming sparked clashes at the university between Tajik students supporting the renaming and Pashtun and Hazara students opposing it.

## **Hazaras**

Many Pashtuns are said to be increasingly resentful of the Hazara Shiite minority (about 10% of the population) that is advancing economically and politically through education. The Hazaras have historically been looked down upon by the Pashtuns, who have tended to employ Hazaras as domestic workers and other lower and lower middle class occupations. Observers report that many Hazaras, including Hazara women, are earning degrees or pursuing training in information technology, medical, and other highly skilled professions and that they are becoming dominant in many of these higher paying sectors of the Afghan economy.<sup>2</sup> Hazaras are slightly underrepresented in the ANSF officer corps (about 7%) as of September 2012.

Jealousy of Hazara advancement could have been a factor in the December 6, 2011, bombings of Hazaras in three cities, killing 60, while they were visiting their mosques to celebrate the Shiite holy day of Ashura. Pakistan-based militant group, Lashkar-i-Jhangvi—generally allied to the almost purely Pashtun Taliban, claimed responsibility—possibly in an effort to stir up sectarian conflict in Afghanistan.

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<sup>2</sup> Oppel, Richard Jr. and Abdul Waheed Wafa, “Hazara Minority Hustles to Head of the Class in Afghanistan,” *New York Times*, January 4, 2010.

There are also tensions between the Hazaras and the Tajiks, even though both oppose Pashtun dominance. A clash took place between the two communities on September 9, 2012, when a car in procession of Tajiks commemorating the September 9, 2001, death of their historic leader Ahmad Shah Masoud ran over a Hazara bicyclist. The clash was said to reflect lingering Hazara resentment of Masoud's 1993 offensive against then Hazara rivals during the 1992-1996 period of internecine warfare that preceded the accession of the Taliban regime.

## **Uzbeks**

Uzbeks, like the Hazaras, are about 10%. The Uzbek community is Sunni Muslim and speaks a language akin to Turkish. Most Uzbeks speak Dari as well. The most well-known Uzbek leader in Afghanistan is Abdul Rashid Dostam, who was allied with Soviet occupation forces but later defected and helped bring down the Communist regime in Afghanistan in April 1992. He heads a faction called *Junbush Melli Islami Afghanistan* (National Islamic Movement of Afghanistan), although it is not a registered political party for the purposes of elections. Because of their alliance with the Soviet Union during the occupation period, many Uzbeks in Afghanistan are leftwing and highly secular. Uzbeks are slightly underrepresented in the ANSF officer corps—about 4.5% as of September 2012.

## **Other Minorities<sup>3</sup>**

There are several other religious and ethnic minorities in Afghanistan, members of which are sometimes discriminated against or targeted for attacks. Northeastern provinces have a substantial population of Isma'ilis, a Shiite Muslim sect often called "Seveners" (believers in the Seventh Imam as the true Imam). They constitute about 5% of the population. Many Ismailis follow the Agha Khan IV (Prince Qarim al-Husseini), who chairs the large Agha Khan Foundation that has invested heavily in Afghanistan. An estimated 350 Sikh families and 30 Hindu families are present as well, concentrated in the area of Jalalabad in Nangarhar Province. The Christian community is estimated at between 500 and 8,000 persons, and the Bahai community, considered heretic by Afghan Muslim clerics, is about 2,000.

## **The Role of Political Parties**

During the era of the Soviet occupation and the 1992-1996 civil war, many of the *mujahedin* parties were based on ethnicities, loyal to major ethnic and factional commanders. These parties were largely funded and armed by outside powers, producing a popular aversion to formal political parties in post-Taliban Afghanistan. Since 2009, there apparently has been some evolution in these attitudes and parties and electoral coalitions have strengthened. Even though many parties still are relatively homogenous ethnically, they do not advertise themselves as "ethnic" parties per se, because Article 35 of the Afghan constitution bans parties based on ethnicity or religious sect.

From the fall of the Taliban until 2009, 110 political parties were established. A September 2009 political parties law required all parties to re-register and to submit 10,000 signatures, spanning at least 22 provinces, to verify their support. That limited the number of parties registered before the

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<sup>3</sup> Some of this information is taken from the State Department International Religious Freedom Report for 2012, released May 20, 2013. <http://www.state.gov/j/drl/rls/irf/religiousfreedom/>



September 18, 2010, parliamentary election to only five. By late 2011, 38 parties had completed the process, and a total of 21 parties are represented in the lower house of parliament. A July 11, 2012, regulation apparently eased registration rules somewhat by requiring parties to have offices in at least 20 provinces in order to register.

Partly because parties are viewed with suspicion, President Hamid Karzai never formed a party. However, many of his supporters in the National Assembly (parliament)—and several officials in his office—belong to a moderate faction of *Hizb-e-Islami*. The party, composed almost totally of ethnic Pashtuns, is the only one of the *mujahedin* parties that formally registered. This wing of the *Hizb-e-Islami* is committed to working within the political system. It is led by Minister of Economy Abdul Hadi Arghandiwal, whose leadership was reaffirmed at a party conference during October 3-4, 2012. The militant wing of *Hizb-e-Islam* is loyal to pro-Taliban insurgent leader Gulbuddin Hikmatyar; it is called *Hizb-e-Islami Gulbuddin* (HIG). The other *mujahedin* parties have mostly merged into broader coalitions, as discussed below. Another mostly Pashtun party is Afghan Millat (Afghan Nation), which was headed until October 2012 by the current Minister of Commerce Anwar ul-Haq Ahady; he was displaced at an October 4, 2012, party congress by its secretary-general Stana Gul Sherzad.

It was hoped that post-Taliban Afghanistan would produce a substantial number of secular, pan-ethnic democratic parties. That process has evolved only gradually, but has accelerated since the flawed 2009 presidential election. Since 2004, Dr. Abdullah has formed several parties in succession, although generally composed of other ethnic Tajiks, and rival Tajiks have formed their own parties. However, these mostly Tajik groupings are increasingly working with other parties of varying ethnicities and ideologies to increase government accountability. One prominent secular, pan-ethnic party, the Rights and Justice Party, was formed by ex-Interior Minister Mohammad Hanif Atmar and other allies in October 2011; it is discussed further below. Another party, the Coalition for Reform and Development, formed in early 2012 to try to ensure that the presidential election in 2014 is fair.

Prior to 2011, the secular parties were mainly small and received little national attention—often centered around the personalities of their founders rather than enduring ideas. These parties include the Afghanistan Labour and Development Party, the National Solidarity Party of Afghanistan's Youth, the Republican Party, and the National Congress Party of Afghanistan led by Abdul Latif Pedram. Other secular parties are left wing, such as the National United Party of Afghanistan, led by former parliamentarian Nur ul-Haq Ulumi, who was in the Communist era military. However, some believe that all the smaller, idea-based parties remain weak because the Single, Non-Transferable Vote (SNTV) system—in which each voter casts a ballot for only one candidate—favors candidates running as independents rather than as members of parties.

## **Post-Taliban Transition and Political Landscape**

U.S. policy since 2001 has been to help expand the capacity of formal Afghan governing institutions, most of which were nearly nonexistent during Taliban rule. However, the formal governing structure continues to compete, often unsuccessfully, with the traditional power structures discussed above.

## Formal Government Structure: Elected but Centralized Leadership

The ouster of the Taliban government paved the way for the success of a long-stalled U.N. effort to form a broad-based Afghan government and for the international community to help Afghanistan build legitimate governing institutions. During Taliban rule (1996-2001), Afghanistan was run by a small, Qandahar-based group (“Shura”) of Pashtun clerics loyal to Mullah Mohammad Umar, who remained there. No parliament was functioning, and Government offices were minimally staffed and without modern equipment. There were no formal processes to review Mullah Omar’s decision, for example, to host Osama bin Laden in Afghanistan.

In the formation of the first post-Taliban transition government, the United Nations was viewed as a credible mediator by all sides largely because of its role in ending the Soviet occupation. During the 1990s, a succession of U.N. mediators adopted proposals for a government to be selected by a traditional assembly, or *loya jirga*, even though U.N.-mediated cease-fires between warring factions did not hold. Non-U.N. initiatives made little progress, particularly the “Six Plus Two” multilateral contact group, which began meeting in 1997 (the United States, Russia, and the six states bordering Afghanistan: Iran, China, Pakistan, Turkmenistan, Uzbekistan, and Tajikistan).

### December 2001 Bonn Agreement

Immediately after the September 11 attacks, former U.N. mediator Lakhdar Brahimi was brought back (he had resigned in frustration in October 1999). U.N. Security Council Resolution 1378 (November 14, 2001) called for a “central” role for the United Nations in establishing a transitional administration. After the fall of Taliban rule in November 2001, the United Nations invited major Afghan factions, most prominently the Northern Alliance and that of the former King—but not the Taliban—to an international conference in Bonn, Germany. There, on December 5, 2001, the factions signed the “Bonn Agreement.”<sup>4</sup> It was endorsed by U.N. Security Council Resolution 1385 (December 6, 2001). Other provisions of the agreement:

- authorized an international peace keeping force to maintain security in Kabul, and Northern Alliance forces were directed to withdraw from the capital. Security Council Resolution 1386 (December 20, 2001, and renewed yearly thereafter) gave formal Security Council authorization for the international peacekeeping force (International Security Assistance Force, ISAF);
- referred to the need to cooperate with the international community on counter narcotics, crime, and terrorism; and
- applied the constitution of 1964 until a permanent constitution could be drafted.<sup>5</sup>

On December 5, 2011, there was an international conference on Afghanistan in Bonn, marking the 10<sup>th</sup> anniversary since the 2001 Bonn Conference. The meeting, in part, evaluated governance progress in Afghanistan since the original convention.

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<sup>4</sup> Text of Bonn agreement is at <http://www.ag-afghanistan.de/files/petersberg.htm>.

<sup>5</sup> The last pre-Karzai *loya jirga* that was widely recognized as legitimate was held in 1964 to ratify a constitution. Najibullah convened a *loya jirga* in 1987 to approve pro-Moscow policies, but that gathering was widely viewed by Afghans as illegitimate.

## **Permanent Constitution Adopted, Sets Up Presidential System**

A June 2002 “emergency” *loya jirga* put a representative imprimatur on the transition; it was attended by 1,550 delegates, of which about 200 were women. Subsequently, a 35-member constitutional commission drafted a constitution, unveiling it in November 2003. It was debated by 502 delegates, selected in U.N.-run caucuses, at a “*constitutional loya jirga (CLJ)*” during December 13, 2003-January 4, 2004. The CLJ, chaired by prominent Islamic scholar and former interim Afghan leader Sibghatullah Mojadeddi, approved the draft constitution.

The constitution set up a presidential system, with an elected president having relatively broad powers and a separately elected National Assembly (parliament). Opposing too great a centralization of power (which would favor Pashtuns), the Tajik-dominated Northern Alliance failed in its effort to set up a prime ministership in which the elected parliament would select a prime minister who would run the day-to-day workings of government. In such a system, the president’s powers would be limited. In the constitution, the faction did achieve some limitation to presidential powers by assigning major authorities to the parliament, as discussed below. The Northern Alliance assumed that, in a prime ministerial system, the post of elected president would be held by a Pashtun but, in a tradition of power sharing, the prime minister post would be held by a Tajik or other ethnic minority. The constitution and election system (a two round election if no majority is achieved in the first round) strongly favor the likelihood that an ethnic Pashtun will be president of Afghanistan.

The president serves a five-year term, with a two-term limit (Article 62). There are two vice presidents. The president has broad powers. Under article 64, he has the power to appoint all “high-ranking officials,” which has been interpreted by Karzai to include not only cabinet ministers but also members of the Supreme Court, judges, provincial governors and district governors, local security chiefs, and members of supposedly independent commissions such as the Independent Election Commission and the Afghan Independent Human Rights Commission (AIHRC). The latter body was set up by Article 58 to refer cases of human rights violations to “the legal authorities.” (See further below on this commission.) However, these appointments are constitutionally subject to confirmation by the National Assembly. The president also is commander-in-chief of the Afghan armed forces. At the CLJ, the opposition did not achieve the right of elected provincial and district councils to choose their governors—an outcome the opposition continues to seek to reverse. The constitution made former King Zahir Shah honorary “Father of the Nation,” a title that was not heritable; he died on July 23, 2007.<sup>6</sup>

### ***Karzai Elected in First Post-Taliban Presidential Elections in 2004***

Security conditions precluded the holding of the first post-Taliban elections simultaneously. The first election, for president, was held on October 9, 2004, missing a June constitutional deadline. Turnout was about 80%. On November 3, 2004, Karzai was declared winner (55.4% of the vote) over his 17 challengers on the first round, avoiding a runoff. He was sworn in to office in December 2004, about one year before the swearing in of an elected National Assembly; he ruled by decree during that one year period.

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<sup>6</sup> Text of constitution is at <http://arabic.cnn.com/afghanistan/ConstitutionAfghanistan.pdf>.

## **National Assembly (Parliament) Formation, Powers, and Assertion of Powers**

The National Assembly outlined by the constitution consists of a 249 all-elected lower house (*Wolesi Jirga*, House of the People) and a selected 102 seat upper house (*Meshrano Jirga*, House of Elders). The upper house is selected as follows: one-third, or 34 seats, appointed by the president (for a five-year term); one-third appointed by the elected provincial councils (four-year term); and one-third appointed by elected district councils (for a three-year term). Of the president's appointments, half (17) are mandated to be women.<sup>7</sup>

Because of the difficulty in confirming voter registration rolls and determining district boundaries, formal elections for the 364 district councils have not been held to date. Each district boundary is likely to be contentious because it will inevitably separate tribes and clans. Until there are elected district councils, two-thirds of the Meshrano Jirga are selected by the provincial councils for four year terms. The lower house is mandated to be at least 28% female (68 people), an average of two for each of the 34 provinces.

Parliamentary and provincial council elections, which were to establish the National Assembly and the provincial councils, were originally intended for April-May 2005 but were delayed until September 18, 2005. The elections were based on a "Single Non-Transferable Vote" System; candidates stood as individuals, not part of a party list. Voting was for one candidate only, although the number of representatives varied by province, ranging from 2 (Panjshir Province) to 33 (Kabul Province). Other examples include Herat, 17; Nangahar, 14; Qandahar, Balkh, and Ghazni, 11 seats each.

### ***Powers of the National Assembly***

The National Assembly has become the key formal institution for non-Pashtuns and political independents to express political opposition to and to exert influence on Karzai. The Assembly has been set up by the constitution as a relatively powerful body that can, to some extent, check the powers of the president, although the Northern Alliance and other Karzai critics say it has insufficient power to brake presidential authority.

The lower house has the power to vote no-confidence against ministers (Article 92)—based on a proposal by 10% of the lower house membership, or 25 parliamentarians. Both the upper and lower houses are required to pass laws. Under Article 98 of the constitution, the national budget is taken up by the *Meshrano Jirga* first and then passed to the *Wolesi Jirga* for its consideration. Both houses of parliament, whose budgets are controlled by the Ministry of Finance, are staffed by about 275 Afghans, reporting to a National Assembly "secretariat." There are 18 oversight committees, a research unit, and a library. USAID has helped the Afghanistan National Assembly build its capabilities with a program called the Afghanistan Parliamentary Assistance Project (APAP). The program assists the Assembly's outreach efforts, communications, information technology use, and advises on legislative reform and national budget review.

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<sup>7</sup> The size of the two bodies is slightly smaller than the size of the same two bodies provided for in the 1964 constitution (214 members in the *Wolesi Jirga* and 84 members in the *Meshrano Jirga*, of which one-third were appointed by the King, one-third appointed by the provincial councils, and one-third directly elected.

The National Assembly has, at times, asserted institutional strength since it was first inaugurated on December 19, 2005. It is the lower house's younger, more technocratic independent bloc that has consistently pushed to assert authority. One of its first tasks was to review, and either endorse, amend, or void, the decrees Karzai had issued prior to the formation of the National Assembly. In March 2006, it achieved a vote to require Karzai's cabinet to be approved individually, rather than *en bloc*, increasing opposition leverage. However, Karzai was able to obtain confirmation for all but five of his first twenty five nominees. In May 2006, the opposition within the lower house compelled Karzai to change the nine-member Supreme Court, the highest judicial body, including ousting 74-year-old Islamic conservative Fazl Hadi Shinwari as chief justice. The proximate justification for the ouster was Shinwari's age, which was beyond the official retirement age of 65. He was succeeded as chief justice by Abdul Salam Azimi. (Shinwari later headed the Ulema Council, discussed below, until his death in 2011.)

The process of confirming Karzai's second-term cabinet—in which many of Karzai's nominees were voted down in several nomination rounds during 2010—reaffirmed the Assembly's institutional strength. The lower house again asserted itself on August 4, 2012 by voting to oust Defense Minister Abdul Rahim Wardak and Interior Minister Bismillah Khan Mohammadi, ostensibly for failing to reduce corruption in their ministries. Some experts asserted the move was an effort to ensure that security contracts were opened to a broader range of bidders. Karzai abided by the vote, although he subsequently appointed and achieved confirmation of Khan as defense minister. On January 14, 2013, the lower house summoned eleven ministers to explain why they had executed only about 50% of their budgetary authority in 2012. In mid-May 2013, the lower house questioned Finance Minister Omar Zakhilwal for alleging that several parliamentarians that they were smuggling goods across Afghanistan's borders. After he presented specific information to support his charges, the lower house voted not to impeach Zakhilwal.<sup>8</sup>

## **The Judiciary and Rule of Law**

The Afghan constitution provides for an independent judiciary, led by a nine-member Supreme Court. The members are appointed by the president, but subject to confirmation by the lower house of the National Assembly. Of the nine, three judges are appointed to 10-year terms; three are appointed for seven years, and three are appointed for four years. In May 2006, the National Assembly voted to start the appointment cycle anew. The current chief justice, Abdul Salaam Azimi, was appointed to a four-year term but his term, as well as that of two associate justices, expired in August 2010. One of them was replaced in May 2012. The terms of another three associate justices expire in July 2013.

International, including U.S., funding is helping the formal Afghan judicial system expanded its capacity and competence. The writ of the judicial system has, by all accounts, expanded significantly since 2001, particularly in the urban areas. U.S. funding supports training and mentoring for Afghan justice officials, direct assistance to the Afghan government to expand efforts on judicial security, legal aid and public defense, gender justice and awareness, and expansion of justice in the provinces. USAID's "Rule of Law Stabilization Program" has trained over 700 Afghan judges. The program also expanded the Afghan Supreme Court's training for new judges. Some observers say that Afghanistan's counter-narcotics courts have demonstrated particular progress in achieving a steady stream of convictions of drug traffickers. As of July 2010, the U.S. Embassy has an Ambassador rank official heading a "Rule of Law Directorate."

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<sup>8</sup> "Afghanistan's Cycle of Corruption." *TheDailyBeast.com*, May 16, 2013.

As the highest body in the judiciary, the Supreme Court appoints judges at the provincial and district level. In mid-2012, the Supreme Court swore in 181 judges, many of whom were women, and leaving only 38 out of Afghanistan's 364 districts lacking an assigned judge. Some female judicial officials, for example Maria Bashir—chief prosecutor in Herat Province (the only female chief prosecutor in the country)—have been criticized by some groups for enforcing laws that are heavily skewed against women.<sup>9</sup>

Still, there is broad international agreement that the Afghan judicial system remains weak and its independence is questionable. The Afghan government has completed few of the benchmarks for judicial reform agreed at the July 20, 2010, Kabul conference and the “Tokyo Framework” established at the Tokyo donor’s conference of July 8, 2012. The Afghan government has committed to:

- Enact its draft Criminal Procedure Code into law by the end of 2010 (one of the 37 laws the Afghans pledged at the Kabul Conference to enact). A draft of a new code was presented to the National Assembly on June 30, 2012, and debate began in the Wolesi Jirga in late 2012. However, the code has not been enacted to date. On October 13, 2012, the Wolesi Jirga adopted a law on the structure and authority of the Attorney General’s Office.
- Improve legal aid services by the end of 2011. The March 5, 2013, U.N. Secretary General’s report on Afghanistan said the Ministry of Justice has established 29 legal aid offices as of the end of 2012, up from 16 in 2011.
- Strengthen judicial capabilities to facilitate the return of illegally seized lands. This commitment was made partly to address the ability of well-connected individuals to appropriate land—either through the legal process or through force—for their homes and projects. USAID provided \$56 million during FY2005-2009 to facilitate property registration. An additional \$140 million is being provided from FY2010-2014 to inform citizens of land processes and procedures, and to establish a legal and regulatory framework for land administration.
- Align strategy toward the informal justice sector with the National Justice Sector Strategy.

As a result of the Tokyo conference, Afghanistan committed to present donors with plans to depoliticize the judiciary and assure rule of law—elements of a National Priority Program (NPP). In mid-October 2012, the EU judged that not enough progress had been made, and about \$26 million in EU aid for judiciary reform remains withheld.

Some institutional barriers to the independence of the judiciary will be difficult to overcome. On matters involving interpreting the constitution, the Supreme Court has sparred with a rival institution, a constitutionally mandated “Independent Commission for the Supervision of the Implementation of the Constitution (ICSIC).” The ICSIC consists of seven commissioners appointed by the president, subject to confirmation by the lower house of the National Assembly. To date, two of the required seats remain unfilled.

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<sup>9</sup> Graham Bowley. “Afghan Prosecutor Faces Criticism for Her Pursuit of ‘Moral Crimes.’” *New York Times*, December 29, 2012.

### ***Informal Justice System***

Despite the international focus on the formal justice sector, some experts estimate that as many as 80% of cases are decided in the informal justice system. Many Afghans view the formal sector as riddled with corruption and unfairness, and continue to use local, informal mechanisms (*shuras*, *jirgas*) to adjudicate disputes—particularly with cases involving local property, familial or local disputes, or personal status issues. In the informal sector, Afghans can usually expect traditional practices of dispute resolution to prevail, including the traditional Pashtun code of conduct known as *Pashtunwali*. Some of these customs include traditional forms of apology (“*nanawati*” and “*shamana*”) and compensation for wrongs done.<sup>10</sup>

While much of the informal justice system consists of *shuras* and *jirgas*, there is also a history of Islamic courts operating in some provinces. These courts predate the accession of the Taliban, and some re-emerged after the international intervention in Afghanistan in 2001. Some experts believe this informal Islamic court system could provide a stabilizing effect after 2014 by attracting the trust of Afghans and drawing them away from informal justice mechanisms run by Taliban insurgents.<sup>11</sup>

However, the informal justice system is dominated almost exclusively by males. For example, some disputes, including over debts or other financial obligations, are resolved by families’ offering to make young girls available to marry older men from the family that is the counterparty to the dispute. This practice is known as *baad*.

Some informal justice *shuras* take place in Taliban-controlled territory, and some Afghans may prefer Taliban-run *shuras* when doing so means they will be judged by members of their own tribe or tribal confederation. U.S. officials say they do not oppose the widespread use of the informal justice sector as such, but they do oppose it when it is administered by Taliban members because of the Taliban’s often extreme interpretations of Islamic law.

One concern is how deeply the international community should become involved in the informal justice sector. U.S. programs have focused primarily on the formal justice system, but there has been increasing attention to the informal system because its use is so prevalent.

USAID has implemented programs to link the formal and informal justice sector. As part of a program begun in 2011, USAID has assisted local *shuras* (informal justice sector) in four districts to establish a system to transmit their judicial rulings, in writing, to the district government. The rule of law issue is discussed in depth in CRS Report R41484, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*, by Liana Sun Wyler and Kenneth Katzman.

### **Rivalries Within and Outside Governing Institutions**

As discussed above, many intersecting factors—ethnicity, tribal affiliation, geography, economic interests, and ideologies—determine politics in Afghanistan. These splits manifest within as well as outside Afghan governing institutions. Although they largely accept that a Pashtun is most likely to hold the top slot in the Afghan government, non-Pashtuns insist on being—and are—

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<sup>10</sup> <http://www.khyber.org/articles/2004/JirgaRestorativeJustice.shtml>.

<sup>11</sup> Casey Garret Johnson. “Afghan Islamic Courts: A Pre-Taliban System With Post-2014 Potential?” *At War*, April 17, 2013.

represented at all levels of the central government. Ethnic minorities have demanded, and have achieved, a large measure of control over how government programs are implemented in their geographic regions. Although Karzai has the power to appoint provincial and district governors, in practice he has not generally appointed governors of a different ethnicity than the majority of residents of particular provinces and districts. One possible exception is the governor of Herat, Daud Shah Saba, appointed in 2011; he is a Pashtun in a province whose major city, Herat, is overwhelmingly Tajik, although much of the province outside Herat is majority Pashtun. The Independent Directorate of Local Governance (IDLG), which recommends to the presidential palace local appointments, often consults notables of a province on local appointments.

### **Karzai's Presidential Leadership, His Close Advisers, and Staff**

As president, Karzai is advised by what some observers believe is a narrow spectrum of Pashtuns in the cabinet and in his presidential office. Many of them are considered hardline Pashtuns who want to assert Afghan sovereignty; some observers say their advice has contributed to the stream of Karzai statements in 2012 and 2013 accusing the United States of causing excessive civilian casualties, committing human rights abuses of Afghans, and impinging on Afghan sovereignty through continued holding of Afghan detainees. Some of these statements occurred in the context of Defense Secretary Chuck Hagel's visit to Afghanistan during March 9-11, 2013. Some see in these statements an effort by Karzai to establish his legacy as a nationalist leader and parry criticism by many Afghans (and the Taliban) that he is a "puppet." Opposition figures have distanced themselves from the Karzai statements, saying he is jeopardizing the key relationship with the United States.

Some Karzai advisers are affiliated with the moderate wing of *Hezb-e-Islami*. Among them is his chief of staff, former Minister of Information and Culture Abdul Karim Kurram, who was appointed in April 2011; he serves as key gatekeeper of access to Karzai. Kurram replaced Mohammad Umar Daudzai, another member of the moderate wing of *Hezb-e-Islami* and a purported skeptic of Western/U.S. influence over Afghan decision making.<sup>12</sup> Another top palace aide is minister-counselor Taji Ayubi.

Some of Karzai's top advisers are well-educated and Westernized. For example, Karzai trusts such professionals as French-educated physician—now foreign minister—Zalmay Rassoul and National Security Adviser Rangin Spanta, who served as Foreign Minister during 2006-2010. Both are Pashtuns. The National Security Council, headed by Spanta, is located in the presidential palace complex and heavily populated by ethnic Pashtuns. One highly trusted NSC official is first deputy NSC Adviser Ibrahim Spinzada, a Pashtun. However, many NSC officials at all levels are from other ethnicities.

Karzai also surrounds himself with Pashtun tribal and faction leaders from southern Afghanistan, such as Sher Mohammad Akhunzadeh, the former governor of Helmand (until 2005). These personalities reflect Karzai's attempts to exert direct control over his home province of Qandahar and the neighboring large province of Helmand.

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<sup>12</sup> On October 23, 2010, *The New York Times* asserted that Daudzai was the presidential office's liaison with Iran for accepting the approximately \$2 million per year in Iranian assistance that is provided as cash. Karzai acknowledged this financial arrangement. Daudzai was appointed Ambassador to Pakistan in April 2011.



Some observers assert that the apparatus around Karzai require improved focus and organization. One idea that has periodically surfaced is to create a new position akin to a “chief administration officer” who can break through administrative bottlenecks. One of Karzai’s 2009 election challengers, Ashaf Ghani, was not formally given this role but advises Karzai on government reform and institution building, and manages the transition from the United States and NATO to Afghan lead. Another close Karzai confidant, “Senior Minister” Hedayat Amin Arsala, heads government reform efforts.

### *Office of Administrative Affairs/General Administrative Office*

An administrative unit that has attracted increasing international attention as a center of organized policymaking is the Office of Administrative Affairs (OAA), referred to by some as the General Administrative Office (GAO). Some experts say that the office, headed by a Hazara Shiite named Sadiq Mudabir, is primarily administrative, and without any policy coordination role. However, some Afghan observers say it is increasingly taking on a policymaking role by helping the National Assembly draft laws and advising Karzai on what legislation to sign or to veto. The office also is purported to be taking on an informal judicial role by assessing the legitimacy of citizen, group, and corporate petitions and forwarding those to the relevant ministries for follow-up action.

The office is a holdover from the Communist era, and contains many longtime bureaucrats. During the 1990s it may have had as many as 1,800 personnel, but has been trimmed during the Karzai era to about 700 staff members. The operations of the unit are funded primarily by the United Kingdom, but U.S. military and civilian officials have been assigned to provide advice and assistance to the office as well.

### *Karzai’s Allies in the Lower House of the National Assembly*

In addition to his aides in the presidential palace and allies in the government writ large, as of 2012 Karzai has about 70–80 supporters, mostly Pashtuns, in the *Wolesi Jirga*. Karzai and his aides hoped to but failed to increase the president’s support base to over 100 in the September 18, 2010, elections, but instead the results caused Karzai’s base to shrink slightly. Of his lower house supporters, about half are former members of the Hizb-e-Islam party, and many others are followers of Abd-i-Rab Rasul Sayyaf, a prominent Pashtun Islamic conservative *mujahedin* era party leader.<sup>13</sup> Karzai was unable to engineer the selection of Sayyaf to become lower house speaker in 2011 and displace Yunus Qanooni (Tajik). Neither Sayyaf nor Qanooni was unable to obtain enough votes to become speaker, instead losing to a compromise candidate, Abdul Raouf Ibrahim, an Uzbek who is perceived as weak.

Many of Karzai’s supporters in the lower house are from Qandahar, Karzai’s home province, and from Helmand province. For example, one pro-Karzai Pashtun who was reelected in the 2010 elections is former militia leader Hazrat Ali (Nangarhar Province), who led the Afghan component of the failed December 2001 assault on Osama bin Laden’s purported redoubt at Tora Bora. On the other hand, the 2010 elections resulted in the loss in parliament of Karzai cousin Jamil Karzai and other Karzai allies such as Pacha Khan Zadran of Paktia Province.

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<sup>13</sup> Sayyaf led the *Ittihad Islami* (Islamic Union) *mujahedin* party during the war against the Soviet occupation.

### **Hamid Karzai, President of the Islamic Republic of Afghanistan**

Hamid Karzai, born December 24, 1957, was selected to lead Afghanistan at the Bonn Conference because he was a prominent Pashtun leader who had been involved in Taliban-era political talks among exiled Afghans and was viewed as a compromiser rather than a “strongman.” However, some observers consider his compromises as Afghanistan’s leader a sign of weakness and criticize him for indulging members of his clan and other allies with appointments. His term expires in 2014 and he is constitutionally barred from running again; he told parliamentarians in August 2011 that he would abide by the constitutional requirement to step down at that time.

From Karz village in Qandahar Province, Karzai has led the powerful Popolzai tribe of Durrani Pashtuns since 1999, when his father was assassinated, allegedly by Taliban agents, in Quetta, Pakistan. Karzai’s grandfather was head of the consultative National Council during King Zahir Shah’s reign. He attended university in India and supported the *mujahidin* party of Sibghatullah Mojadeddi (still a very close ally) during the anti-Soviet war. He was deputy foreign minister in the *mujahidin* government of Rabbani during 1992-1995, but he left the government and supported the Taliban as a Pashtun alternative to Rabbani. He broke with the Taliban as its excesses unfolded and forged alliances with other anti-Taliban factions, including the Northern Alliance. Karzai entered Afghanistan after the September 11 attacks to organize Pashtun resistance to the Taliban, supported by U.S. Special Forces. He became central to U.S. efforts after Pashtun commander Abdul Haq entered Afghanistan in October 2001 without U.S. support and was captured and hung by the Taliban. Karzai was slightly injured by an errant U.S. bomb in late 2001.

With heavy protection, Karzai has survived several assassination attempts since taking office, including rocket fire or gunfire at or near his appearances. His wife, Dr. Zenat Karzai, is a gynecologist by profession. They have two children.

#### **Family Dealings**

Controversy has surrounded his siblings for allegedly profiting from Karzai’s presidency. His half brother, Ahmad Wali Karzai, was the most powerful political figure in Qandahar Province until his assassination on July 12, 2011. He was key to President Karzai’s information network in Qandahar. Ahmad Wali was widely accused of involvement in or tolerating narcotics trafficking, but reportedly also was a paid informant for the CIA; some of his property has been used by U.S. Special Forces. After Ahmad Wali’s death, Karzai appointed another brother, Shah Wali Karzai, as Popolzai chief, and he reputedly has become involved in business dealings in Qandahar that have run him afoul of another brother, Mahmoud Karzai. Mahmoud is reportedly under U.S. Justice Department investigation for alleged corruption. He has wide business interests in Qandahar and Kabul, including auto dealerships, a coal mine, a cement factory, a large gated housing development in Qandahar called Ayno Maina, and had borrowed from Kabul Bank (see below). Another brother, Qayyum Karzai, served in parliament during 2005-2008 but resigned in October 2008 for health reasons. He has reportedly been involved in negotiations with Taliban figures on a political settlement. Other Karzai relatives have profited extensively from international contracts, including a \$2.2 billion U.S. “Host Nation Trucking” contract. The United States banned contracts to one such firm, Watan Risk Management, as of January 6, 2011; the firm is co-owned by two Karzai second cousins—Rashid and Rateb Popal. The Popal brothers reorganized the company as Watan Group and this firm is the local partner of China National Petroleum Company on a \$3 billion investment, awarded in 2012, to develop oil fields in northern Afghanistan.

#### **U.S.-Karzai Relations**

Karzai has periodically lashed out at what he sees as U.S. and international pressure on him to reduce corruption and ensure electoral fairness, as well as what he characterizes as infringements on Afghan sovereignty from U.S.-led combat operations and prisoner detentions. On April 4, 2010, Karzai suggested that Western meddling in Afghanistan was fueling support for the Taliban as a legitimate resistance to foreign occupation.<sup>14</sup> In October 2011, Karzai said that Afghanistan would side with Pakistan in the event of a war between Pakistan and the United States. During the March 2013 visit of Secretary of Defense Hagel, Karzai said that Taliban attacks were helping the United States prolong its military presence in Afghanistan. U.S. officials have tended to mute their reaction to many such statements, and even have often adjusted toward Karzai’s views. Karzai visited Washington, DC, the week of January 7, 2013, focused on securing Afghanistan after the international security mission winds down at the end of 2014.

**Source:** CRS.

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<sup>14</sup> An exact English translation of his April 4 comments, in which he purportedly said that even he might consider joining the Taliban if U.S. pressure on him continues, is not available.

### ***Karzai Support Significant in the Upper House***

Karzai has substantial support in the 102-seat upper house of the National Assembly, partly because of his bloc of 34 appointments (one-third) to that body. His allies have consistently chaired the body, including Sibghatullah Mojadeddi (2005-2010) and, the current upper house chair, Fazl Hadi Muslim Yaar. Because it is composed of more elderly, established, notable Afghans who are traditionalist in their political outlook, the upper house has tended to be more Islamist conservative than the lower house, advocating a legal system that accords with Islamic law, and restrictions on press and Westernized media broadcasts.

Karzai also has used his bloc of appointments to the upper house to co-opt potential antagonists or reward his friends. In 2006, he appointed Northern Alliance military leader Muhammad Fahim to the upper body, although he resigned after a few months. He was Karzai's primary running mate in the 2009 elections and is now first vice president. In 2006, Karzai also named a key ally, former Helmand Governor Sher Mohammad Akhunzadeh, to the body.

Karzai was scheduled to make his 34 new upper house appointments (five year terms) prior to the January 26, 2011, seating of the 2011-2015 parliament. However, the appointments were delayed by the 2010 Assembly election dispute. On January 27, 2011, the body reaffirmed Muslim Yaar as upper house chair. On February 19, 2011, Karzai made his 34 selections, reappointing 18 incumbents and appointing 16 new members to the body. In line with the constitution, 17 of Karzai's appointments are women.

### **The Political Opposition: The "Northern Alliance," Dr. Abdullah, and Others**

The opposition to Karzai is led by ethnic minority figures (Tajiks, Uzbeks, and Hazaras), many of whom are part of the "Northern Alliance," discussed above. Since the constitution was adopted in 2004, Northern Alliance figures have unsuccessfully advocated amending it to give more power to parliament and to empower the elected provincial councils (instead of the president) to select governors and mayors. Such steps would ensure maximum autonomy from Kabul for non-Pashtun areas, and serve as a check and balance on Pashtun dominance of the government.

Suggesting the fluidity of Afghan politics, several opposition figures have, at times, joined Karzai's government in exchange for autonomy or a share of business interests. A key example is Vice President Muhammad Fahim. Another is the late President Rabbani, who agreed to chair the 70-member High Peace Council that is leading Karzai's effort to reconcile with insurgent leaders. Rabbani was assassinated by an alleged Taliban operative in September 2011, and was succeeded as High Peace Council chair by his son, Salahuddin. The Karzai strategy of giving high-level appointments to his critics has, to date, kept the opposition somewhat divided.

### ***The Opposition Movements Led by Dr. Abdullah***

Although Rabbani was the elder statesman of the Northern Alliance, he was largely displaced in recent years by harder line Tajiks such as the overall "leader of the opposition"—former Foreign Minister Dr. Abdullah Abdullah. Abdullah is about 55 years old; his mother is Tajik and father is Pashtun, but his identity as the foreign envoy of the late Ahmad Shah Masoud gives him Tajik political identity. He was dismissed from his foreign minister post by Karzai in a March 2006 cabinet reshuffle, causing his political break with Karzai. Aside from his political activities, Abdullah heads a private foundation named after Ahmad Shah Masoud.

Abdullah emerged as Afghanistan's opposition leader after his unsuccessful challenge against Karzai for president in the August 2009 election in which widespread fraud was demonstrated. He is not in parliament but he works to promote his agenda through public statements, in direct meetings with Karzai, and through allies in the lower house, as discussed below. The cornerstone of his ideology is to establish a parliamentary system in which the National Assembly would select a powerful prime minister, although Karzai often accuses him of simply seeking to bring the Tajiks to ultimate power in Afghanistan. He visited Washington, DC, one week after Karzai's May 10-14, 2010, visit, criticizing Karzai's governance at think tank appearances. He visited Washington, DC, again in April 2011 and held several meetings with the Obama Administration, while using several think-tank appearances to criticize Karzai's governance. Some of Dr. Abdullah's representatives say he is likely to run for president again in 2014, but others familiar with his thinking say he is undecided.

The Northern Alliance bloc in parliament has gone through several iterations. During 2007-2009, the bloc called itself the United Front (UF), although some accounts refer to it as the "National Front" or "United National Front." It was formed in April 2007 by then *Wolesi Jirga* speaker Yunus Qanooni (former adviser to Masoud and Northern Alliance stalwart; he was Karzai's main challenger in the 2004 presidential election) and former President Rabbani. The United Front included some Pashtuns, such as Soviet-occupation era security figures Sayed Muhammad Gulabzoi and Nur ul-Haq Ulumi, head of the National United Party. Ulumi was not reelected to parliament in 2010.

The United Front bloc underwent changes during 2009-2010 as Abdullah emerged as the main national opposition figure. In late May 2010, Abdullah created a formal, national democratic opposition party called the "Hope and Change Movement" that ran in the September 18, 2010, elections under that name. Abdullah supporters sought to increase their numbers in the new Assembly and hold a commanding position that would enable them to block Karzai initiatives or achieve passage of its own alternative proposals. The 2010 elections results suggest this objective was not achieved—Abdullah supporters number about 60—roughly the same as in the previous Assembly. This is also a bloc slightly smaller to Karzai's core support base. The Hope and Change Movement represented an example of the growing willingness of Afghan leaders to identify with and compete as formal political parties.

### ***Splits in the Northern Alliance: The National Coalition and the National Front***

Despite Dr. Abdullah's prominence, the Northern Alliance coalition has fractured somewhat since 2011. Several Northern Alliance figures did not join Dr. Abdullah's ten-party "*National Coalition of Afghanistan*" in December 2011, instead focusing on a separate coalition formed earlier. The National Coalition advocates a parliamentary system of government, and does not rule out a peace agreement with the Taliban.

In June 2011, several key Northern Alliance leaders, including Dostam and Hazara figure Mohammad Mohaqiq (see below) joined with former Vice President Ahmad Zia Masoud (Ahmad Shah Masoud's brother) to announce a new opposition group—the *National Front of Afghanistan*. The *National Front of Afghanistan* advocates "federalism"—a high degree of autonomy for Afghan provinces, including appointment of provincial governors by elected provincial councils. The National Front grouping also is more skeptical of a peace agreement with the Taliban than is Dr. Abdullah. Even before this new opposition was formed, Ahmad Zia Masoud, as well as ousted intelligence leader Amrollah Saleh, a key Tajik, were increasingly outspoken against a potential settlement with the Taliban.

### ***Truth and Justice Party Forms***

Abdullah and his allies also face a challenge from a party not affiliated with Northern Alliance. On November 4, 2011, a new party called the Truth and Justice Party formed, proclaiming itself a reformist party consisting of leaders of all of Afghanistan's various ethnicities. It represents opposition to both Karzai and Dr. Abdullah. Major figures behind it include Karzai's previous Interior Minister Mohammad Hanif Atmar (a Pashtun), who was dismissed by Karzai in 2010, as well as Uzbek leader Dostam (retaining his membership in the National Front as well) and Afghanistan Independent Human Rights Commission (AIHRC) Chairwoman Sima Simar, an ethnic Hazara. Taliban era Deputy Justice Minister Jalaluddin Shinwari joined the party as well. This party is strongly in favor of reconciliation with the Taliban.

### **The Informal Power Structure: Other Power Brokers, "Warlords," and Local Faction Leaders**

An informal power structure exists outside the formal governing institutions, consisting mainly of locally popular and sometimes well-armed faction leaders. This power structure has begun to re-emerge in anticipation of the departure of most international forces in 2014, as Afghan constituencies look for protection from a potential Taliban comeback. Karzai has worked with this informal power structure even while heading the formal power structure, maintaining that confronting faction leaders outright would cause their followers to rebel. Some faction leaders, both Northern Alliance figures and Pashtun leaders, operate in both spheres—holding official positions while also exercising informal influence their home provinces. In order to stabilize Afghanistan, the United States and its partners have forged working relations with the informal power structure—often causing resentment among civil society activists and other emerging Afghan modernizers. A number of faction leaders own or have investments in Afghan security or other firms that have won business from U.S. and other donors and fuel allegations of nepotism and other corruption.

Some argue that U.S. policy since 2007 has further empowered local faction leaders and even created new factions and militias. Local security initiatives including the Afghan Local Police Program and the Critical Infrastructure Police, have created new security organs that sometimes operate outside the full control of central security authority. On the other hand, Northern Alliance leaders maintain that the international community's early dismantling of local power structures in favor of a monopoly of central government control over armed force—which often targeted Northern Alliance militias for demobilization—caused the security deterioration in 2006-2011.

In February 2007, both houses of parliament passed a law (officially titled the National Reconciliation, General Amnesty, and National Stability Law) giving amnesty to faction leaders and others who committed abuses during Afghanistan's past wars. Karzai sent back to parliament an altered draft to give victims the right to seek justice for any abuses. Even though the revised draft contained that amendment, Karzai did not sign the final version in May 2007, leaving the status unclear. However, in December 2009, the Afghan government published the law in the official gazette (a process known as "gazetting"), giving it the force of law.

The following sections analyze some of the main faction leaders.

### ***Vice President Muhammad Fahim***

Karzai's choice of Northern Alliance figure Muhammad Fahim as his first vice presidential running mate in the August 2009 elections reflected Karzai's reliance on faction leaders as well as his effort to divide the Northern Alliance. Fahim is a Tajik from the Panjshir Valley region who was named military chief of the Northern Alliance/UF faction after Ahmad Shah Masoud's death. However, the Fahim choice as vice president was criticized by human rights and other groups because of Fahim's long identity as a *mujahedin* commander/militia faction leader. During 2002-2007, he reportedly withheld turning over some heavy weapons to U.N. disarmament officials who have been trying to reduce the influence of local strongmen such as Fahim. In September 2012, he said that the *mujahedin*—presumably referring to the Northern Alliance fighters—should reorganize after 2014 if Afghan forces alone prove unable to keep the Taliban at bay.

The Obama Administration officials have not limited their dealings with Fahim as vice president. Similarly, the Bush Administration continued to deal with Fahim when he was defense minister (2001-2004) despite reports that he was involved in facilitating narcotics trafficking in northern Afghanistan, according to a *New York Times* story of August 27, 2009. Other allegations suggest he has engineered property confiscations and other benefits to feed his and his faction's business interests. Fahim's brother, Abdul Hussain Fahim, was a beneficiary of concessionary loans from Kabul Bank, which is discussed below, and he has also partnered with Mahmoud Karzai on coal mining and cement manufacturing ventures.

### ***Abdul Rashid Dostam: Uzbeks Leader in Northern Afghanistan***

Some observers have cited Karzai's handling of prominent Uzbek leader Abdul Rashid Dostam as inconsistent. Dostam, who is discussed above in his political role as a Northern Alliance figure, commands numerous partisans in his redoubt in northern Afghanistan (Jowzjan, Faryab, Balkh, and Sar-I-Pol provinces). There, during the Soviet and Taliban years, he was widely accused of human rights abuses of political opponents. To try to separate him from his armed followers, in 2005 Karzai appointed him to the post of chief of staff of the armed forces. On February 4, 2008, Afghan police surrounded Dostam's villa in Kabul in response to reports that he attacked an ethnic Turkmen rival, but Karzai did not order his arrest for fear of stirring unrest among Dostam's followers. He temporarily resigned his military advisory position and went into exile in Turkey in exchange for the dropping of any case against him.<sup>15</sup>

Dostam returned to Afghanistan on August 16, 2009, and subsequently supported Karzai's re-election, perhaps in part to limit the influence of a strong rival figure in the north, Balkh Province Governor Atta Mohammad Noor, who is discussed below. Balkh Province is inhabited by many Uzbeks. In January 2010, he was restored to his previous, primarily honorary, position as a senior military advisor to Karzai. Dostam was not nominated to a cabinet post in 2010 but two members of his Junbush Melli faction were; however, they were voted down by the National Assembly.

Dostam's failure to secure posts for his allies could account for his decision to again break with Karzai and join the opposition National Front of Afghanistan and Truth and Justice Party, as discussed above. In June 2012, the Karzai government launched a prosecution of Dostam for allegedly insisting the China National Petroleum Co. (CNPC) hire Dostam loyalists to security and other jobs on their oil development project in northern Afghanistan. However, Dostam and

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<sup>15</sup> CRS email conversation with a then-National Security aide to President Karzai, December 2008.

those close to him alleged that the prosecution was a Karzai effort to favor his relatives' firm, Watan Group, which is the partner of CNPC on the project and which is therefore in line to provide security and other services to the development.

Dostam's reputation is further clouded by his actions during the U.S.-backed war against the Taliban. On July 11, 2009, the *New York Times* reported that allegations that Dostam had caused the death of several hundred Taliban prisoners during the major combat phase of OEF (late 2001) were not investigated by the Bush Administration. In responding to assertions that there was no investigation of the *Dasht-e-Laili* massacre because Dostam was a U.S. ally,<sup>16</sup> President Obama said any allegations of violations of laws of war need to be investigated. Dostam responded to Radio Free Europe/Radio Liberty (which carried the story) that only 200 Taliban prisoners died and primarily because of combat and disease, not intentional actions of his forces.

### ***Atta Mohammad Noor: Balkh Province***

Atta Mohammad Noor, another figure generally considered part of the Northern Alliance, has been the governor of Balkh Province, whose capital is the vibrant city of Mazar-e-Sharif, since 2005. He is an ethnic Tajik and former *mujahedin* commander who openly endorsed Dr. Abdullah in the 2009 presidential election. However, Karzai has kept Noor in place because he has kept the province secure, allowing Mazar-e-Sharif to become a major trading hub, and because displacing him could cause ethnic unrest. Mazar-e-Sharif is one of the four cities transitioned to Afghan security leadership in June 2011. It is unique in that 60% of the residents of the city have access to electricity 24 hours per day, a far higher percentage than most other cities in Afghanistan, and higher even than Kabul. His critics say that Noor exemplifies the local potentate, brokering local security and business arrangements that enrich Noor and his allies while ensuring stability and prosperity.<sup>17</sup> Some reports say that he commands two private militias in the province that, in at least two districts (Chimtal and Charbolak), outnumber official Afghan police, and which prompt complaints of abuses (land seizures) by the province's Pashtuns. Some press reports say Atta Mohammad is considering running for president in 2014, although others say his mulling of a candidacy is intended primarily to ensure his continued autonomy after 2014.

### ***Mohammed Mohaqiq: Hazara Stalwart***

Another faction leader is Mohammad Mohaqiq, a Hazara leader. During the war against the Soviet Union and then Taliban, Mohaqiq was a commander of Hazara fighters in and around Bamiyan Province, and a major figure in the Hazara Shiite Islamist party Hezb-e-Wahdat (Unity Party). The party was supported by Iran during those periods.

Currently, Mohaqiq is aligned with Dostam and hardline Tajik figures in the National Front of Afghanistan party. In July 2012, Mohaqiq demanded Karzai fire the head of the Academy of Sciences for publishing a new national almanac that Mohaqiq said overstated the percentage of Pashtuns in Afghanistan at 60%. Karzai fired the Academy head and three others at that institution. Another major Hazara figure, Karim Khalili, tends to work with Karzai and has served as his second vice president through Karzai's two terms as president.

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<sup>16</sup> This is the name of the area where the Taliban prisoners purportedly died and were buried in a mass grave.

<sup>17</sup> Gall, Carlotta, "In Afghanistan's North, Ex-Warlord Offers Security." *New York Times*, May 17, 2010.

### ***Isma'il Khan: Western Afghanistan/Herat***

Another Northern Alliance strongman that Karzai has sought to both engage and weaken is prominent Tajik political leader and former Herat Governor Ismail Khan. Herat is one of the four cities that was transitioned to Afghan security leadership in July 2011 and is generally considered secure and economically vibrant. In 2006, Karzai appointed Khan minister of energy and water, taking him away from his political base in the west. However, Khan remains influential in western Afghanistan, and maintaining ties to Khan helped Karzai win Herat Province in the 2009 election. Still, Khan is said to have several opponents in Herat, and a bombing there on September 26, 2009, narrowly missed his car.

Despite U.S. concerns about Khan, Karzai renominated him in his ministry post on December 19, 2009. The renomination was initially voted down by the National Assembly, but he remained in an acting capacity and was ultimately re-confirmed in March 2012. In October 2010, Karzai appointed him to the High Peace Council that is the main body overseeing the reconciliation process with Taliban leaders. In November 2010, Afghan television broadcast audio files purporting to show Khan insisting that election officials alter the results of the September 2010 parliamentary elections.<sup>18</sup>

U.S. concerns about Khan's continuing role as a faction leader—and a sign of the re-emergence of traditional authority forms—were reinforced in November 2012. Anticipating greater Taliban strength after the international forces draw down at the end of 2014, Khan rallied thousands of his followers in the desert outside Herat, calling on them to reactivate their networks to prepare for possible eventual battle with the Taliban. He reportedly has begun enlisting new recruits for a reviving militia force. Karzai's office criticized the gathering and Khan's efforts as contrary to government policy.<sup>19</sup> Khan may have been trying to reassure the Herat business community, which reportedly has grown nervous about the international pullout in 2014, that the city and its economic prospects will be secure in any scenario. On the other hand, his comments included criticisms of U.S. forces for bringing in "American girls" to Afghanistan and revived memories of Khan's role in the March 1979 killing of 50 Soviet advisors in western Afghanistan. Then a captain in the Afghan military, the attack by military personnel loyal to Khan marked the start of the *mujahedin* uprising that triggered the December 1979 Soviet invasion.

### ***Helmand Province Power Brokers***

Karzai's relationship with a Pashtun strongman, Sher Mohammad Akhundzadeh, demonstrates the dilemmas facing Karzai in governing Afghanistan. Akhundzadeh was a close associate of Karzai when they were in exile in Quetta, Pakistan, during Taliban rule. Karzai appointed him governor of Helmand after the fall of the Taliban, but in 2005, Britain demanded he be removed for his abuses and reputed facilitation of drug trafficking, as a condition of Britain taking security control of Helmand. Karzai acceded to the demand, even though he subsequently asserted that Akhundzadeh was more successful against militants in Helmand using his local militiamen than Britain has been with its more than 9,000 troops there. Akhundzadeh promoted Karzai's re-election in Helmand Province in the 2009 election. Akhundzadeh and other traditional Helmand leaders

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<sup>18</sup> Partlow, Joshua, "Audio Files Raise New Questions About Afghan Elections." *Washington Post*, November 11, 2010.

<sup>19</sup> Graham Bowley. "Afghan Warlord's Call to Arms Rattles Officials." *New York Times*, November 13, 2012.



apparently won their power struggle with Helmand governor Ghulab Mangal, who is from eastern Afghanistan, when Karzai replaced him on September 20, 2012.

An Akhunzadeh ally, Abdul Wali Khan (nicknamed “Koka”), was similarly removed by British pressure in 2006 as police chief of Musa Qala district of Helmand. However, the Afghan government insisted on—and obtained—his reinstatement a few years later and his militia followers subsequently became the core of the police force in the district. Koka is mentioned in a congressional report as accepting payments from security contractors who are working under the U.S. Department of Defense’s (DOD’s) “Host National Trucking” contract that secures U.S. equipment convoys. Koka allegedly agreed to secure the convoys in exchange for the payments.<sup>20</sup>

### ***Karzai Family: Qandahar Province***

Governing Qandahar, a province of about 2 million, of whom about half live in Qandahar city, is a sensitive issue in Kabul because of President Karzai’s active political interest in his home province. Qandahar governance is particularly crucial to ongoing U.S. military-led operations to increase security in surrounding districts, giving the July 12, 2011, assassination of Karzai’s half brother, Ahmad Wali Karzai, crucial significance.

Ahmad Wali was chair of the Qandahar provincial council, a post with relatively limited formal power, but he was always more powerful than any appointed governor of Qandahar. President Karzai frequently rotated the governors of Qandahar to ensure that none of them would impinge on Ahmad Wali’s authority. Perceiving him as the key power broker in the province, many constituents and interest groups requested his interventions on their behalf. Qandahar governance suffered an additional blow on July 27, 2011, when the appointed mayor of Qandahar city, Ghulam Haider Hamidi, was assassinated.

Before Ahmad Wali’s assassination, U.S. officials had been trying to bolster the clout of the appointed Qandahar governor, Tooryalai Wesa by supporting Wesa’s efforts to equitably distribute development funds and build local governing structures.<sup>21</sup> Karzai had appointed Wesa—a Canadian-Afghan academic—in December 2008, perhaps hoping that his ties to Canada would convince Canada to continue its mission in Qandahar beyond 2011.

The international community expected, and hoped, that the death of Ahmad Wali Karzai would further empower Governor Wesa. However, Karzai installed another of his brothers, Shah Wali Karzai, as head of the Popolzai clan after Ahmad Wali’s death. Shah Wali at first lacked the acumen and clout of Ahmad Wali, but reports since mid-2012 say he has become highly influential, while also becoming involved in significant business dealings that continue to cast aspersions on the Karzai family. Prior to appointing him intelligence director in September 2012, Karzai used former Qandahar governor Asadullah Khalid as an informal envoy in the province.

Another power center is Qandahar’s police chief, Colonel Abdul Razziq. He is perceived as having increasing weight, as well as a reputation for corruption, including siphoning off customs

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<sup>20</sup> House of Representatives. Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform. “Warlord, Inc.: Extortion and Corruption Along the U.S. Supply Chain in Afghanistan.” Report of the Majority Staff, June 2010.

<sup>21</sup> Partlow, Joshua, “U.S. Seeks to Bolster Kandahar Governor, Upend Power Balance,” *Washington Post*, April 29, 2010.

revenues at the key Spin Boldak crossing from Pakistan. He was appointed to his current post in March 2011 when his predecessor was killed in an insurgent attack.

### ***Ghul Agha Shirzai: Eastern Afghanistan/Nangarhar***

A key gubernatorial appointment has been Ghul Agha Shirzai as governor of Nangarhar. He is a Pashtun from the powerful Barakzai clan based in Qandahar Province, previously serving as governor of that province, where he reportedly continued to exercise influence in competition with Ahmad Wali Karzai. As noted above, Shirzai had considered running against Karzai in 2009 but then opted not to run as part of a reported “deal” that yielded unspecified political and other benefits for Shirzai. He has said he will run in 2014.

In Nangarhar, Shirzai is generally viewed as an interloper. But, much as has Noor in Balkh, Shirzai has exercised relatively effective leadership, particularly in curbing poppy cultivation there. However, Shirzai is also widely accused of arbitrary action against political or other opponents, and he reportedly does not remit all the customs duties collected at the Khyber Pass/Torkham crossing to the central government. U.S. officials say that he has kept some of the funds, and moves substantial funds around in cash rather than the Afghan banking system. He was briefly questioned in July 2012 in Germany about several suitcases of cash he was carrying, but was allowed to proceed. His supporters say he uses much of the funds—deposited in an account called the “Shirzai Fund”—for the benefit of the province, not trusting that funds remitted to Kabul would be spent in the province. A Kabul effort to stop the illicit fund siphoning is discussed in the section on corruption below. Some U.S. reports say he has intervened in the province’s judicial process to win freedom for Taliban suspects with whom he might have commercial ties. Shirzai denies the allegations.<sup>22</sup> The allegations are said to have soured U.S. officials on his leadership in light of purported security deterioration in the province in 2012.

### **Traditional Decision-Making Processes Of the Informal Power Structure**

The informal power structure has decision-making bodies and processes that do not approximate Western-style democracy but yet have participatory and representative elements. Meetings called *shuras*, or *jirgas* (consultative councils),<sup>23</sup> often composed of designated notables, are key mechanisms for making or endorsing authoritative decisions or dispensing justice. Some of these mechanisms are practiced by Taliban insurgents in areas under their control or influence. On the other hand, some see the traditional patterns as competing with and detracting from the development of the post-Taliban formal power structure—a structure that, with Western guidance, has generally tried to meet international standards of democratic governance.

At the national level, one traditional mechanism has carried over into the post-Taliban governing structure. The convening of a *loya jirga*, an assembly usually consisting of about 1,500 delegates from all over Afghanistan, has been used on several occasions. The Afghan constitution provides for a *constitutional loya jirga* as the highest decision-making body, superseding government decisions and even elections, and the constitution specifies the institutions that must be represented at the *constitutional loya jirga*. If a constitutional jirga cannot be held or is blocked, a traditional jirga can be convened by the president to discuss major issues, although its ability to

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<sup>22</sup> Nathan Hodge. “U.S. Finds Graft by Favored Afghan Leader.” *Wall Street Journal*, November 3, 2012.

<sup>23</sup> *Shura* is the term used by non-Pashtuns to characterize the traditional assembly concept. *Jirga* is the Pashtun term.

render binding decisions on proposals is unclear. In the post-Taliban period, traditional *loya jirgas* have been convened to endorse Karzai's leadership, to adopt a constitution, and to discuss a long-term defense relationship with the United States. A special *loya jirga*, called a *peace jirga*, was held on June 2-4, 2010, to review government plans to offer incentives for insurgent fighters to end their armed struggle and rejoin society. Another *loya jirga* was held during November 16-19, 2011, to endorse proposed Afghan government conditions on a Strategic Partnership Agreement between Afghanistan and the United States.

## **Emerging Power Centers: Civil Society and “Independent” Activists**

The fall of the Taliban and international intervention has enabled an entire new center of influence to emerge—a power center with the potential to sustain modernization and progress after the 2014 transition. Civil society activists and “independents” in the National Assembly and other institutions are a growing force in Afghan politics. Civil society activists populate the Afghan Independent Human Rights Commission, as well as such private activists and watchdog groups as the Afghanistan Women's Network, the Afghan Anti-Corruption Network, Integrity Watch, Equality for Peace and Democracy, “Afghanistan 1400,” and the Afghanistan Analysis and Awareness (“A3”). Activists in these groups are familiar with and have easy access to media outlets. Some own new media outlets: the Mohseni family that owns Moby Media (Tolo Television); the Mohsenis are said to be close to the Karzai administration but have often criticized its performance as well as restrictions on media content. A newspaper called *Hasht-e-Sobh* advocates for transparent government.

However, civil society activists continue to struggle against traditional faction leaders—many of whom are willing to use their armed factions to intimidate opponents—to exert influence over policy. In the 2005-2010 parliament, Malalai Joya (Farah Province), was a leading critic of war-era faction leaders. In May 2007 the lower house voted to suspend her for this criticism for the duration of her term and she did not seek reelection in 2010. Ms. Fawzia Koofi, at one time a deputy lower house speaker and declared presidential candidate for 2014, also remains in the Assembly and an outspoken leader on Afghan women's rights.

Others in this independent camp have included Ms. Fauzia Gailani (Herat Province, not returned to parliament in 2010); Ms. Shukria Barekzai, chairwoman of the lower house Defense Committee during 2011; and Mr. Ramazan Bashardost, a former Karzai minister who champions parliamentary powers and has established a “complaints tent” near the parliament building to highlight and combat official corruption. (He ran for president in the 2009 elections on an anti-corruption platform and drew an unexpectedly large amount of votes.) Bashardost was returned to parliament in the September 2010 election and may run again in 2014.

Some other leading independents are present in the 2011-2015 lower house. They include Rafiq Shahir from Herat, a well-known civil-society activist; Dr. Saleh Seljuki; and Ahmad Behzad (all from Herat). Other independents reelected include Shakiba Hashemi and Khalid Pashtun, both from Qandahar. U.S.-based International Republican Institute (IRI) and National Democratic Institute (NDI) have assisted civil society leaders in and outside the National Assembly.

## **Elections in 2009 and 2010 Harmed Confidence in the Electoral Process and Widened Political Schisms**

Elections are widely considered a key harbinger of the durability and extent of Afghanistan's political development—and a barometer of the degree to which factional, political, ethnic, and sectarian rivalries can be reduced. The 2009 presidential and provincial elections were the first post-Taliban elections run by the Afghan government itself in the form of the Afghanistan Independent Electoral Commission. Both it and the September 2010 National Assembly elections were flawed, as discussed below, and the international community is working with Afghan leaders to correct the flaws for the presidential and provincial elections on April 5, 2014.

### **2009 Presidential Election**

The 2009 election was plagued, from the start, by assertions of a lack of credibility of the Independent Elections Commission. Its commissioners were selected by and politically close to Karzai. As a check and balance to ensure electoral credibility, there was also a U.N.-appointed Elections Complaints Commission (ECC) that reviewed fraud complaints. Under the 2005 election law, three ECC seats were held by foreign nationals, appointed by the head of U.N. Assistance Mission–Afghanistan (UNAMA). The two Afghans on the ECC<sup>24</sup> were appointed by the Supreme Court and Afghanistan Independent Human Rights Commission, respectively.

Disputes first erupted over the election date. On February 3, 2009, Afghanistan's Independent Election Commission (IEC) set August 20, 2009, as the election date (a change from a date mandated by Article 61 of the Constitution as April 21, 2009, in order to allow at least 30 days before Karzai's term expired on May 22, 2009). The IEC decision on date cited Article 33 of the Constitution as mandating universal accessibility to the voting, saying that the April date was precluded by difficulties in registering voters, printing ballots, training staff, advertising the elections, dependence on international donors, and security issues.<sup>25</sup> Karzai opponents insisted that his presidency ended May 22, 2009, and that a caretaker government should run Afghanistan until elections. On March 4, 2009, the IEC reaffirmed the August date and the Afghan Supreme Court backed it on March 28, 2009. The Obama Administration publicly backed these rulings.

Despite the political dispute between Karzai and his opponents, enthusiasm among the public appeared high. Registration, which updated 2005 voter rolls, was conducted during October 2008–March 2009. About 4.5 million new voters registered, and about 17 million total Afghans were registered. However, there were widespread reports of registration fraud (possibly half of all new registrants), with some voters registering on behalf of women who do not, by custom, show up at registration sites, and others selling registration cards.

A total of 32 candidates ran, and 3,200 people competed for 420 provincial council seats nationwide. Although about 80% of the provincial council candidates ran as independents, some of Afghanistan's parties, including *Hezb-i-Islami*, fielded multiple candidates in several provinces. About 200 women competed for the 124 seats reserved for women (29%) on the provincial councils, although in two provinces (Qandahar and Uruzgan) there were fewer women

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<sup>24</sup> ECC website, <http://www.ecc.org.af/en/>.

<sup>25</sup> Statement of the Independent Election Commission Secretariat, February 3, 2009, provided to CRS by a Karzai national security aide.

candidates than reserved seats. In Kabul Province, 524 candidates competed for the 29 seats of the council.

Security was a major issue for all the international actors supporting the Afghan elections process, amid open Taliban threats against Afghans who vote. In the first round, about 7,000 polling centers were to be established but, of those, about 800 were deemed too unsafe and did not open. The European Union, supported by the Organization for Security and Cooperation in Europe (OSCE) sent a few hundred observers, and the International Republican Institute and National Democratic Institute sent observers as well. About 8,000 Afghans assisted the observation missions, according to the U.N. Nations Development Program. The total cost of the Afghan elections in 2009 were about \$300 million. Other international donors contributing funds to close the gap left by the U.S. contribution of about \$175 million.<sup>26</sup>

### *The Political Contest and Campaign*

The presidential competition took shape in May 2009. In the election-related deal-making,<sup>27</sup> Karzai obtained an agreement from Fahim to run as his first vice presidential running mate, thereby splitting the Northern Alliance. The second Vice President Karim Khalili (a Hazara) agreed to run with Karzai again. Karzai convinced several prominent Pashtuns not to run, and anti-Karzai Pashtuns failed to rally around the one major Pashtun critic of Karzai who did run—Ashraf Ghani. The Northern Alliance (operating under the banner of the United Front, see above) had difficulty forging a united challenge to Karzai. Dr. Abdullah registered to run with UF backing. His running mates were Dr. Cheragh Ali Cheragh, a Hazara who did poorly in the 2004 election, and a little known Pashtun, Homayoun Wasefi. The 56-year-old anti-corruption parliamentarian Ramazan Bashardost, an ethnic Hazara, ran a low-budget campaign was appealed to reform-minded Afghans outside his core Hazara base.

Taliban intimidation and voter apathy appear to have suppressed the total turnout to about 5.8 million votes cast, or about a 35% turnout, far lower than expected. Twenty-seven Afghans, mostly security forces personnel, were killed in election-day violence. Some observers said that turnout among women was primarily because there were not sufficient numbers of female poll workers to make women feel comfortable enough to vote. In general, however, poll workers were well trained, and the voting process was orderly.

Clouding the election substantially were the widespread fraud allegations coming from all sides. The ECC, in statements, stated its belief that there was substantial fraud likely committed, mostly by Karzai supporters. The final, uncertified total was released on September 16, 2009, and showed Karzai at 54.6% and Dr. Abdullah at 27.7%. Bashardost and Ghani received single-digit vote counts (9% and 3% respectively).

The constitution required that a second-round runoff, if needed, be held two weeks after the results of the first round are certified. Following the release of the vote count, the complaints evaluation period began which, upon completed, would yield a “certified” vote result. On September 8, 2009, the ECC ordered a recount of 10% of polling stations (accounting for as many as 25% total votes). On October 20, 2009, the ECC determined, based on its investigation, that

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<sup>26</sup> Report by the Special Inspector General for Afghanistan Reconstruction (SIGAR), September 9, 2010.

<sup>27</sup> Some of the information in this section obtained in CRS interviews with a Karzai national security aide, December 2008.

about 1 million Karzai votes, and about 200,000 Abdullah votes, were fraudulent and were deducted from their totals. The final, certified, results therefore left Karzai short of the 50% needed to avoid a runoff. Karzai ultimately acquiesced to a runoff against the next highest vote-getter, Dr. Abdullah, but it was on November 1, 2009, when Dr. Abdullah refused to participate in the runoff on the grounds that problems that plagued the first round were unresolved. On November 2, 2009, the IEC issued a statement saying that, by consensus, the body had determined that Karzai, being the only candidate remaining in a two-person runoff, should be declared the winner. The Obama Administration accepted the outcome as “within Afghanistan’s constitution,” on the grounds that the fraud had been investigated. As noted above, the election for the provincial council members were not certified until December 29, 2009. The council members took office in February 2010.

### **September 18, 2010, Parliamentary Elections**

The split over the conduct of the presidential elections widened in the run-up to the September 18, 2010, parliamentary elections. Mechanisms to prevent fraud were not fully implemented and the results continue to be disputed as of July 2011, largely paralyzing the institutional functioning of the Assembly and its role as a check and balance on the Karzai government. As a result, the political structure of Afghanistan has continued to fragment, even as the government assumes greater responsibility in the context of a transition to Afghan security leadership beginning in July 2011. The July 20, 2010, Kabul conference final communiqué included an Afghan government pledge to initiate, within six months, a strategy for long-term electoral reform.

### ***Election Timing***

On January 2, 2010, the IEC had initially set National Assembly elections for May 22, 2010. The IEC view was that this date was in line with a constitutional requirement for a new election to be held well prior to the expiry of the current Assembly’s term. However, U.S., ECC, UNAMA, and officials of donor countries argued that Afghanistan’s flawed institutions would not be able to hold free and fair elections under this timetable. Among the difficulties noted were that the IEC lacks sufficient staff, given that some were fired after the 2009 election; that the IEC lacked funds to hold the election under that timetable; that the U.S. military buildup will be consumed with securing still restive areas at election time; and that the ECC’s term expired at the end of January 2010. A functioning ECC was needed to evaluate complaints against registered parliamentary candidates because there are provisions in the election law to invalidate the candidacies of those who have previously violated Afghan law or committed human rights abuses.

The international community pressed for a delay of all of these elections until August 2010 or, according to some donors, mid-2011.<sup>28</sup> Bowing to funding and the wide range of other considerations mentioned, on January 24, 2010, the IEC announced that the parliamentary elections would be postponed until September 18, 2010. Other experts said that the security issues, and the lack of faith in Afghanistan’s election institutions, necessitated further postponement.<sup>29</sup>

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<sup>28</sup> Trofimov, Yaroslav, “West Urges Afghanistan to Delay Election,” *Wall Street Journal*, December 11, 2009.

<sup>29</sup> Rondeaux, Candace, “Why Afghanistan’s September Elections Ought to Be Postponed.” *Washington Post*, July 11, 2010.

About \$120 million was budgeted by the IEC for the parliamentary elections, of which at least \$50 million came from donor countries, giving donors leverage over when the election might take place. The remaining \$70 million was funds left over from the 2009 elections. Donors had held back the needed funds, possibly in an effort to pressure the IEC to demonstrate that it is correcting the flaws identified in the various “after-action” reports on the 2009 election. With the compromises and Karzai announcements below, those funds were released as of April 2010.

### *Election Decree/Reform*

Amid the dispute between the Karzai government and international donors over how to ensure a free and fair election, in February 2010 Karzai signed an election decree that would supersede the 2005 election law and govern the 2010 parliamentary election.<sup>30</sup> The Afghan government argued that the decree superseded the constitutional clause that any new election law not be adopted less than one year prior to the election to which that law will apply. Substantively, some of the provisions of the election decree—particularly the proposal to make the ECC an all-Afghan body—alarmed in the international community. On March 14, 2010, after discussions with outgoing UNAMA head Kai Eide, Karzai reportedly agreed to cede to UNAMA two “international seats” on the ECC, rather than to insist that all five ECC members be Afghans. Still, the majority of the ECC seats were Afghans. The National Assembly did not block the decree; the Wolesi Jirga voted against it but the Meshrano Jirga did not act, thus allowing the decree to stand. Karzai upheld his pledge to implement the March 2010 compromise with UNAMA to allow UNAMA to appoint two ECC members and to implement a requirement that at least one non-Afghan ECC member concur in decisions.

Among other steps to correct the mistakes of the 2009 election, the Afghan Interior Ministry planned instituted a national identity card system to curb voter registration fraud. However, observers say that registration fraud still occurred. On April 17, 2010, Karzai appointed a new IEC head, Fazel Ahmed Manawi, a Tajik, who drew praise from many factions (including “opposition leader” Dr. Abdullah, who is half Tajik and identifies with that ethnicity) for impartiality. The IEC also barred 6,000 poll workers who served in the 2009 election from working the 2010 election.

### *Preparations and the Vote*

Preparations for the September 18 election proceeded without major disruption, according to the IEC. Candidates registered during April 20-May 6, 2010. A list of candidates was circulated on May 13, 2010, including 2,477 candidates for the 249 seats.<sup>31</sup> A final list of candidates, after all appeals and decisions on the various disqualifications, was issued June 22; it included 2,577 candidates, of which 406 were women. Sixty-two candidates were invalidated by the ECC, mostly because they did not resign their government positions, as required.

Voter registration was conducted June 12-August 12. According to the IEC, over 375,000 new voters were registered, and the number of eligible voters was about 11.3 million. Campaigning

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<sup>30</sup> Partlow, Joshua, “Afghanistan’s Government Seeks More Control Over Elections,” *Washington Post*, February 15, 2010.

<sup>31</sup> The seat allocation per province is the same as it was in the 2005 parliamentary election—33 seats up for election in Kabul; 17 in Herat province; 14 in Nangarhar, 11 each in Qandahar, Balkh, and Ghazni; 9 in Badakhshan, Konduz, and Faryab, 8 in Helmand, and 2 to 6 in the remaining provinces. Ten are reserved for Kuchis (nomads).

began June 23. Many candidates, particularly those who are women, said that security difficulties have prevented them from conducting active campaigning, and three candidates were killed by insurgent violence.

On August 24, 2010, the IEC announced that the Afghan security forces say they would only be able to secure 5,897 of the planned 6,835 polling centers. Therefore it was decided that the 938 stations not securable would not open, in order to prevent so-called “ghost polling stations”—stations open but where no voters can go. After further security evaluation, on election day, 5,355 centers were opened. About 5.6 million votes were cast out of about 17 million eligible voters. Turnout was therefore about 33%. A major issue suppressing turnout was security. At first, it appeared as though election-day violence was lower than in the 2009 presidential election. However, on September 24, NATO/ISAF announced that there were about 380 total attacks, about 100 more than in 2009. The attacks did not derail the election.

### *Parliamentary Election Outcome*

Preliminary results were announced on October 20, 2010, and final, IEC-certified results were to be announced by October 30, 2010, but were delayed until November 24, 2010, due to investigation of fraud complaints. While the information below illustrates that there was substantial fraud, the IEC and ECC have been widely praised by the international community for their handling of the fraud allegations.

Of the 5.6 million votes cast, the ECC invalidated 1.3 million (about 25%) after investigations of fraud complaints. The ECC prioritized complaints filed as follows: 2,142 as possibly affecting the election, 1,056 as unable to affect the result, and 600 where there will be no investigation. Causes for invalidation most often included ballot boxes in which all votes were for one candidate.

The results, as certified by the IEC, resulted in substantial controversy within Afghanistan and led to a political crisis. The certified results were as follows.

- About 60% of the lower house (148 out of 249) winners were new members.
- As noted above, Karzai’s number of core supporters was reduced from about 90 to 60-70. This was in part because the number of Pashtuns elected was 94, down from 120 in the outgoing lower house. Several pro-Karzai candidates lost in Qandahar Province, and because many Pashtuns did not vote due to security reasons, in mixed Ghazni Province. The low Pashtun turnout in Ghazni caused Hazara candidates to win all 11 seats from the province, instead of 6 Pashtuns and 5 Hazaras in the outgoing lower house; this was a big factor in the reduction of the number of Pashtuns who won election. Several prominent pro-Karzai deputies were defeated.
- Some local militia commanders won election, including Amanullah Guzar (Kabul) who may have been behind May 2006 rioting in Kabul against NGO offices; and Haji Abdul Zahir (Nangarhar), a member of the well-known “Eastern Shura” once headed by the assassinated Hajji Abdul Qadir. Two ex-Taliban figures, Mullah Salam Rocketi, and Musa Wardak, were defeated.
- A date of the inauguration of the new parliament was set for January 20, 2011, at which time, under Afghan law, President Karzai would formally open the session.



### ***Special Tribunal, Related Political Crisis, and Resolution***

The certified results triggered a major political crisis, caused primarily by Pashtuns who felt they lost the election due to fraud. The issue brought the operations of the National Assembly to a virtual halt, with Karzai ruling by decree, with seven cabinet posts and a few Supreme Court seats remaining unfilled by permanent appointees. Karzai took steps to address Pashtun grievances, but with his own interest in increasing the number of Pashtuns elected. In December 2010, the office of the Attorney General urged election results to be voided and the Afghan Supreme Court to order a recount. There were weekly demonstrations against the fraud by about 300 candidates who felt deprived of victory.

On December 28, 2010, at the instruction of the Supreme Court, Karzai issued a decree empowering a five-member tribunal to review fraud complaints. Many Afghans, including an independent watchdog group, “Free and Fair Election Foundation,” maintained that the tribunal had no legal authority under the constitution to review the election. The IEC and ECC, backed by UNAMA and the international community, insisted that the certified results stand, asserting they are the only bodies under Afghan electoral law that have legitimate jurisdiction over election results. Still, on January 19, 2011, the day before the parliament was to convene, the tribunal leader, Judge Sediqullah Haqiq, announced it would need another month to evaluate the fraud allegations. On that basis, Karzai postponed the inauguration of the new parliament by a month.

Defying Karzai and the special tribunal, about 213 of the certified winners met at the Intercontinental Hotel in Kabul on January 20, 2011, and reportedly decided to take their seats on Sunday, January 23, 2011, without Karzai’s formal inauguration. Elected deputies at the meeting said they would try to convene at the parliament building but would meet elsewhere, if blocked. They elected an interim speaker, Hajji Mohammad Sarwar Osmani, from Farah Province. This would have rendered unclear the legal status of a self-convened parliament.

During January 20-25, 2011, with the lower house threatening to convene on its own, a compromise was found. Karzai agreed to inaugurate the lower house on January 26, 2011; that event took place. However, the ongoing fraud investigation by the special tribunal remained active, despite insistence by declared winners to terminate it. As noted, after its inauguration, the lower house elected a compromise candidate, Abdul Raouf Ibrahim, from the Uzbek community, as speaker. This fell short of Karzai’s goal of engineering selection of Sayyaf but accomplished his aim of denying Qanooni reselection to that post. The upper house was completed as of February 19, 2011, when Karzai made his 34 appointments.

The crisis became acute on June 23, 2011, when the special tribunal ruled that 62 defeated candidates be reinstated. The National Assembly—containing the 62 people who would lose their seats if the tribunal’s order were followed—subsequently passed a no-confidence vote against Attorney General Aloko. On August 10, 2011, Karzai tried to defuse the crisis with a decree declaring that special court does not have jurisdiction to change election results, and that such changes are the role of the IEC. Subsequently, on August 21, 2011, the IEC implemented elements of a compromise urged by UNAMA by ruling that nine winners had won their seats through fraud and must be removed—fewer than the 17 that UNAMA had urged. The newly declared winners were sworn in on September 4, 2011, and the nine whose victories were overturned were barred from entering the parliament building. However, in protest of the decision, the Assembly was unable to obtain a quorum to act on legislation or government nominees, including Supreme Court vacancies. The boycotting parliamentarians ended their protest on October 8, 2011, paving the way for the National Assembly to resume full function.

The exposure of widespread fraud in the 2009 and 2010 elections increased strains between Karzai and the National Assembly. In the confirmation process of his post-2009 election cabinet, National Assembly members objected to many of his nominees as having minimal qualifications or as loyal to faction leaders. Karzai's original list of 24 ministerial nominees (presented December 19) was generally praised by the United States, but only 7 were confirmed. Only 7 of the 17 replacement nominees were confirmed (January 16, 2010), but another five were confirmed on June 28, 2010. The differences over cabinet selections continued after the resolution in 2011 of the Assembly elections, although perhaps with less intensity. On March 12, 2012, the National Assembly confirmed most of those ministers who were serving in an acting capacity—including the controversial Ismail Khan—as well as some new nominees.

### **April 5, 2014 Presidential and Provincial Elections: Credibility Still in Doubt<sup>32</sup>**

U.S. officials and many Afghans remain concerned that the fraud uncovered in the 2009 and 2010 elections could recur in the 2014 presidential elections, which will occur as international forces are completing their drawdown from Afghanistan. Another fraud-filled election could cloud Afghanistan's ability to govern beyond the 2014 transition. The international community seems to be downplaying expectations, avoiding holding it to a standard of "free and fair." During an April 9, 2013, phone call, Karzai reaffirmed to President Obama his support for a fair and inclusive election, according to a White House statement. Deputy Secretary of State William Burns said in Kabul on May 11, 2014 that the election should be "transparent, credible, and inclusive." USAID plans to spend about \$200 million to support the 2014 election process in Afghanistan, including \$95 million to support Afghan institutions directly and promote voter education and election observer groups; \$80 million in the form of a donation to U.N. Development Program election support efforts (see below); and about \$15 million to support civil society groups.

### ***Timing of the Elections***

Under the constitution, the next presidential elections are to be held 30 to 60 days before the May 22, 2014, expiration of Karzai's second term, which would place the required election day between March 22 and April 22, 2014. On October 31, 2012, the IEC met a key requirement by publishing a timeline for the 2014 elections, including setting the election date as April 5, 2014. However, Dr. Abdullah and others argue that the date should be postponed to allow for the northern part of the country (where support for non-Pashtun candidates is strong) to thaw after the winter, in order that snow and ice would not impede voter access.

Provincial elections were due in 2013, because the last provincial elections were concurrent with the 2009 presidential election, and provincial councils serve a four year term. However, Afghan officials say the provincial elections could not be held until 2014 because of the logistical difficulties involved in holding a separate election in 2013. The provincial elections will be held concurrent with the presidential elections on April 5, 2014. The next parliamentary elections, due in 2014—four years after the 2010 parliamentary election are expected to be held in 2015.

Some Karzai critics still claim he plans to engineer a *loya jirga*—invoking national security grounds to call such an assembly—that would keep him in office after 2014. To allay the

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<sup>32</sup> For additional information on the upcoming elections and their implications, see International Crisis Group. Afghanistan: The Long, Hard Road to the 2014 Transition. October 8, 2012.

skepticism, Karzai has repeatedly re-affirmed, again on May 22, 2013, that he will leave office and in the timeframe prescribed by the constitution.

### ***Potential Candidate Field***

There is no clear frontrunner to succeed Karzai, although a number of candidates receive attention from observers. Some observers say that, in the interests of unity approaching the 2014 security transition, some senior figures are trying to unify around a single successor who might be elected by consensus among the Pashtuns and the Northern Alliance figures. However, it is not clear that this idea will be implemented because of the differing views and ambitions of the potential major competitors. Candidates are required to register to run by September 14, 2013. Virtually all of the figures discussed in this section are also discussed above.

If the election is heavily contested, there are several potential Pashtun contenders, all of whom are said to be competing for Karzai's endorsement and are hesitant to express interest in running while Karzai is still in office. Some observers say that Karzai privately favors his former or current chief of staff—Mohammad Umar Daudzai. Karzai reportedly does not want any of his brothers to run, but Qayyum is said to be pondering a candidacy. The other major Pashtuns who might run (either as head of a consensus ticket or against a strong opponent) include: Ashraf Ghani, former Interior Minister Ali Jalali, Education Minister Faruq Wardak, former Interior Minister Hanif Atmar, and deputy lower house speaker Mirwais Yassini. Some read Karzai's reshuffling on September 20, 2012, of 10 of the 34 provincial governorships as an effort to place loyalists in position to support his favored candidate in the 2014 election.

There are several likely Northern Alliance figures who might run, either as First Vice President in a consensus ticket or as presidential candidates challenging Pashtun figures. Those most prominently mentioned include Dr. Abdullah, Ahmad Zia Masoud, former intelligence chief Amrollah Saleh, and Atta Mohammad Noor. However, if there is a hotly contested election (no consensus ticket), a run by two or more of these Tajiks might split their vote, and it is likely these figures will try to unite behind one Tajik representative. Dr. Abdullah is said by observers to be undecided on another run out of concerns over family issues as well as election fraud. Should he or the other Tajiks run, the leading Pashtun candidate still has a strong advantage if the vote comes down to a two-person runoff.

Parliamentarian Fawzia Koofi, also a Tajik, has stated in editorials since late 2011 that she will run, although her gender alone would lead most observers to conclude she is not favored to win. Karzai has said that any Taliban figure who commits to the Afghan constitution would be welcome to run for president (and one former Taliban commander ran in 2009). Some low-ranking Taliban figures might run candidates in the concurrent provincial elections.

### ***Election Process Concerns***

The July 8, 2012, "Tokyo Mutual Accountability Framework," discussed above, stipulated that Afghanistan conduct "credible, inclusive and transparent Presidential and Parliamentary elections in 2014 and 2015," including to "develop, by early 2013, a comprehensive election timeline

through 2015 for electoral preparations and polling dates.”<sup>33</sup> That benchmark was met on October 31, 2012, as discussed above. Among the other key benchmarks and their status are:

- **Election Preparations.** Karzai’s July 26, 2012, administrative reform decree directed the IEC to prepare a plan for registering candidates who will compete in the 2014 presidential and provincial elections. As noted above, the IEC has set an election date. It also has issued a list of polling centers that are to be opened for voting.
- **IEC Chairman and Reform.** IEC chairman Fazl Ahmad Manawi’s term expires at the end of April 2013. There is a broad expectation that Karzai will reappoint him, but differences between Karzai and the lower house of the National Assembly over the election law for the 2014 elections is reportedly holding up the IEC chairmanship appointment. On December 19, 2011, Karzai swore in five new IEC commissioners he appointed, a move that renewed criticism of mechanisms and laws that allow the president to appoint election officials. That same month the IEC signed a two-year assistance program by UNDP called ELECT II (Legal and Electoral Capacity for Tomorrow).
- **Election Laws and Complaint Process.** New election laws for the 2014 elections—a law to govern the election and another one to structure the Electoral Complaints Commission (ECC)—must be adopted within the first quarter of 2013, but that deadline was not met.<sup>34</sup> Karzai insists that the ECC be replaced as complaint arbiter by an Afghan Supreme Court-run election tribunal. In mid-April 2013, the National Assembly passed a draft election law that included lower house provisions that would deprive the President of sole discretion over IEC appointments and provide for two ECC officials to be non-nationals (as was the case for the 2010 parliamentary election). Karzai subsequently returned the draft unsigned – essentially vetoing the legislation. On May 22, 2013, the lower house passed another election law, but with the same ECC provision. Karzai’s office said he would evaluate the legislation if it passes the upper house of the National Assembly. No date for the upper house vote is scheduled. The international donor community strongly favors continuing to have some international representation on the ECC. Other debate continues on allocating reserved seats for women, whether to set individual district representation for each lower house seat (favored by Karzai), dispute-resolution mechanisms, and other issues.<sup>35</sup>
- **Efforts to Prevent Fraud.** The government decided in November 2012 to issue 14 million biometric ID cards (“e-taskera”) by March 2014 to reduce voter fraud. However, this system is difficult and expensive (\$115 million) to implement in time for the 2014 vote, and it is likely that this mechanism might apply to subsequent elections. In January 2013, the IEC decided to use past voter registration process, characterized by the issuance of voter registration cards. Voter registration is to begin on May 26, 2013. The IEC’s formal operational plan to prevent election fraud is due out in June 2013.

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<sup>33</sup> <http://www.embassyofafghanistan.org/article/the-tokyo-declaration-partnership-for-self-reliance-in-afghanistan-from-transition-to-transf>

<sup>34</sup> USAID and State Department briefing for congressional staff. March 11, 2013.

<sup>35</sup> U.N. Report of the Secretary-General, December 6, 2012. U.N. document no. A/67/619-S/2012/907

Some express optimism for a credible election by noting that several of the parties discussed above, such as the National Front, the National Coalition, the Truth and Justice Party, and Hizb-e-Islam have been meeting—as part of a “Cooperation Council of Political Parties and Coalitions of Afghanistan” (CCPPCA) to ensure that there is a free and fair election. In mid-October 2012, the “Free and Fair Election Foundation of Afghanistan” domestic observation body held a meeting at which 50 political parties endorsed detailed demands for election reform. The strength of these grouping could, in the view of many, fulfill some of the oversight and accountability roles that were lacking in 2009 and 2010.

## **Afghan Governing Capacity and Performance<sup>36</sup>**

There are risks that Afghanistan will revert to a terrorist haven unless effective governance is established before the transition to Afghan leadership is completed by 2014. U.S. and U.N. reports assess that there has been progress in the capacity of Afghan institutions to provide services, but that significant deficiencies remain. Many of the shortcomings in governance are attributed to all of the political disputes, alleged corruption, nepotism and favoritism, and the lack of trained or skilled workers discussed below—as well as the widespread security issues that continue to plague Afghanistan.

In major policy addresses, President Obama has consistently stressed that more needed to be done to promote the legitimacy and effectiveness of the Afghan government at both the Kabul and local levels. The U.S.-Afghanistan Strategic Partnership Agreement, signed in Afghanistan on May 1, 2012, commits the United States (beyond 2014) to “support the Afghan government in strengthening the capacity, self-reliance, and effectiveness of Afghan institutions and their ability to deliver basic services.”

Earlier, the Obama Administration developed about 45 different metrics to assess progress in building Afghan governance and security, as it was required to do (by September 23, 2009) under P.L. 111-32, an FY2009 supplemental appropriation.<sup>37</sup> UNAMA, headed in Kabul by Jan Kubis, also evaluates Afghan governance according to numerous metrics. Afghan progress according to these metrics is presented in reports of the Secretary-General to the U.N. General Assembly, such as a report released March 5, 2013, (U.N. document number: A/67/778-S/2012/133).

The Tokyo Framework of Mutual Accountability, cited above, makes aid incentives for Afghanistan (portions of \$16 billion pledged through 2015) conditional on several governance measures including<sup>38</sup>

- The holding of credible, inclusive, and transparent elections in 2014 and 2015.
- Improved access to justice, and respect for human rights, particularly for women and children.

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<sup>36</sup> Some information in this section is from the State Department report on human rights in Afghanistan for 2011, May 24, 2012.

<sup>37</sup> “Evaluating Progress in Afghanistan-Pakistan” Foreign Policy website, [http://www.foreignpolicy.com/articles/2009/09/16/evaluating\\_progress\\_in\\_afghanistan\\_pakistan](http://www.foreignpolicy.com/articles/2009/09/16/evaluating_progress_in_afghanistan_pakistan).

<sup>38</sup> <http://www.embassyofafghanistan.org/article/the-tokyo-declaration-partnership-for-self-reliance-in-afghanistan-from-transition-to-transf>

- Improved integrity of public financial management and the commercial banking sector.
- Improved revenue systems and budget execution.

In part to demonstrate that Afghanistan would uphold those commitments, the Karzai administrative reform decree issued July 26, 2012, requires virtually every ministry and government body to develop a work plan, complete unfinished tasks, file specified reports, or carry out specified reforms.<sup>39</sup>

## **Expanding Central Government Capacity**

The international community has had mixed success in helping Afghanistan build transparent and effective state institutions. Since 2001, Afghan ministries have greatly increasing their staffs, their presence in Afghan provinces, and their technological capabilities; most ministry offices in Kabul, and many in the provinces, have modern computers and communications. Afghan-led governmental reform and institution-building programs under way, all with U.S. and other donor assistance, include training additional civil servants, instituting merit-based performance criteria, basing hiring on qualifications rather than kinship and ethnicity, and weeding out widespread governmental corruption.

However, the government still faces a relatively small recruitment pool of workers with sufficient skills and many are reluctant to serve in the provincial offices of the central government ministries, particularly in provinces where there is still substantial violence. U.S. mentors and advisers serve in virtually all the Afghan ministries. Afghanistan has also tried to address the problem of international donors luring away Afghan talent with higher salaries, by pledging at the July 20, 2010, Kabul conference to reach an understanding with donors, within six months, on a harmonized salary scale for donor-funded salaries of Afghan government personnel. Discussions have been held between the Afghan government and donors on this issue.

## **The Afghan Civil Service/Merit-Based Recruitment**

The low level of Afghan bureaucratic capacity is being addressed in a number of ways, but slowly. There are about 500,000 Afghan government employees, although the majority of them are in the security forces. A large proportion of the remainder work as teachers. On several occasions, the United States has funded jobs fairs that have recruited some new civil servants.

To increase the proficiency of government, during late 2010-early 2011, the government instituted merit-based appointments for senior positions, such as deputy provincial governors and district governors, and converted those positions to civil servants rather than political appointees. After a halting start, this process has been accelerating: merit-based recruitment was responsible for selecting about half of the 34 provincial governors; 32 out of the 34 deputy provincial governors, and 189 out of the 364 district governors, according to the March 5, 2013, U.N. report mentioned earlier (p.10). Sixty district governors and 17 deputy provincial governors were appointed in January 2013 alone, based on merit. This increase in merit-based recruitment implements the July 26, 2012, Karzai administrative reform decree directing the Independent Directorate of Local

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<sup>39</sup> Text of the decree “On the Execution of Content of the Historical Speech of June 21, 2012, in the Special Session of the National Assembly. Provided to CRS by the Embassy of Afghanistan in Washington, DC, July 16, 2012.

Governance, discussed below, to open all deputy provincial governorships to competition within two months.

The key institution that is deciding on merit-based appointments and standardizing job descriptions, salaries, bonuses, and benefits is the Afghan Independent Administrative Reform and Civil Service Commission (IARCSC). The commission has thus far redefined more than 80,000 civil servant job descriptions. The Afghan cabinet drafted a revised civil service law to institute merit-based hiring and give the IARCSC a legal underpinning; it was ratified by the National Assembly in late 2011 and replaced a less-specific September 2005 civil service law.

Under a USAID program called the Civilian Technical Assistance Plan, the United States is providing technical assistance to Afghan ministries and to the IARCSC. From January 2010 until January 2011, USAID, under a February 2010 memorandum of understanding, gave \$85 million to programs run by the commission to support the training and development of Afghan civil servants. One of the commission's subordinate organizations is the Afghan Civil Service Institute, which trained over 16,000 bureaucrats during 2010-2011, and which has instituted an internship program for 1,000 interns in national civil service jobs and 2,000 interns in provincial and district offices. On-going training for civil servants is provided by an arm of the Civil Service Institute called the National Training Directorate (NTD).

According to the March 5, 2013, U.N report referenced above, the international community is running a \$350 million five-year program ("Capacity-Building for Results Program") to enhance the Afghan government's ability to deliver services to its population through key ministries.

As one specific example, USAID programs are helping employees of the state-owned Afghan power company (DABS) to manage Afghanistan's power grid and bill its customers. USAID programs have also trained 250 Ministry of Mines personnel in geology to try to help develop Afghanistan's extractive industries sector.

Many Afghan civil service personnel undergo training in India, building on growing relations between Afghanistan and India. Japan and Singapore also are training Afghan civil servants on good governance, anti-corruption, and civil aviation. Singapore and Germany, in 2011, jointly provided technical assistance in the field of civil aviation. Some of these programs were conducted in partnership with the German Federal Foreign Office and the Asia Foundation.

## **The Afghan Budget Process**

The international efforts to build up the central government are reflected in the Afghan budget process. The Afghan government controls its own funds as well as those of directly supplied donor funds. The Afghan budget year has followed the solar year, which begins on March 21 of each year, which also corresponds to the Persian New Year (*Nowruz*). However, as of the 2013 budget, Afghan budgets will run from December 21—December 20 of each year. The 2013 budget was approved by the National Assembly on January 20, 2013.

The Afghan budget is a "unitary" (centralized) system. Once a budget is adopted by the full National Assembly (first the upper house and then the lower house, and then signed by Karzai), the funds are allocated to central government ministries and other central government entities. Some of the elected provincial councils, appointed provincial governors, and district governors formulate local budget requirements and help shape the national budget process, but no locality controls its own budget. These local organs do approve the disbursement of funds by the central

entities (called *mustofiats*, accounting offices in each of Afghanistan's 34 provinces). The Tokyo Mutual Accountability Framework, cited above, includes as one of its benchmarks the formalization of a provincial budgeting process with more systematic provincial input into the relevant ministries that formulate the national budget.

All revenue is collected by central government entities which implement the local programs but, according to experts, contributes to the widespread observation that local officials sometimes seek to retain or divert locally collected revenues. That diversion has reportedly increased in 2013 as governors of border provinces grow nervous about an economic downturn after 2014; the diversion has contributed to a 20% government revenue shortfall (compared to government projections) in 2013. There are several pilot programs in place, including the Provincial Budget Pilot Program (PBPP) to improve budgetary planning integration between the national and provincial levels. To date, four ministries and the IDLG say they have made sound progress on this program and several other ministries are being included in the program in 2013. However, the Defense Department report on Afghan stability released December 2012 (covering April–September 2012) said this Kabul-local budget coordination process had difficulty in mid-late 2012 due to funding difficulties (p. 107).

Many international development experts concur with the Afghan government that only through direct funding will the Afghan government be able to develop the capacity and eventually the transparency to govern and deliver services effectively. Although still wary of misuse, the United States has been accommodating that view; more than 47% of U.S. aid was channeled through the Afghan government during FY2012—close to the target of 50% that was endorsed at the July 20, 2010, Kabul conference. The percentages are up from 21% in FY2009. The Tokyo Framework, cited earlier, provides incentives for Afghanistan by continuing to raise the percentage of donor funds channeled through the Afghanistan Reconstruction Trust Fund (ARTF) as Afghan governance improves. That fund gives money directly to Afghan ministries and thus gives the Afghan government substantial discretion as compared to other donated funds. Increased percentages have been predicated on U.S. assessments of the ability of individual ministries to accurately and transparently administer donated funds; in 2012 fourteen Afghan ministries received USAID and State Department funds directly.

## **Expanding Local (Subnational) Governance**

Since 2007, U.S. and allied policy has increasingly emphasized building local or “subnational” governance. During 2009–2012, the Administration sent about 500 additional U.S. civilian personnel from the State Department, USAID, the Department of Agriculture, and several other agencies to advise Afghan ministries, and provincial and district administrations. That effort raised the number of U.S. civilians in Afghanistan to about 1,330 by August 2011, of which nearly 400 were serving outside Kabul (up from 67 in early 2009). However, the Obama Administration plans to reduce civilian personnel in Afghanistan by about 20% when the transition to Afghan lead is completed in 2014.<sup>40</sup>

U.S. and partner country officials, as well as observers, say that Afghan local governance, is improving and expanding, particularly in areas secured by the 2010 U.S. “troop surge.” U.S. officials say that Afghans are increasingly forming local councils and building ties to appointed

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<sup>40</sup> Karen DeYoung. “Plans For Big Civilian Force in Postwar Afghanistan to Be Cut.” *Washington Post*, December 6, 2012.



local leaders in these cleared and secured areas. However, forming these linkages has been slowed by centralized decision making processes; localities have their own governing bodies but the central government ministries in the provincial capitals of each province actually implement national programs. Local officials often disagree with the Kabul ministry representatives on priorities and implementation.

Karzai has long complained that donor-run Provincial Reconstruction Teams (PRTs) have prevented the Afghan government from expanding its own responsibilities and capacity at the local level. There are PRTs in about 80% of Afghan provinces, and they have far more funding and capability than the Afghan governor in those provinces. The Tokyo Framework largely endorses Karzai's complaints by calling for the PRTs to be transferred to Afghan control. Karzai administrative decree of July 26, 2012, provides for Afghan institutions to begin taking over the roles of the PRTs, and, since mid-2012, the United States and partner countries have been closing down PRTs and handing them over to Afghan control.

Some further enhancements to local governance await Afghan parliamentary action. According to the March 5, 2013, U.N. report mentioned above (p.22), several laws that would improve local governance by clarifying the responsibilities and powers of the various levels of governance are at various stages of consideration, but none has reached the National Assembly to date. These include a local government law, a municipalities law, and a provincial councils law.

### **The Independent Directorate for Local Governance (IDLG)**

In terms of local governance institution-building, a key institution was empowered in August 2007 when Karzai placed the selection process for local leaders (provincial governors and below) in a new Independent Directorate for Local Governance (IDLG)—and out of the Interior Ministry. The IDLG was headed until early 2011 by Jelani Popal, a member of Karzai's Popolzai tribe and a close Karzai ally. Some international officials say that Popal packed local agencies with Karzai supporters, where they were able to arrange votes for Karzai in the August 2009 presidential elections. He was replaced by Abdul Khaliq Farahi, a former diplomat who was kidnapped in Peshawar, Pakistan, and held for nearly three years (2008-2011) allegedly by militants linked to Al Qaeda.

The IDLG is an implementing partner for the District Delivery Program (DDP), which now operates in at least 32 of the 364 districts of Afghanistan. The program was created to improve government presence and service delivery at the district level, and has been funded by the United States, Britain, Denmark, and France. U.S. funding for the program was suspended in July 2011 pending accountability of expenditures and a request for the IDLG and Ministry of Finance to satisfy several conditions, and has not reactivated to date.<sup>41</sup> The IDLG also gets from the U.N. Development Program (UNDP)'s Afghanistan Subnational Governance Program II (ASGP-II). That program provided \$83.6 million to the IDLG from the European Community, Italy, Switzerland, and Britain. Its main achievement has been to fund assistance for the IDLG.

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<sup>41</sup> DOD report on Afghanistan stability, April 2012, p.73.

## **Provincial Governors and Provincial Councils**

One issue that has plagued local governance has been the difficulty in recruiting staff. The July 26, 2012, Karzai administrative reform decree required the IDLG to fill open positions in the provinces within six months, including in the ministry offices in each provincial capital. It also requires a review of the performance of provincial governors' performance in combating corruption and improving governance.

Many believe that, even more than institutional expansion, the key to effective provincial governance is the appointment of competent and incorruptible governors in all 34 Afghan provinces. U.N., U.S., and other international studies and reports all point to the beneficial effects (reduction in narcotics trafficking, economic growth, lower violence) of some of the strong Afghan civilian appointments at the provincial level. A key example of a successful gubernatorial appointment was the March 2008 appointment of Gulab Mangal as Helmand governor. He is from Laghman Province (eastern Afghanistan) and drew immediate skepticism from the local tribes and power-brokers of the south who repeatedly have urged Karzai to replace him. But, he drew praise from the United States and the international community for taking effective action to convince farmers to grow crops other than poppy. His leadership accounted for the reduction of cultivation in Helmand that has been noted since 2009. Other governors, such as Ghul Agha Shirzai and Atta Mohammad Noor (discussed above) are considered effective, but have been criticized for exercising excessive independence of central authority.

Despite the progress on merit-based appointments and the widely noted importance of having competent provincial governors, about half of the provincial governors continue to be political appointees selected mostly for loyalty to Karzai. On September 20, 2012, Karzai shuffled 10 out of the 34 provincial governors, asserting that those taken out of their positions had fallen short on improving governance or combating corruption. However, many observers suspected the reshuffle was intended to place Karzai loyalists in key local positions ahead of the 2014 election period. Mangal was one of those removed, causing consternation among some of the international donors who raved about his performance. He was replaced by the little-known Gen. Mohammad Naeem. Some of the ousted governors were assigned to different provinces. Other than Helmand, the nine provinces where governors were changed include Wardak, Kabul, Takhar, Faryab, Baghlan, Nimruz, Laghman, Lowgar, and Badghis.

### ***Provincial Councils***

One problem noted by governance experts is that the role of the elected provincial councils is unclear. The elections for the provincial councils in all 34 provinces were held on August 20, 2009, concurrent with the presidential elections. The next provincial elections will likely be held concurrent with the presidential election in 2014; the first provincial council elections were held concurrent with the parliamentary elections in September 2005. In most provinces, the provincial councils do not act as true local legislatures and are considered weak compared to the power and influence of the provincial governors.

Perhaps the most significant role the provincial councils play is in choosing the upper house of the National Assembly (*Meshrano Jirga*). In the absence of district councils (no elections held or scheduled), the provincial councils elected in 2009 have chosen two-thirds (68 seats) of the 102-seat body. Karzai appointed the remaining 34 seats in February 2011.

## **District-Level Governance**

U.S. officials say there has been “measured progress” in developing effective district governance. District governors are appointed by the president, at the recommendation of the IDLG, and more than half of all district governors in place have been appointed based on merit, as noted above. Some districts had no formal governance at all until the 2009 U.S. troop surge. Some of the district governors in Helmand Province, including in Nawa and Now Zad districts, returned after the U.S.-led expulsion of Taliban militants.

The difficulty plaguing the expansion of district governance, in addition to security issues, is lack of resources. Many district governors have virtually no staff or vehicles. In about 40 districts, the United States and partner countries have established District Support Teams (DSTs) to assist in district-level governance and service delivery. However, like the PRTs, the DSTs are to be turned over to Afghan control as the transition to complete Afghan control proceeds.

### *District Councils*

Another problem in establishing district level governance has been the fact that no elections for district councils have been held due to boundary and logistical difficulties. In his November 19, 2009, inaugural speech, Karzai said the goal of the government is to hold these elections along with the 2010 parliamentary elections. However, that was not accomplished and no date for these elections has been set. As a result, there is no one authoritative district-level representative body, but rather a collection of groupings established by donor programs. According to the April 2012 DOD report on Afghan stability, the Afghan government has agreed in principle to a roadmap leading to a single district level body, a roadmap to be endorsed by September 2012, although not necessarily implying district elections could be held by then.

## **Municipal and Village Level Authority**

As are district governors, mayors of large municipalities are appointed. There are about 42 mayors nationwide, many with deputy mayors. Karzai pledged in his November 2009 inaugural that “mayoral” elections would be held “for the purpose of better city management.” However, no municipal elections have been held and none is scheduled. It is likely that these await passage of a municipalities law, referenced above.

As noted throughout, there has traditionally been village-level governance by councils of tribal elders and other notables. That structure remains, particularly in secure areas, while village councils have been absent or only sporadically active in areas where there is combat. As noted above, a U.S. official in southern Afghanistan, Henry Ensher, said in January 2011 that councils have been formed in areas where security has been established by the 2010 U.S. “troop surge.”

The IDLG and the Ministry of Rural Rehabilitation and Development (MRRD), with advice from India and other donors, also are empowering localities to decide on development priorities. The MRRD has formed about 30,000 Community Development Councils (CDCs) nationwide to help suggest priorities, and these bodies are eventually to all be elected.

## **Reforming Afghan Governance: Curbing Corruption<sup>42</sup>**

The Obama Administration has tried not only to expand Afghan governing capacity but to push for its reform, transparency, and oversight. Many Afghans have come to view the central government as “predatory.” Reducing corruption in government is a major focus of the Tokyo Mutual Accountability Framework, cited above, which requires Afghanistan to “enact and enforce the legal framework for fighting corruption.” Karzai himself has repeatedly acknowledged that corruption is a major problem in Afghanistan. In a June 21, 2012, speech, he called on his government to step up the fight against corruption, and fighting corruption was a cornerstone of Karzai’s July 26, 2012, administrative decree.

However, concerns about Karzai’s leadership on this issue center on his apparent reluctance to prosecute officials for corruption—particularly those related to or aligned with him politically. This stands in contrast to his attempts to vigorously prosecute those politically opposed to him. Some international officials have also questioned Karzai’s repeated placement of blame for Afghan corruption on international donor contracting practices. He repeated that criticism in advance of his January 2013 U.S. visit, blaming corruption on the NATO/ISAF practices of contracting with firms linked to traditional faction leaders. He did so again during a visit to India during May 20-22, 2013.

On the other hand, some say that U.S. policy on corruption has been inconsistent. Karzai confirmed U.S. press reports in April 2013 saying that the Central Intelligence Agency continues to provide cash payments directly to the Karzai government, through the Afghan National Security Council, for purposes such as compensating faction leaders or providing other financial patronage.<sup>43</sup> Karzai said the payments were relatively small, but U.S. and other experts say the payments circumvent standard controls on U.S. foreign aid and help fuel Afghan corruption. Neither CIA nor other U.S. officials confirmed or denied the reports, when asked by journalists.

## **High Level Corruption, Nepotism, and Cronyism**

At the upper levels of government, some observers have asserted that Karzai deliberately tolerates officials who are allegedly involved in illicit activity and supports their receipt of lucrative contracts from donor countries, in exchange for their political support. Karzai’s brother, Mahmoud, as discussed above, has apparently grown wealthy through real estate and auto sales ventures in Qandahar and Kabul, purportedly by fostering the impression he can influence his brother. Some observers who have served in Afghanistan say that Karzai has appointed some provincial governors to “reward them” and that these appointments have gone on to “prey” economically on the populations of that province. Several high officials, despite very low official government salaries, have acquired ornate properties in west Kabul since 2002. They allegedly have appropriated to themselves private land, the ownership of which was unclear, for homes, and housing business ventures. Redressing this issue is discussed in the “rule of law” section below. The Special Inspector General for Afghanistan Reconstruction (SIGAR) reported in May 2013 that \$50 million in stolen U.S. aid funds – which U.S. investigators discovered in an Afghan bank

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<sup>42</sup> For more information, particularly on Rule of Law programs, see CRS Report R41484, *Afghanistan: U.S. Rule of Law and Justice Sector Assistance*, by Liana Sun Wyler and Kenneth Katzman.

<sup>43</sup> Matthew Rosenberg. “Karzai’s Office Gets Bags Full of C.I.A. Cash.” *New York Times*, April 29, 2013.

account – was again missing because the Afghan government did not implement U.S. requests to freeze the account.

On the other hand, loose accusations of corruption are often used as a political weapon. One former official accused National Security Adviser Spanta of corruption after being fired from an Afghan government position. Spanta took the case to court, which ruled against the Afghan accuser on September 25, 2012, and fined him \$300. Some observers say that the National Assembly’s accusations of corruption against Finance Minister Zakhilwal in May 2013 were intended to prompt him to release additional funding to parliamentarians’ districts and causes. During his questioning by the Assembly, Zakhilwal leveled smuggling and other corruption allegations against six parliamentarians.

### **Lower-Level Corruption**

Observers who follow the issue say that most of the governmental corruption takes place in the course of performing mundane governmental functions, such as government processing of official documents (e.g., passports, drivers’ licenses), in which processing services routinely require bribes in exchange for action.<sup>44</sup> Other forms of corruption include Afghan security officials’ selling U.S./internationally provided vehicles, fuel, and equipment to supplement their salaries. In other cases, local police or border officials may siphon off customs revenues or demand extra payments to help guard the U.S. or other militaries’ equipment shipments. Other examples include security commanders placing “ghost employees” on official payrolls in order to pocket their salaries. Corruption is fed, in part, by the fact that government workers receive very low salaries (about \$200 per month, as compared to the pay of typical contractors in Afghanistan that might pay as much as \$6,500 per month). Many observers say there is a cultural dimension to the corruption—that it is commonly expected by relatives and friends that those Afghans who have achieved government positions will protect those relations with favors, appointments, and contracts.

### **Administration Views and Policy on Corruption**

As noted throughout, there is a consensus within the Administration on the wide scope of the corruption in Afghan government and the deleterious effect the corruption has on government popularity and effectiveness. The Administration wrestled throughout 2010 with the degree to which to press an anti-corruption agenda with the Karzai government. In early 2011, the Administration reportedly decided to prioritize reducing low-level corruption instead of investigations of high-level allies of Karzai.<sup>45</sup> High level investigations not only risked a Karzai backlash, but were judged to potentially complicate efforts to obtain the cooperation of Afghans who can help stabilize areas of the country. Some of these Afghans are said to be paid by the CIA for information and other support, and the National Security Council reportedly issued guidance to U.S. agencies to review this issue.<sup>46</sup>

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<sup>44</sup> Filkins, Dexter, “Bribes Corrode Afghan’s Trust in Government,” *New York Times*, January 2, 2009; Kevin Seiff, “Greasing the Wheels in Kabul,” *Washington Post*, February 18, 2013.

<sup>45</sup> Strobel, Warren and Marisa Taylor. “U.S. Won’t Pursue Karzai Allies in Anti-Corruption Campaign,” *McClatchy Newspapers*, January 6, 2011.

<sup>46</sup> Chandrasekaran, Rajiv. “A Subtler Tak to Fight Afghan Corruption,” *Washington Post*, September 13, 2010.

## Anti-Corruption Initiatives

Yet, U.S. officials believe that anti-corruption efforts must be pursued because corruption is contributing to a souring of Western publics on the mission as well as causing some Afghans to embrace Taliban insurgents. Obama Administration officials have credited Karzai with allowing the United States and other donors to help develop oversight bodies to curb corruption. At the July 20, 2010, Kabul conference—following onto the January 28, 2010, London conference—the Afghan government finalized a National Anti-Corruption Strategy (“Azimi report”) and committed to enacting 37 laws to curb corruption. Very few of these laws have been enacted, although the Afghan cabinet has drafted new anti-corruption and auditing laws and some regulations have been issued by Karzai decree. The anti-corruption institutions, and some examples of their efforts, are discussed below.

- *High Office of Oversight and Anti-Corruption.* In August 2008 Karzai, with reported Bush Administration prodding, set up the “High Office of Oversight and Anti-Corruption” (commonly referred to as the High Office of Oversight, HOO) with the power to identify and refer corruption cases to state prosecutors, and to catalogue the overseas assets of Afghan officials. It is headed by former IEC head Azizullah Ludin. On March 18, 2010, Karzai, as promised at the January 28, 2010, international meeting on Afghanistan in London, issued a decree giving the HOO power to investigate corruption cases rather than just refer them to other offices. The July 26, 2012, Karzai administrative decree directed the HOO to, within six months, assess “private institutions’ and government officials’ suspicious wealth” and report those findings to the president’s office every two months. On February 7, 2013, the HOO issued a report that Afghans had paid \$3.9 billion in total bribes during 2012. USAID is providing the HOO \$30 million total during FY2011-FY2013 to build capacity at the central and provincial level. USAID pays for salaries of six HOO senior staff and provides some information technology systems as well.
- *Assets Declarations and Verifications.* During December 15-17, 2009, Karzai held a conference in Kabul to combat corruption. It debated requiring deputy ministers and others to declare their assets, not just those at the ministerial level. That requirement was imposed. Karzai declared his assets on March 27, 2009. The July 20, 2010, Kabul Conference communiqué<sup>47</sup> included an Afghan pledge to verify and publish these declarations annually, beginning in 2010. According to a U.N. report of March 9, 2011, 1,995 senior Afghan officials had declared their assets, and an unspecified number have done so since. However, a SIGAR report of April 30, 2012, said that the government’s progress for verification of the declarations “fall[s] short of U.S. expectations.” The March 5, 2013, U.N. report, referenced earlier, says that the HOO will verify at least 10% of the assets declarations by June 2013.
- *A Joint Monitoring and Evaluation Committee* to evaluate the government’s performance in combating corruption was mandated by the Kabul conference communiqué to be established within three months of the conference (by October 2010). According to a June 23, 2011, U.N. report, the committee, supported by UNDP, was inaugurated on May 11, 2011. It was established by decree and is

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<sup>47</sup> Communiqué text at <http://www.nytimes.com/2010/07/21/world/asia/21kabultext.html>.

composed of three Karzai nominees and three international nominees. It is headed by Slovenian diplomat Drago Kos, and on November 28, 2012, it issued an 87-page report on the Kabul Bank scandal, discussed below.

- *Establishment of Additional Investigative Bodies: Major Crimes Task Force and Sensitive Investigations Unit.* Since 2008, several additional investigative bodies have been established under Ministry of Interior authority. The most prominent is the Major Crimes Task Force (MCTF) tasked with investigating public corruption, organized crime, and kidnapping. A headquarters for the MCTF was inaugurated on February 25, 2010, and it has been funded and mentored by the FBI, the DEA, the U.S. Marshal Service, Britain's Serious Crimes Organized Crime Agency, the Australian Federal Police, EUPOL (European police training unit in Afghanistan), and the U.S.-led training mission for Afghan forces. The MCTF has 169 investigators, according to U.S. officials.

A related body is the Sensitive Investigations Unit (SIU), run by several dozen Afghan police officers, vetted and trained by the DEA.<sup>48</sup> This body led the arrest in August 2010 of a Karzai NSC aide, Mohammad Zia Salehi, on charges of soliciting a bribe from the New Ansari Money Exchange in exchange for ending a money-laundering investigation of the firm. The middle-of-the-night arrest prompted Karzai, by his own acknowledgment on August 22, 2010, to obtain Salehi's release. In November 2010, the Attorney General's office ended the prosecution of Salehi.

- *Anti-Corruption Unit, and an Anti-Corruption Tribunal.* These investigative and prosecution bodies were established by decree in 2009. Eleven judges have been appointed to the tribunal. The tribunal, under the jurisdiction of the Supreme Court, tries cases referred by an Anti-Corruption Unit of the Afghan Attorney General's office. However, of the approximately 2,000 cases investigated by the Anti-Corruption Unit, only 28 officials have been convicted to date. The Department of Justice suspended its training program for the Anti-Corruption Unit in early 2012 because of the unit's "lack of seriousness," according to the SIGAR report of April 30, 2012. One of the laws pledged during the July 20, 2010, Kabul conference would be enacted (by July 20, 2011) included one to legally empower the Anti-Corruption Tribunal and the Major Crimes Task Force. That has not been enacted by the National Assembly to date.
- *Prosecutions and Investigations of High-Level Officials.* The Afghanistan Attorney General's office has investigated at least 20 senior officials, but with virtually no convictions. One investigation announced in mid-2012 was of Minister of Mines Wahidullah Shahrani, although some interpreted the investigation of him as intended to undermine a draft mining law that some saw as too favorable to foreign firms. Some of those investigated previously—but not convicted—included Commerce Minister Amin Farhang (for allegedly submitting inflated invoices for reimbursement); former Minister of Mines Mohammad Ibrahim Adel (who reportedly accepted a \$30 million bribe to award a key mining project to a Chinese firm),<sup>49</sup> and former Minister of the Hajj

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<sup>48</sup> Nordland, Ron and Mark Mazzetti. "Graft Dispute in Afghanistan Is Test for U.S." *New York Times*, August 24, 2010.

<sup>49</sup> Partlow, Joshua, "Afghanistan Investigating 5 Current and Former Cabinet Members," *Washington Post*, November (continued...)

Mohammad Siddiq Chakari (for allegedly accepting bribes to steer Hajj-related travel business to certain foreign tourist agencies). Chakari fled to Britain. Then Deputy Kabul Mayor Wahibuddin Sadat was arrested at Kabul airport in December 2009 for alleged misuse of authority.

- *EITI*. Relatedly, Afghanistan has signed up as a candidate to the Extractive Industries Transparency Initiative (EITI) which is intended to ensure that contracting for Afghanistan's mineral resources is free of corruption. Afghanistan hopes to become fully EITI compliant by April 2012. The World Bank gave Afghanistan a three year grant of \$52 million to manage its natural resources effectively.
- *Salary Levels*. The government has tried to raise salaries, particularly of security forces, in order to reduce their inclination to solicit bribes. In November 2009, the Afghan government announced an increase in police salaries (from \$180 per month to \$240 per month). During his term as Interior Minister, Bismillah Khan attempted to institute transparency and accountability in promotions and assignments. However, the results of these initiatives remain unclear.
- *Bulk Cash Transfers Out of Afghanistan*. At the July 2010 Kabul conference, the government pledged to adopt regulations and implement within one year policies to govern the bulk transfers of cash outside the country. This was intended to grapple with issues raised by reports, discussed below, of officials taking large amounts of cash out of Afghanistan (an estimated \$4.5 billion taken out in 2011). U.S. officials say that large movements of cash are inevitable in Afghanistan because only about 5% of the population use banks and 90% use informal cash transfers ("hawala" system). The late Ambassador Holbrooke testified on July 28, 2010 (cited earlier), that the Afghan Central Bank has begun trying to control hawala transfers; 475 hawalas have been licensed, to date, whereas none were licensed as recently as 2009. On August 21, 2010, it was reported that Afghan and U.S. authorities would implement a plan to install U.S.-made currency counters at Kabul airport to track how officials had obtained their cash (and ensure it did not come from donor aid funds).<sup>50</sup> On March 19, 2012, Central Bank Governor Noorullah Delawari said the Bank had imposed a \$20,000 per person limit on cash transfers out of the country. However, a report by the SIGAR issued December 11, 2012, found that the provided currency counters at Kabul airport were not being used, nor were procedures to ensure that notable Afghan figures were not taking large amounts of cash out of Afghanistan being enforced. Other reports say that Afghans are taking significant amounts of gold out of Afghanistan, possible to hedge against instability after the 2014 transition.
- *Customs Revenue Diversion*. As noted above, some governors of border provinces are siphoning off customs duties that are supposed to be remitted to the central government. In December 2012, a commission created by Karzai investigated the issue in twelve provinces and shut down some of these operations. One scheme shut down was a surtax levied illegitimately at the

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24, 2009.

<sup>50</sup> Miller, Greg and Joshua Partlow. "Afghans, U.S. Aim to Plug Cash Drain." *Washington Post*, August 21, 2010.



Torkham Gate (Khyber Pass) crossing by the provincial government of Ghul Agha Shirzai (see above on Shirzai above).

- *Auditing Capabilities.* The SIGAR has previously assessed that the mandate of Afghanistan's Control and Audit Office is too narrow and lacks the independence needed to serve as an effective watch over the use of Afghan government funds.<sup>51</sup> At the Kabul conference, the government pledged to submit to parliament an Audit Law within six months, to strengthen the independence of the Control and Audit Office, and to authorize more auditing by the Ministry of Finance. The government drafted an audit law but the National Assembly has not enacted it to date.
- *Legal Review.* The Kabul conference communiqué committed the government to establish a legal review committee, within six months, to review Afghan laws for compliance with the U.N. Convention Against Corruption. Afghanistan ratified the convention in August 2008.
- *Local Anti-Corruption Bodies.* Some Afghans have taken it upon themselves to oppose corruption at the local level. Volunteer local inspectors, sponsored originally by Integrity Watch Afghanistan, are reported to monitor and report on the quality of donor-funded, contractor implemented construction projects. However, these and other "watchdog" groups do not have an official mandate, and therefore their authority and ability to rectify inadequacies are limited.
- *U.S. Defense Department Efforts.* In 2009, a key U.S. military official, General H.R. McMaster, formed several DOD task forces to focus on anti-corruption (*Shafafiyat*, Task Force Spotlight, and Task Force 2010) from a U.S. military/counter-insurgency perspective. These task forces, in part, review U.S. contracting strategies to enhance Afghan capacity and reduce the potential for corruption. The *Shafafiyat* task force announced in February 2012 that it had caused the restitution of \$11.1 million, \$25.4 million in fines, and \$3.4 million in seizures from allegedly fraudulent contractors, and has debarred or suspended more than 125 American, Afghan, and international workers for alleged fraud.<sup>52</sup>

## **Kabul Bank Scandal and Continuing Difficulties**

The near-collapse of Kabul Bank is a prime example of how well-connected Afghans have avoided regulations and other restrictions in order to garner personal profit. Mahmoud Karzai was a major (7%+) shareholder in the bank, which was used to pay Afghan civil servants and police, and he reportedly received large loans from the bank to buy his position in it. Another big shareholder was Abdul Hussain Fahim, the brother of First Vice President, discussed above. The insider relationships were exposed in August and September 2010 when Kabul Bank reported large losses (\$500 million initially) primarily from shareholder investments in Dubai properties, prompting President Karzai to appoint a Central Bank official to run the Kabul Bank. However, the government moves did not prevent large numbers of depositors from withdrawing their money from it.

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<sup>51</sup> Madhani, Aamer. "U.S. Reviews Afghan Watchdog Authority." *USA Today*, May 12, 2010.

<sup>52</sup> John Ryan. "Task Force Rooting Out Corruption in Afghanistan." *Army Times*, February 20, 2012.

In response to the crisis, the United States and other donors refused to recapitalize the bank, but it offered to finance an audit of Afghan banks, including Kabul Bank. The Finance Ministry decided instead in November 2010 to hire its own auditor—a move that suggested to some that high Afghan officials seek to avoid sharing the results with international donors. The International Monetary Fund (IMF) suspended its credit program for the Afghan government in November 2010 because of the scandal and demanded the entire Afghan banking industry undergo an outside forensic audit and that those responsible be held accountable. That caused the holding up of \$70 million World Bank/Afghan Reconstruction Fund (ARTF) in donor funds due to be paid June 11, 2011. Other donors suspended as much as \$1.8 billion in economic aid because of the IMF suspension.

Amid Afghan confirmation that the questionable loans of the bank total over \$925 million (including interest due), the IMF—as a condition of resuming its credit program—subsequently pushed for the bank to be sold. The Central Bank instead agreed to separate the bank’s performing from nonperforming assets and then dissolve or restructure the bank.<sup>53</sup> A version of the plan, which was subject to approval by an Afghan government committee, was formally approved and announced on April 21, 2011.

The “good bank” (part of the bank with deposits and which still functions) was financed by a Central Bank loan of \$825 million. It was renamed “New Kabul Bank.” The Afghan Finance Ministry has promised to pay back the loan with recovered assets and tax revenues. On October 16, 2011, the National Assembly voted on a supplemental budget that enabled the Finance Ministry to reimburse the Central Bank loan over eight years. Central Bank governor Noorullah Delawari said in April 2012 that the country plans to sell Kabul Bank in June 2012. However, to date, only one consortium (Ali Akbar Zhandawal consortium) finalized a bid for the bank.

The Afghan government, through its “Financial Dispute Resolution Commission,” continues to try to recoup the lost funds. Of the estimated \$925 million in losses, about \$300 million of the losses are judged by the Afghans as untraceable because of a lack of documentation. As of the end of 2012, the commission had recovered \$128 million in cash and \$145 million in property, mostly luxury villas in Dubai.<sup>54</sup> The Tokyo Mutual Accountability Framework, discussed above, requires Afghanistan to continue asset recovery and to strengthen banking supervision through the Central Bank (Da Afghanistan Bank).

### *Attempting Accountability*

The political fallout also produced some resolution. On January 15, 2011, the office of Afghan Attorney General Ishaq Aloko announced an investigation into the near-collapse of the bank. The investigating commission briefed reporters on its findings on May 30, 2011, placing much of the blame on lax controls by the Central Bank and its governor, Abdul Qadir Fitrat. The government commission also largely absolved Mahmoud Karzai of any wrongdoing, saying he had paid off his loans, and naming other key figures, such as Dostam, as taking out \$100,000 in unsecured loans. The following day, Central Bank governor Fitrat disputed the commission’s conclusions. He had previously told parliament that Mahmoud Karzai owed \$22 million. In part because of his feuding with figures such as Mahmoud Karzai, Fitrat fled Afghanistan for the United States and

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<sup>53</sup> Ernesto Londono. “Afghan Officials Opt to Dissolve Bank Draped in Scandal.” *Washington Post*, March 27, 2011.

<sup>54</sup> Joshua Partlow. “Afghan Bureaucrat Tasked With Recovering Millions in Bad Loans.” *Washington Post*, July 7, 2012. Afghanistan Plans to Sell Scandal-Scarred Kabul Bank in June. *Bloomberg.com*, April 11, 2012.

announced his resignation on June 27, 2011. Karzai subsequently barred U.S. advisers from the Central Bank. On December 11, 2011, Karzai called for the United States to extradite Fitrat to Afghanistan and blamed U.S. officials for knowing of the Bank's problems at an early stage but failing to alert Afghan authorities.

In a step toward holding principals accountable, on June 30, 2011, the government announced the arrest of two former Kabul Bank executives, Sherkhan Farnood and Khalilullah Frouzi, who allegedly allowed the concessionary loans to the high-level Afghans and their relatives. However, by late 2011, the detentions of the two had been relaxed and they were frequently sighted at various public places in Kabul.<sup>55</sup> On August 1, 2011, the Attorney General's office sent the names of about 15 people allegedly responsible for the scandal to Afghan courts for trial. On April 3, 2012, Karzai ordered a special prosecutor appointed and a special tribunal created to try those involved. On June 2, 2012, at the urging of Karzai's office, 21 people were indicted by the special tribunal, including Farnood, Frouzi, Fitrat, nine other government officials, and nine other bank employees who were allegedly in positions to have known of and reported the fraud while it was occurring but did not. The trial of Farnood, Frouzi, and about 20 others allegedly involved began on November 10, 2012, under the leadership of a three judge panel. All twenty one defendants were found guilty, and Farnood and Frouzi received five year sentences and financial penalties. The Attorney General has appealed the sentences as too light; he wanted them found guilty of the original charges of embezzlement and money laundering rather than fraud; the former charges carry longer jail terms if convicted. In addition, the Attorney General is appealing the sentences of the other 19 defendants who the Attorney General believes were not involved in the misfeasance and should not have been tried.

### ***Conclusions and Fallout***

On November 27, 2012, the *New York Times* reported on the Central Bank's audit of Kabul Bank by Kroll Associates. The Kroll investigation called Kabul Bank a virtual "Ponzi scheme" involving numerous deliberate efforts to deceive the bank's original auditors. Two days later, the Joint Evaluation and Monitoring Committee, discussed above, released its 87-page report on the Bank scandal, detailing how Bank funds were smuggled out of the country surreptitiously and alleging high level Afghan government political interference in handling the scandal and in deciding whom to hold accountable.<sup>56</sup>

The investigations, the recovery of some lost funds, and the forensic audits of the bank suggested Afghanistan was moving to meet the IMF conditions for the restart of its credit program. In November 2011, the IMF resumed its program by approving a \$133 million loan to Afghanistan. That move restored the flow of some previously blocked donor funds, including U.S. contributions to the World Bank-run Afghanistan Reconstruction Trust Fund (ARTF).

The IMF also wants a timetable for another bank found by the Central Bank to be vulnerable to collapse, Azizi Bank, to shore up its finances. Another Afghan entity suspected of corruption is the New Ansari Money Exchange, a large money-trading operation. On February 18, 2011, the Treasury Department designated the New Ansari, and persons affiliated with it, as major money

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<sup>55</sup> Matthew Rosenberg and Graham Bowley. "Intractable Afghan Graft Hampering U.S. Strategy." *New York Times*, March 8, 2012.

<sup>56</sup> Matthew Rosenberg. "Audit Says Kabul Bank Began as 'Ponzi Scheme.'" *New York Times*, November 17, 2012; Pamela Constable. "Report Cites Interference in Afghan Bank Probe." *Washington Post*, November 29, 2012.

laundering entities under the “Kingpin Act,” a designation that bans U.S. transactions with the designees. The Treasury Department accused the New Ansari and affiliates of serving as a vehicle for narcotics trafficking organizations.

### **Moves to Penalize Lack of Progress on Corruption**

Several of the required U.S. “metrics” of progress, cited above, involve Afghan progress against corruption. In the 111<sup>th</sup> Congress, in June 2010, the Foreign Operations Subcommittee of the House Appropriations Committee deferred consideration of some of the nearly \$4 billion in civilian aid to Afghanistan requested for FY2011, pending the outcome of a committee investigation of the issue. The subcommittee’s action came amid reports that as much as \$3 billion in funds had been allegedly embezzled by Afghan officials over the past several years.<sup>57</sup> In part on the basis of the findings of the House Appropriations Committee investigation, the Senate Appropriations Committee’s FY2011 omnibus appropriation marked up in December 2010 required Administration certifications of progress against corruption as a condition of providing aid to Afghanistan. Some of this conditionality was included in the FY2011 continuing appropriations (P.L. 112-10). Aid conditionality based on Afghan performance against corruption, on incorporation of women in the reconciliation process, and on reports on progress on the Kabul Bank scandal, were included in the FY2012 Consolidated Appropriation (P.L. 112-74). No U.S. funding for Afghanistan has been permanently withheld because of this or any other legislative certification requirement.

### **Promoting Human Rights and Civil Society<sup>58</sup>**

Since 2001, U.S. policy has been to build capacity in human rights institutions in Afghanistan and to promote civil society and political participation. As do previous years’ State Department human rights reports, the report on Afghanistan for 2011 analyzed numerous human rights deficiencies, attributing most of them to overall lack of security, loose control over the actions of Afghan security forces, pervasive corruption, and cultural attitudes including discrimination against women. A UNAMA report issued January 20, 2013, documented numerous cases of torture and ill treatment for detainees at the hand of Afghan security forces.<sup>59</sup>

### **Institution-Building: The Afghanistan Independent Human Rights Commission (AIHRC) and Outside Human Rights Organizations**

One of the institutional human rights developments since the fall of the Taliban has been the establishment of the Afghanistan Independent Human Rights Commission (AIHRC). It is headed by a woman, Sima Simar, a Hazara Shiite from Ghazni Province. It acts as an oversight body over alleged human rights abuses but its members are appointed by the government and some believe it is not as aggressive or independent as some had hoped. However, its members are appointed by the president and, as an indication of government interference, in December 2011, Karzai

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<sup>57</sup> Rosenberg, Matthew. “Corruption Suspected in Airlift of Billions in Cash From Kabul.” *Wall Street Journal*, June 28, 2010.

<sup>58</sup> Information in this section is primarily from Department of State. Human Rights Report for 2012: Afghanistan, April 19, 2013. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dclid=204393#wrapper>

<sup>59</sup> <http://unama.unmissions.org/LinkClick.aspx?fileticket=VsBL0S5b37o%3d&tabid=12254&language=en-US>

dismissed its deputy chairman Ahmad Nader Nadery for his outspoken writings alleging abuses by traditional allies of Karzai. Nadery heads another civil society watchdog organization, the Free and Fair Election Foundation of Afghanistan (see above), which was highly critical of Karzai and his allies for the 2009 and 2010 election fraud.

The July 20, 2010, Kabul conference communiqué contained a pledge by the Afghan government to begin discussions with the AIHRC, within six months, to stabilize its budgetary status. It pledged to provide \$1 million per year, but has provided only half that amount. A December 10, 2010, U.N. Secretary General report says the Afghan cabinet has approved inserting a line item in the annual Afghan budget for the AIHRC, but the March 5, 2012, report of the Secretary General said the National Assembly has not regularized the AIHRC status within the national budget framework. USAID has given the AIHRC about \$10 million per year since the fall of the Taliban.

Since 2002, there has been a proliferation of Afghan organizations that demand transparency about human rights deficiencies. Prominent examples of Afghan NGO's that monitor and agitate for improved human rights practices include the Afghanistan Human Rights and Democracy Organization, and the Equality for Peace and Democracy organization. The December 5, 2011, Bonn Conference was preceded by meetings (December 2-3, 2011, in Bonn) of Afghan civil society activists, intended to help assess the progress of Afghan governance and highlight the role of civil society in governance.

It is in part the work of these groups that has produced responses by the government. For example, Afghanistan's National Directorate of Security (intelligence directorate but with arrest powers), which has widely been accused of detainee abuse and torture, established in late 2011 a "human rights unit" to investigate abuse allegations and train NDS staff not to conduct such abuses. In 2012, the Human Rights Support Unit of the Ministry of Justice conducted twelve human rights training sessions for NDS and Afghan National Policy officers. In June 2012, Karzai tasked the Interior Ministry to report on prison conditions. On June 2, 2012, Karzai ordered disarmed a local security unit whose members were accused of raping an 18-year old woman in Konduz Province. On July 9, 2012, Afghan forces were sent to track down Taliban militants who had executed a woman for adultery in Parwan Province.

### **Religious Influence on Society: National Ulema Council**

Counterbalancing the influence of post-Taliban modern institutions such as the AIHRC are traditional bodies such as the National Ulema Council. The Council consists of the 150 most respected and widely followed clerics throughout Afghanistan, and represents a network of about 3,000 clerics nationwide. It has taken conservative positions on free expression and social freedoms, such as the type of television and other media programs available on private media outlets. Clerics sometimes ban performances by Afghan singers and other performers whose acts the clerics consider inconsistent with conservative Islamic values. On the other hand, some rock bands have been allowed to perform high profile shows since 2011. Because of the power of Islamist conservatives, alcohol is increasingly difficult to obtain in restaurants and stores, although it is not banned for sale to non-Muslims.

In August 2010, 350 clerics linked to the Council voted to demand that Islamic law (Sharia) be implemented (including such punishments as stoning, amputations, and lashings) in order to better prevent crime. The government did not implement the recommendation, which would require amending the Afghan constitution that does not implement Sharia. The Council's March

2, 2012, backing of Sharia interpretations of the rights of women is discussed below in the section on women's rights.

The government (Ministry of Hajj and Religious Affairs) is also involved in regulating religious practices. Of Afghanistan's approximately 125,000 mosques, 6,000 are registered and funded by the government. Clerics in these mosques are paid about \$100 per month and, in return, are expected to promote the government line. In April 2012, the Ministry decreed that it would fire government-funded clerics who refuse to heed warnings and preach violence or incitement.

As an illustration of Afghanistan's inherent Islamic conservatism, riots broke out in two successive years over what some Afghans perceived as U.S. disrespect of Islam. On April 2, 2011, hundreds of Afghans rioted in the normally quiet (and non-Pashtun) city of Mazar-e-Sharif to protest the burning of a Quran by a Florida pastor a few weeks earlier. The rioters stormed the U.N. compound in the city and killed at least 12 people, including 7 U.N. workers. A more serious eruption occurred in late February 2012 over the mistaken U.S. discarding of Qurans used by detainees at Bagram Airfield. Riots and protests occurred in several cities, including the normally peaceful and pro-U.S. north. The public reaction to the Quran burning was more intense than it was following the March 11, 2012, killing of 16 Afghans allegedly by a U.S. soldier, Robert Bales, who is in U.S. military custody. On September 17, 2012, several hundred Afghans rioted outside a U.S. training facility east of Kabul city to protest a video produced in the United States ("Innocence of Muslims") that mocks the Prophet Muhammad. Afghan police protected the facility from assault from the crowd.

These perceived U.S. slights may account for some of the killings of U.S. military personnel by Afghan security forces over the past few years. The so-called "green on blue" attacks have caused tensions between Afghan forces and their U.S. mentors, and prompted U.S. commanders to impose counter-measures that potentially complicate the U.S. effort to accelerate the transition to Afghan security before the end of 2014.

## **Religious Freedom**

The International Religious Freedom report for 2012 (released May 20, 2013) asserts that Afghan law and policy does restrict religious freedom, and that the government's respect for religious freedom did not change during 2012.<sup>60</sup> Members of minority religions, including Christians, Sikhs, Hindus, and Baha'i's, often face discrimination, but members of these communities sometimes serve at high levels. Karzai has had a Hindu as an economic advisor and one member of the Sikh community serves in the Meshrano Jirga. There are four Isma'ilis in the National Assembly. Baha'is fare worse than members of some of the other minorities because the Afghan Supreme Court declared the Baha'i faith to be a form of blasphemy in May 2007. There are no public Christian churches and four synagogues, although the synagogues are not used because there is only one Afghan national who is Jewish. There are three active *gurdwaras* (Sikh places of worship) and five Hindu *mandirs* (temples). Buddhist foreigners are free to worship in Hindu temples.

One major case that drew international criticism was a January 2008 death sentence, imposed in a quick trial, against 23-year-old journalist Sayed Kambaksh for allegedly distributing material critical of Islam. On October 21, 2008, a Kabul appeals court changed his sentence to 20 years in

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<sup>60</sup> <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2012&dliid=208422#wrapper>

prison, a judgment upheld by another court in March 2009. He was pardoned by Karzai and released on September 7, 2009.

The Hazaras and other Afghan Shiites tend to be less religious and more socially open than their co-religionists in Iran. Afghan Shiite leaders appreciated the July 2009 enactment and “gazetting” of a “Shiite Personal Status Law” that gave Afghan Shiites the same degree of recognition as the Sunni majority, and provided a legal framework for Shiite family law issues. Afghan Shiites are able to celebrate their holidays openly and some have held high positions, but some Pashtuns have become resentful of the open celebrations and some clashes have resulted. The former Minister of Justice, Sarwar Danesh, is a Hazara Shiite, the first of that community to hold that post. He studied in Qom, Iran, a center of Shiite theology. He was voted down by the National Assembly for reappointment on January 2, 2010. In June 2012, Karzai denounced a book published by the Afghanistan Academy of Science that portrayed Hazaras as un-Islamic. In November 2012, Pashtun students at four universities in Kabul attacked Hazara students who were trying to commemorate the Shiite day of mourning (Ashura), prompting the temporary closing of the universities. The clashes occurred even though Shiite public observance of the holy month of Muharram has progressively expanded.

Afghan Christians can worship in small congregations in private homes, but several conversion cases have earned international attention. An Afghan man, Abd al-Rahman, who had converted to Christianity 16 years ago while working for a Christian aid group in Pakistan, was imprisoned and faced a potential death penalty trial for apostasy—his refusal to convert back to Islam. Facing international pressure, Karzai prevailed on Kabul court authorities to release him (March 29, 2006). His release came the same day the House passed a bill (H.Res. 736) calling on protections for Afghan converts. In May 2010, the Afghan government suspended the operations of two Christian-affiliated international relief groups claiming the groups were attempting to promote Christianity among Afghans, an assertion denied by the groups (Church World Service and Norwegian Church Aid). Another case arose in May 2010, when an amputee, Said Musa, was imprisoned for converting to Christianity from Islam, an offense under Afghan law that leaves it open for Afghan courts to apply a death sentence under Islamic law (Shariah). The arrest came days after the local Noorin TV station broadcast a show on Afghan Christians engaging in their rituals. Following diplomatic engagement by governments and human rights groups, Musa was quietly released from prison on February 24, 2011, and he obtained asylum in Italy.

## **Media and Freedom of Expression/Social Freedoms**

Afghanistan’s conservative traditions have caused some backsliding in recent years on media freedoms. Since 2001, numerous television channels, newspapers, and other media forms have been established, giving Afghanistan one of the freest press in the region. Media has expanded to the point where the government, in 2012, began a process of launching a communications satellite to help with broadcast speed and breadth of dissemination. However, a Mass Media Law adopted in 2009 gave independence to the official media outlets but also contained a number of content restrictions and required that new newspapers and electronic media be licensed by the government. The Ministry of Information and Culture is attempting to draft a new media law to replace it, although some early drafts contained provisions that drew opposition from human rights groups in and outside Afghanistan.

According to the State Department report on human rights for 2012, there continues to be intimidation and sometimes violence against journalists who criticize the central government or powerful local leaders, and some news organizations and newspapers have occasionally been

closed for incorrect or derogatory reporting on high officials. In October 2012, the Afghan government threatened to expel the staff of the International Crisis Group because of a report it issued that warned that Afghanistan might slide into civil war if the 2014 presidential elections are not free and fair. Supporters of the government position reportedly threatened the senior Crisis Group expert in Kabul, Candace Rondeaux, prompting her to leave the country.

USAID programs have trained investigative journalists to do more reporting on official corruption and other issues. The United States has provided funding and advice to an Afghan Government Media Information Center that the Afghan government uses to communicate with the public. However, possibly as part of an effort to transition more tasks to the Afghans, U.S. advisers were pulled from the Center in late December 2011.

Separately, Islamic conservatives on the Ulema Council and in the National Assembly, as well as prominent clerics such as Shiite Ayatollah Asif Mohseni), have sometimes asserted control over media content. This has been an attempt to curb the popularity of such post-Taliban networks as Tolo Television. With the Ulema Council's backing, in April 2008 the Ministry of Information and Culture banned five Indian-produced soap operas on Tolo Television on the grounds that they are too risqué, although the programs were restored in August 2008 under a compromise that brought in Islamic-oriented programs from Turkey. In June 2011, pressure from the Ulema Council caused Tolo to remove a soap opera called "Forbidden Love." Tolo has also aired programs with women performers—presentations that raise eyebrows among religious conservatives—and about official corruption. In April 2013, Karzai reportedly agreed with a call by the Ulema Council to ban programs considered "vulgar, obscene, or un-Islamic."

Radio Free Europe/Radio Liberty's "Radio Azadi" service for Afghanistan has distributed 20,000 solar powered radios to poor (and usually illiterate) Afghans to improve their access to information. In general, the government does not restrict access to the Internet, but it does ban access to pornographic web sites.

## **Harsh Punishments**

The State Department reports widespread examples of torture, rape, and other abuses by officials, security forces, detention center authorities, and police. In September 2011, U.S. and partner transfers of prisoners to some Afghan facilities were suspended because of alleged torture by Afghan prison authorities. Afghanistan's Interior Ministry and National Directorate of Security denied the allegations, which included assertions that prisoners were being beaten with rubber hoses or given electric shocks. In October 2007, Afghanistan resumed enforcing the death penalty after a four-year moratorium, executing 15 criminals. In August 2010, the issue of stoning to death as a punishment arose when Taliban insurgents ordered a young couple who had eloped stoned to death in a Taliban-controlled area of Konduz Province. Although the punishment was not meted out by the government, it was reported that many residents of the couple's village supported the punishment.

## **Human Trafficking**

For the third year in a row, Afghanistan was again placed in Tier 2: Watch List in the State Department report on human trafficking issued on June 19, 2012, (Trafficking in Persons Report for 2012). However, Afghanistan was given a waiver for an automatic downgrade to Tier 3 (the downgrade is automatic after a country is "watch-listed" for three consecutive years). The waiver



was based on a the government's writing of a plan that, if implemented, would qualify as a significant effort to comply with minimum standards for the elimination of trafficking. The government is assessed in the 2012 report as not complying with minimum standards for eliminating trafficking, and not showing evidence of increasing efforts to address the issue.

The State Department report says that women from China, some countries in Africa, Iran, and some countries in Central Asia are being trafficked into Afghanistan for sexual exploitation, although, according to the report, trafficking within Afghanistan is more prevalent than trafficking across its borders. The report asserts that some families knowingly sell their children for forced prostitution, including for *bacha baazi*, a practice in which wealthy men use groups of young boys for social and sexual entertainment. The report added that some members of the Afghan National Security Forces have sexually abused boys as part of the *bacha baazi* practice. Since 2001, the United States has spent about \$500,000 on programs to eliminate human trafficking in Afghanistan. Other reports say that many women have resorted to prostitution, despite the risk of social and religious ostracism or punishment, to cope with economic hardship.<sup>61</sup>

### **Advancement of Women**

Women and women's groups are a large component of the burgeoning of civil society in post-Taliban Afghanistan. Freedoms for women have greatly expanded since the fall of the Taliban with their elections to the parliament and their service at many levels of government. The Afghan government pursues a policy of promoting equality for women under its National Action Plan for Women of Afghanistan (NAPWA). The Tokyo Mutual Accountability Framework requires Afghanistan to implement the NAPWA and all of its past commitments and laws to strengthen the rights of women and provide services to them.

The major institutional development since 2001 was the formation in 2002 of a Ministry of Women's Affairs dedicated to improving women's rights. It is headed by Husn Banu Ghazanfar. Its primary function is to promote public awareness of relevant laws and regulations concerning women's rights. It plays a key role in trying to protect women from domestic abuse by running 11 women's shelters across Afghanistan, with a total of 29 such shelters planned. Women's rights groups in Afghanistan expressed outrage over a June 2012 statement by Afghanistan's justice minister that the shelters encourage "immorality and prostitution," although that assertion continues to be put forward by various Afghan clerics and other Islamic conservatives. The Afghanistan Freedom Support Act of 2002 (AFSA, P.L. 107-327) authorized \$15 million per year (FY2003-FY2006) for the Ministry of Women's Affairs. Those monies were donated to the Ministry from Economic Support Funds (ESF) accounts controlled by USAID. The United States has continued to fund the Ministry at approximately that level since AFSA expired.

One of the most prominent civil society groups operating in post-Taliban Afghanistan is the Afghanistan Women's Network. It has at least 3,000 members and its leaders say that 75 nongovernmental organizations work under its auspices. In addition, the Afghanistan Independent Human Rights Commission and outside Afghan human rights groups focus extensively on rights for Afghan women.

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<sup>61</sup> Azam Ahmed. "An Afghan City's Economic Success Extends to Its Sex Trade." *New York Times*, April 18, 2013.

Among the most notable accomplishments since 2001, women are performing jobs that were rarely held by women even before the Taliban came to power in 1996, including in the new police force. The first Afghan female pilots arrived for training in the United States in July 2011. There are over 200 female judges and nearly 500 female journalists working nationwide. Women are legally permitted to drive, and press reports say an increasing number of Afghan women, although mainly in Kabul and other main cities, are learning how to drive and exercising that privilege. The wearing of the full body covering called the *burqa* is no longer obligatory, and fewer women are wearing it than was the case a few years ago. In November 2010, the government opened a USAID-funded women-only park in Kabul called “Women’s Garden” where women can go, without male escort, and undertake fitness and job training activities.

Some groups, such as Human Rights Watch, report backsliding on women’s rights since 2008,<sup>62</sup> although the State Department human rights report for 2012 says that the situation of women in Afghanistan improved “marginally” during 2012. Numerous abuses, such as denial of educational and employment opportunities, continue primarily because of Afghanistan’s conservative traditions. This is particularly prevalent in rural areas, and less so in larger urban areas. Along with the assertion of authority of conservative Islamic institutions, on March 2, 2012, the Ulema Council issued a pronouncement saying women should be forced to wear the veil and be forbidden from traveling without a male chaperone. The pronouncement did reiterate support for the rights of women to inherit and own property, and to choose their marital partners. On March 6, 2012, Karzai endorsed the Ulema Council statement.

Among the most widespread abuses reported:

- More than 70% of marriages in Afghanistan are forced, despite laws banning the practice, and a majority of brides are younger than the legal marriage age of 16.
- The practice of *baad*, in which women are given away to marry someone from another clan to settle a dispute, remains prevalent.
- There is no law specifically banning sexual harassment, and women are routinely jailed for *zina*—a term meaning adultery, and a crime under the penal code, and that includes running away from home, defying family choice of a spouse, eloping, or fleeing domestic violence. These incarcerations are despite the fact that running away from home is not a crime under the penal code. That code is often relatively lenient towards males—a man convicted of “honor killing” (of a wife who commits adultery) cannot be sentenced to more than two years in prison. One case receiving substantial attention in December 2011 involved a woman who was jailed for having a child outside wedlock even though the child was a product of rape.
- Women’s rights activists have been assassinated on several occasions. On December 10, 2012, the head of the Women’s Affairs Ministry department in Laghman Province was gunned down. Her predecessor in that post was killed by a bomb planted in her car four months earlier.

In an effort to prevent these abuses, on August 6, 2009, Karzai issued, as a decree, the “Elimination of Violence Against Women” (EVAW) law that makes many of the practices above

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<sup>62</sup> “We Have the Promises of the World: Women’s Rights in Afghanistan,” Human Rights Watch, December 2009, [http://www.wluml.org/sites/wluml.org/files/hrw\\_report\\_2009.pdf](http://www.wluml.org/sites/wluml.org/files/hrw_report_2009.pdf).

unlawful. However, enforcement of the EAW decree has been weakened by some Supreme Court rulings and other Afghan legal decisions. The U.N. report of March 5, 2013, mentioned above, said that prosecutions of abuses against women are increasingly obtaining convictions. The report adds that a “High Commission for the Elimination of Violence Against Women” has been established to oversee implementation of the EAW law. Still, only a small percentage of reports of violence against women are registered with the judicial system, and about one-third of those proceed to trial.<sup>63</sup> The number of women jailed for “moral crimes” has increased by 50% since 2011. A December 2010 attempt by the National Assembly to enact the EAW failed, as did a more recent effort in May 2013. The legislative efforts have failed due to opposition from Islamic conservatives and others who do not want to limit the ability of male elders to decide family issues. On May 22, 2013, about 200 male Islamist students demonstrated in Kabul demanding repeal of the EAW decree outright.

### *Women in Key Positions*

Despite conservative attitudes, women have moved into prominent positions in all areas of Afghan governance, although with periodic setbacks. Three female ministers were in the 2004-2006 cabinet: former presidential candidate Masooda Jalal (Ministry of Women’s Affairs), Sediqa Balkhi (Ministry for Martyrs and the Disabled), and Amina Afzali (Ministry of Youth). Karzai named three women to cabinet posts on January 9, 2010, including Afzali (to Labor and Social Affairs). Of the three, only Afzali was immediately confirmed; the other two (Minister of Health and Minister of Women’s Affairs) were kept on in acting capacities and confirmed in subsequent years. Afghanistan has one female ambassador and Karzai has a female deputy chief of staff, Homaira Ludin-Etemadi. In the December 16, 2009, nomination list, Karzai proposed a woman to head a new Ministry of Literacy, but parliament did not vote on this nomination because it had not yet acted to approve formation of the ministry. In March 2005, Karzai appointed a former minister of women’s affairs, Habiba Sohrabi, as governor of Bamiyan province, inhabited mostly by Hazaras. As noted above, there is a growing number of female judges and prosecutors in Afghanistan’s provinces.

One woman (Masooda Jalal) ran in the 2004 presidential election, and two ran for president in the August 20, 2009, election. In the latter, each received less than one-half of 1%. As noted above, parliamentarian Fawzia Koofi already has declared she will run in 2014, and there are likely to be additional female candidates.

In the National Assembly, the constitution reserves for women at least 17 of the 102 seats in the upper house and 68 of the 249 seats in the lower house of parliament. There were 69 women elected in the 2010 parliamentary elections, one more than the quota. (400 women ran for those seats—about 16% of all candidates.) The target ratio is ensured by reserving an average of two seats per province (34 provinces) for women—the top two female vote getters per province. (Kabul province reserves 9 female seats.) There are 28 women in the upper house, substantially more than the minimum prescribed number. In the lower house, Shukria Barekzai, was chair of the Defense Committee of the elected lower house during 2011. Some NGOs and other groups believe that the women elected by the quota system are not viewed as equally legitimate parliamentarians.

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<sup>63</sup> Alissa Rubin. “Slow Gains in Justice for Afghan Women.” *New York Times*, December 12, 2012; <http://unama.unmissions.org/LinkClick.aspx?fileticket=Qy9mDiEa5Rw%3d&tabid=12254&language=en-US>

About 300 women were delegates to the 1,600-person “*peace jirga*” that was held during June 2-4, 2010, which endorsed an Afghan plan to reintegrate insurgents who want to end their fight. The High Peace Council to oversee the reconciliation process, which met for the first time on October 10, 2010, has 9 women out of 70 members, although these women report that their views are not taken into account to any significant extent in the Council. At U.S. and other country urging, a woman was part of the official Afghan delegation to the major international conference on Afghanistan in Bonn on December 5, 2011; she was selected at a meeting of civil society activists in Bonn, a day before the major conference begins.

### ***U.S. and International Posture on Women’s Rights***

U.S. officials say that its policy is to promote women’s rights in Afghanistan rigorously. The Administration has and is following its “Strategy for Assistance to Women in Afghanistan, 2010-2013.”<sup>64</sup> U.S. officials said aid allocations are geared toward that strategy. Specific earmarks for use of U.S. funds for women’s and girls’ programs in Afghanistan are contained in recent annual appropriations, and these earmarks have grown steadily. The United States provided \$159 million to programs for Afghan women in FY2009, slightly more than the \$150 million earmarked, and about \$225 million for FY2010, more than the \$175 earmarked.<sup>65</sup> For FY2010, assistance for women was provided in the following “pillars” of the U.S. Strategy: health (\$87 million); education (\$31 million); economy, work, and poverty (\$54.6 million); legal protection and human rights (\$12 million); and leadership and political participation (\$43 million). Total U.S. funding for women’s programs for Afghanistan were similar for FY2011 and FY2012 and of similar magnitude for FY2013. Among the funding streams has been U.S. Ambassador small grants to support gender equality (FY2009-FY2012), which was used to help finance over 830,000 microloans to women during 2004-2011 for the establishment of 175,000 small businesses, according to the SRAP report released November 2011. These strategy pillars, and specific programs funded by them, are discussed in annual State Department reports on U.S. aid to women and girls.

### **Democracy, Human Rights, Governance, and Elections Funding Issues**

U.S. funding for democracy, governance, and rule of law programs has grown, in line with the Obama Administration strategy for Afghanistan. During FY2002-FY2012, USAID spent about \$1.5 billion on democracy, governance, rule of law and human rights, and elections support. For FY2013, the ESF amounts provided for democracy and governance are \$578.2 million, including

- \$447.2 million for good governance;
- \$31.5 million for rule of law and human rights (not including INCLE);
- \$64.3 million for political competition and consensus-building;
- \$35.2 million for civil society.

For FY2014, the Administration has requested \$1.665 billion in ESF and \$475 in INCLE funding for Afghanistan—the broad accounts from which democracy, governance, and rule of law

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<sup>64</sup> A draft of this strategy document was provided to CRS by the State Department, April 21, 2011.

<sup>65</sup> For prior years, see CRS Report RL30588, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, by Kenneth Katzman, in the section on aid to Afghanistan, year by year.

funding—as well as funding for a wide range of other functions—are drawn. However, precise requested amounts for the specific democracy-related functions are not available to date. For tables on U.S. aid to Afghanistan, see CRS Report RL30588, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, by Kenneth Katzman.

## **Effects of a Settlement with the Taliban**

A major U.S. and Afghan initiative—to reach a conflict-ending settlement with the Taliban—is likely to affect all of the issues discussed in this paper: Afghan politics, future elections, the performance of the government along all its metrics, and the human rights situation. Many in the international community, including within the Obama Administration, initially withheld endorsement of the concept, fearing it might result in the incorporation into the Afghan political system of insurgent leaders who retain ties to Al Qaeda and will roll back freedoms instituted since 2011. The minority communities in the north, women, intellectuals, and others remain skeptical that their freedoms can be preserved if there is a political settlement with the Taliban. These groups fear that the Taliban could be given major ministries, seats in parliament, or even tacit control over territory as part of any deal. Most insurgents are highly conservative Islamists who oppose the advancement of women that has occurred and women have been a target of attacks by Taliban supporters, including attacks on girls' schools and athletic facilities. Then Secretary Clinton said in India on July 20, 2011, that any settlement must not result in and undoing of “the progress that has been made [by women and ethnic minorities] in the past decade.”

To respond to those fears, Afghan and U.S. officials say that the outcome of a settlement would require the Taliban to drop at least some of its demands that (1) foreign troops leave Afghanistan; (2) a new “Islamic” constitution be adopted; and (3) Islamic law be imposed. This issue is covered in greater depth in CRS Report RL30588, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, by Kenneth Katzman.

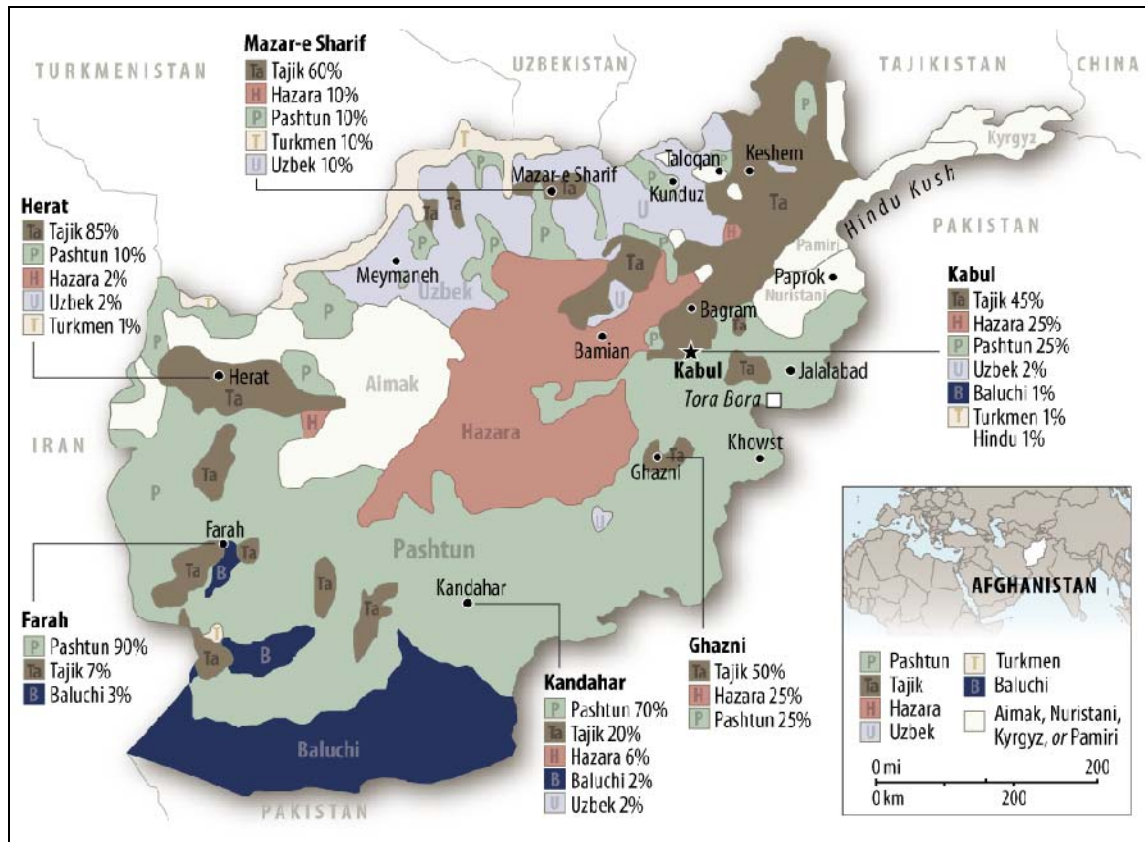
**Table I. Major Pashtun Tribal Confederations**

<b>Clan/Tribal Confederations</b>	<b>Location</b>	<b>Example</b>
<b>Durrani</b>	Mainly southern Afghanistan: Qandahar, Helmand, Zabol, Uruzgan, Nimruz	
Popalzai (Zirak branch of Durrani Pashtun)	Qandahar	Hamid Karzai, president of Afghanistan; Jelani Popal, former head of the Independent Directorate of Local Governance; Mullah Bradar, the top aide to Mullah Umar, captured in Pakistan in Feb. 2010. Two-thirds of Qandahar's provincial government posts held by Zirak Durrani Pashtuns
Alikozai	Qandahar	Mullah Naqibullah (deceased, former anti-Taliban faction leader in Qandahar)
Barakzai	Qandahar, Helmand	Ghul Agha Shirzai (Governor, Nangarhar Province)
Achakzai	Qandahar, Helmand	Abdul Razziq, Police Chief, Qandahar Province
Alozai	Helmand (Musa Qala district)	Sher Mohammad Akhunzadeh (former Helmand governor); Hajji Zahir, former governor of Marjah
Noorzai	Qandahar	Noorzai brothers, briefly in charge of Qandahar after the fall of the Taliban in November 2001
<b>Ghilzai</b>	Eastern Afghanistan: Paktia, Paktika, Khost, Nangarhar, Kunar	
Ahmadzai		Mohammed Najibullah (pres. 1986-1992); Ashraf Ghani, Karzai adviser, Finance Minister 2002-2004
Hotak		Mullah Umar, but hails from Uruzgan, which is dominated by Durranis
Taraki		Nur Mohammed Taraki (leader 1978-1979)
Kharoti		Hafizullah Amin (leader September-December 1979); Gulbuddin Hekmatyar, founder of Hezb-e-Islami (Gulbuddin), former <i>mujahedin</i> party leader now anti-Karzai insurgent.
Zadran	Paktia, Khost	Pacha Khan Zadran; Insurgent leader Jalaluddin Haqqani
<b>Kodai</b>		
Mangal	Paktia, Khost	Ghulab Mangal (Governor of Helmand Province)
Orkazai		
<b>Shinwari</b>	Nangarhar province	Fasl Ahmed Shinwari, former Supreme Court Chief Justice
Mandezai		
Sangu Khel		
Sipah		
<b>Wardak</b> (Pashtu-speaking non-Pashtun)	Wardak Province	Abdul Rahim Wardak (Defense Minister)
<b>Afridis</b>	Tirah, Khyber Pass, Kohat	
Zaka khel		

<b>Clan/Tribal Confederations</b>	<b>Location</b>	<b>Example</b>
		Jawaki
		Adam khel
		Malikdin, etc
<b>Yusufzais</b>	Khursan, Swat, Kabul	
		Akozais
		Malizais
		Loezais
<b>Khattaks</b>	Kohat, Peshawar, Bangash	
		Akorai
		Terai
<b>Mohmands</b>	Near Khazan, Peshawar	
		Baizai
		Alimzai
		Uthmanzais
		Khawazais
<b>Wazirs</b>	Mainly in Waziristan	
		Darwesh khel
		Bannu

**Source:** This table was prepared by Hussein Hassan, Information Research Specialist, CRS.

Figure I. Map of Afghan Ethnicities



**Source:** 2003, National Geographic Society, <http://www.afghan-network.net/maps/Afghanistan-Map.pdf>. Adapted by Amber Wilhelm, Graphics Specialist, Publishing and Editorial Resources Section, CRS.

**Notes:** This map is intended to be illustrative of the approximate demographic distribution by region of Afghanistan. CRS has no way to confirm exact population distributions.

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