

209 CDS 10 E rev 1
Original: English



NATO Parliamentary Assembly

GOVERNANCE CHALLENGES IN AFGHANISTAN

SPECIAL REPORT

VITALINO CANAS (PORTUGAL)
SPECIAL RAPPORTEUR

International Secretariat

19 November 2010

Assembly documents are available on its website, <http://www.nato-pa.int>

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	GOVERNANCE CHALLENGES AT THE CENTRAL GOVERNMENT LEVEL.....	1
	A. AFGHANISTAN'S POLITICAL SYSTEM: MAIN ISSUES AND CHALLENGES.....	2
	B. ELECTIONS	5
	C. HUMAN RIGHTS AND WOMEN'S RIGHTS	9
	D. SECURITY, RECONCILIATION AND REINTEGRATION.....	10
III.	LOCAL GOVERNANCE CHALLENGES	11
IV.	RULE OF LAW CHALLENGES	13
	A. CORRUPTION	13
	B. JUSTICE REFORM	15
	C. DRUGS	16
V.	THE INTERNATIONAL COMMUNITY'S APPROACH TO GOVERNANCE IN AFGHANISTAN: ISSUES AND CHALLENGES.....	17

I. INTRODUCTION

1. The year 2010 was marked by a number of milestone events in Afghanistan: the convening of a Peace *Jirga* to discuss reconciliation and reintegration; stepped-up military activity in the Southern provinces and the start of a transition towards full Afghan responsibility for security; and parliamentary elections on 18 September 2010.

2. At an international conference held in London on 28 January 2010, Afghan authorities and representatives of the international community renewed “their mutual commitment towards helping Afghanistan emerge as a secure, prosperous and democratic nation”. They emphasised that “the Afghan Government and the international community are entering into a new phase on the way to full Afghan ownership”. This mutual pledge was repeated at the Kabul Conference on 20 July 2010, as summarised in the title final communiqué of the conference: “A Renewed Commitment by the Afghan Government to the Afghan People, A Renewed Commitment by the International Community to Afghanistan”.

3. One of the central elements in this transition towards full Afghan ownership is the consolidation of governance, both at the local and central levels. Governance in Afghanistan faces many difficult challenges. Presidential elections held in August 2009 demonstrated the ongoing weakness of central governance. The development of sustainable local institutions has lagged behind. The establishment of the rule of law also continues to be hampered by the slow pace of justice reform, pervasive corruption and the strength of the illicit drug trade.

4. The international community’s approach to governance in Afghanistan has evolved over the past nine years. The initial focus has been on building up central institutions. However, efforts have often suffered from a lack of strategic vision, limited resources and insufficient co-ordination. Many of the initial shortcomings have been progressively corrected, and current strategies provide a sound basis for moving forward.

5. However, whether decisive progress is achieved in consolidating governance will depend both on the Afghan authorities’ determination to implement difficult reforms and on the international community’s ongoing resolve to support political and military processes.

6. This report provides an overview of some of the key governance challenges that Afghanistan faces today and of the measures that Afghan authorities and the international community have taken over the past nine years to address them, and attempts to sketch a few limited proposals to deliver on the mutual commitments undertaken in London and Kabul.

7. Information provided in this report builds upon previous reports by the NATO Parliamentary Assembly’s Committees on Afghanistan, as well as on the findings of a visit of a NATO PA delegation to Afghanistan in April 2010. Your Rapporteur hopes to continue this important study in 2011, and examine also a number of additional issues, such as, in particular, the role of political parties, NGOs and civil society in support of governance.

II. GOVERNANCE CHALLENGES AT THE CENTRAL GOVERNMENT LEVEL

8. The chapter below will examine some of the main governance challenges that Afghan institutions face at the central level, focusing in particular on relations between the executive and the legislative, on past and upcoming elections, on the protection of human rights, and on the issue of reconciliation and reintegration.

A. AFGHANISTAN'S POLITICAL SYSTEM: MAIN ISSUES AND CHALLENGES

9. The Afghan Constitution, adopted at a Constitutional *Loya Jirga* in January 2004, puts in place a representative system of government that concentrates political power in Kabul and in the hands of the President. However, the Parliament has also progressively adopted a more assertive role in relations with the executive.

1. Afghanistan's constitutional framework: key players

The President and the government

10. The President, as the Head of State and government as well as the country's Commander-in-Chief, is by far the most powerful political figure in the Afghan State. He is directly elected every five years, for a maximum of two terms. The government is mainly an administrative body with little formal authority independent from the President.

11. The President's powers extend substantially into the legislative and judiciary realm. He can adopt regulations that are not contrary to the letter and the spirit of the law, issue legislative decrees during recesses of the Lower House (*Wolesi Jirga*) of the National Assembly, and assume broad powers in a state of emergency. Furthermore, the President can call referenda on important national questions. He also appoints one third of the members of the Upper House (*Meshrano Jirga*) of the National Assembly, thus having substantial influence over the make-up of one legislative body.

12. With regards to the judiciary, the President approves the appointment of judges upon a proposal by the Supreme Court; he also appoints candidates to the Supreme Court with the endorsement of the Lower House.

The National Assembly

13. Afghanistan has a bicameral Parliament; the directly elected, 249-member *Wolesi Jirga* and the indirectly elected, 102-member *Meshrano Jirga*, constitute the National Assembly. The provincial councils and district councils, as the sub-national government institutions of Afghanistan, each select one third of the members of the Upper House, and the President appoints the remaining one third.

14. The National Assembly's main responsibilities are to legislate and to oversee the President and the government. However, the National Assembly is constrained in the exercise of these powers in important ways. Most significantly, the extensive legislative powers in the hands of the President indirectly undermine the role of the National Assembly as the country's main legislative body. Furthermore, the President can veto bills, a veto which the Lower House can only overwrite with a two-thirds majority. The government can also require that the National Assembly prioritise treaties and development plans that it considers require urgent consideration.

15. The Lower House has to approve or reject presidential appointments and can express a vote of no confidence in the government's ministers. Its power over the President, however, is limited. Impeachment of the President, for example, requires a complex procedure.

The Supreme Court

16. The Supreme Court is the country's highest judicial authority. It controls judicial budgets and appoints, disciplines and promotes judges from the lower courts. It also exercises limited powers of judicial review. Lower courts and the government are the only institutions able to challenge the constitutionality of a law before the Supreme Court. Individual complaints regarding violations of

fundamental rights can only be made to an Independent Human Rights Commission, which can then decide to refer them to the courts.

17. It is still however unclear how the division of labour between the Supreme Court and the newly established Independent Commission for Oversight of Implementation of the Constitution (ICOIC) will work.

18. To resolve disputes before them, the courts must apply the Constitution and the laws of Afghanistan. However, the Constitution also makes clear that Islamic jurisprudence will be used to adjudicate cases if provisions in the Constitution or other Afghan laws do not provide sufficient ground for them to rule on the case. Depending on whether the ruling affects *Sunni* or *Shia* Muslims, either *Hanafi* – a *Sunni* legal tradition –, or *Shia* jurisprudence, will be used.

2. Checks and balances: a more assertive National Assembly

19. The relationship between the National Assembly and the President has grown increasingly testy over the past few years. While the National Assembly's powers are limited both constitutionally and in practice, it has shown signs that it does not want to be a rubber stamp for government policies. The Lower House has become a key forum for various individuals and groups, particularly for the non-Pashtun ethnic minorities, to influence presidential decisions.

20. Major standoffs between the Parliament and President have recently taken place over the nomination of Cabinet members, revision of the electoral law, and establishment of the ICOIC.

21. An area in which the hands of the National Assembly are far more tied-up is budgetary oversight. While the Upper House comments on and the Lower House approves, amends or rejects the State budget and the separate budget for development programs, the Parliament's actual influence on these financial matters is severely limited. First, the international donor community provides the funds for the overwhelming majority of Afghanistan's budget. Second, budgetary oversight suffers from a lack of parliamentary expertise and resources.

22. Observers note that the National Assembly is showing signs of improved performance and has demonstrated that it has the potential to become an effective check on the power of the executive. The constitution of the newly elected Parliament will show whether this proves to be a durable trend. Questions remain, however, regarding the representative character of the Assembly, the democratic credentials of some of its members – including suspicions of corruption –, as well as, most importantly, the Parliament's capacity and resources. The National Assembly on a whole is only staffed by about 275 Afghans, with only a small research group. It is thus forced to rely to a large extent on information from the very ministries it is supposed to oversee. Additionally, the absence of a functioning party system means that a party apparatus cannot make up for this shortcoming.

3. The absence of a functioning party system

23. The impact of parties on the Afghan polity is rather low. One of the main reasons for the absence of strong parties is the fact that elections are conducted according to the single non-transferable vote system, in which voters have one vote to cast and the candidates with the highest numbers of votes fill the available seats. While simple and straightforward for voters, this system greatly limits the viability of forming parties, as members are elected individually and their chances to be elected are not significantly enhanced by running on a party platform. Furthermore, the legacy of political parties in a country that has been plagued by decades of civil war has made it very hard for parties to appeal to voters.

24. Other factors also add to the poor state of the party landscape: feedback mechanisms between legislators and voters are weak; political parties have few incentives to offer to members; parties tend to be seen as elitist; and the precarious security situation makes political activities extremely challenging.

25. The recent re-registration of political parties provided another illustration of how little these are rooted in political culture.¹

4. Islam and the Constitution

26. Animated discussions took place during the drafting of the Constitution regarding the status of Islam. The Constitution reflects the uneasy compromise between radically divergent views. It recognises Islam as the State religion, but also provides that non-Muslims are free to exercise their religion and perform their rituals within the bounds of the law. While no reference is made to *shari'a*, no law can be contrary to Islam.

27. The recent controversy over the Shiite Personal Status Law² shows that concerns over the status of Islam in the Constitution are real, and that conflicts of interpretations are bound to arise between on the one hand, Afghanistan's constitutional commitment to international human rights treaties and to gender equality before the law, and, on the other hand, the provision that no law shall contravene the tenets and provisions of Islam.

5. Ethnic diversity

28. The Constitution also sought to balance the need to consolidate national unity against the recognition of the ethnic, linguistic, tribal and religious diversity of the country. For instance, it bars the President and the government from using their positions for linguistic, sectarian, tribal, religious or partisan purposes. At the same time, it also prohibits the creation of political parties based on ethnicity.

29. A genuine effort has been made to integrate different ethnicities in government and the administration. Security institutions, and particularly the Afghan National Army, also provide a good model of ethnic diversity.³ Key positions in government, however, are increasingly dominated by Pashtuns. In this context, the Parliament plays a key role in reflecting the country's diversity and providing a counterweight to a Pashtun-dominated administration.

6. Administrative capacity

¹ The Parliament launched this process in June 2009, judging that there were too many parties in the country. Despite a deadline extension, when the re-registration period ended in June 2010, only 2 of the 110 recognised Afghan parties had successfully re-registered, with about a dozen applications pending.

² The law aimed to regulate various issues relating to family law within the Shi'a community of Afghanistan, which represents some 10% of the population. The initial draft adopted by the Parliament in February 2009 denied Shi'a women the right to leave their homes except for "legitimate" purposes; forbade women from working or receiving education without their husbands' consent; permitted marital rape; favoured males in the family with regards to child custody, divorce and inheritance rights. Following an international outcry, some of the most problematic provisions, such as the one restricting women's freedom of movement, were removed from the text.

³ On this issue, see the General Report of the NATO PA's Defence and Security Committee "Preparing the Afghan National Security Forces for Transition", 211 DSC 10 E, which nevertheless points to the fact that, whereas the composition of the Afghan National Army is roughly equivalent to that of the population as a whole, Tajiks still tend to be overrepresented in the higher ranks, while Hazaras feel that they "face a glass ceiling". In addition, only 2 or 3% of the ANA are from the south.

30. Building up administrative capacity is a key challenge for strengthening central and local governance. Yet, efforts in this field have long ignored the scale of the challenge. Some progress has nevertheless been achieved in recent years both in training a new cadre of civil servants and in setting new standards for reducing corruption and enhancing the quality of public administration.

31. The Independent Administrative Reform and Civil Service Commission (IARCSC) plays a central role on both accounts. It has started harmonising and institutionalising job descriptions, standardizing the pay system, and implementing a merit based promotion system. It has also sped up the recruitment of new civil servants.⁴

32. Afghan institutions, with the support of international partners, have also stepped up initiatives to train civil servants at all levels of administration. New programmes put greater emphasis on training local administrators in the provinces and districts. Other programmes aim to strengthen the capacity of the IARCSC and the Afghan Civil Service Institute, its training body, to manage and implement civil service support programmes. International donors have also sought to consolidate and better co-ordinate existing programmes, under the leadership of the IARCSC.

33. Many challenges remain at all levels, however. Implementing structural reform in public administration and building up a competent, effective and appropriately staffed civil service will require a sustained long-term endeavour, an endeavour that is fundamental to the success of all other stabilisation and reconstruction efforts: combating corruption, enhancing the effectiveness of central and local governance, and spreading security across the country. Indeed, a key element in defeating the insurgency and winning hearts and minds is providing a competent government that is able to address the needs of its citizens and deliver reliable services. Recent international strategies have sought to better take into account this link between governance and security, and to ensure that efforts to put in place governance structures are conducted in conjunction with military operations.

B. ELECTIONS

34. On 20 August 2009, Afghanistan held presidential and provincial council elections for the second time since the fall of the Taliban. These were the first post-Taliban elections organised by the Afghan authorities, although with substantial international assistance. The elections were marred by considerable fraud. Mr Karzai was nevertheless declared the winner after his main opponent decided to withdraw between the two rounds. Parliamentary elections were held on 18 September 2010. It is still too early to provide a final assessment of these elections, as final results have not yet been announced and electoral complaints have not all been processed. However, it appears that, despite some positive developments, significant problems have again taken place.

1. 2009 presidential and provincial elections

Electoral framework and administration

35. The President is elected in a single, nation-wide constituency. If no candidate receives the necessary absolute majority in the first round, a run-off must be organised between the two candidates with the most votes.

36. Provincial councils are elected in each single-constituency province using the single non-transferable vote system in multi-member constituencies. There are nine to 29 seats on each council for a nation-wide total of 420 provincial council seats.

⁴ In March 2010, the Commission reported having recruited over 100,000 new civil servants over the past year.

37. An Independent Election Commission (IEC) was responsible for organising the elections, but was extensively supported through technical assistance and capacity building by the United Nations Development Programme's Electoral and Legal Capacity for Tomorrow project (UNDP/ELECT). Additionally, an Electoral Complaints Commission (ECC) was temporarily set up to deal with complaints and challenges arising from the elections. The ECC was composed of five members, two Afghans – nominated respectively by the Afghan Independent Human Rights Commission and the Supreme Court –, and three internationals – appointed by the Special Representative of the UN Secretary-General. The Head of the ECC was selected among these three international members.

The campaign

38. Campaigning was de facto restricted by widespread insecurity. Of the 41 candidates registered for the presidential election, only 29 were still in the race on election day. Over 3,000 candidates competed for the 420 provincial council seats. Over 80% of these candidates ran as independents. In fact, only three parties were visible and active: *Jumbish-i-Milli* (led by General Rashid Dostum), *Hezb-i-Wahdat* (a Shia party) and the United National Front (a coalition led by former President Burhanuddin Rabbani and Speaker of the *Wolesi Jirga* Yunus Qanooni). Rather than political parties, support for specific candidates relied mostly on powerbrokers, community councils, patronage networks and local political blocs based on family, tribal or ethnic ties. President Karzai's main competitor was Dr Abdullah Abdullah, a former Foreign Minister and prominent member of the Northern Alliance, backed by the United National Front.

The election

39. According to the Afghan Independent Human Rights Commission, election day was the most violent day in Afghanistan in 15 years. As many as 31 persons were killed and 79 injured in some 300 incidents. According to the IEC, voting took place at 6,167 polling centres, while some 800 polling centres were deemed too unsafe to open. The turnout – estimated at about 38,8% – was far lower than in the 2004 presidential elections – 80% - and the 2005 parliamentary and provincial elections – 50%.

40. Allegations of widespread fraud surfaced immediately after the polls closed. The ECC received over 2,500 complaints. Nevertheless, the IEC decided to release preliminary results on 16 September 2009. According to these preliminary results, Mr Karzai had won 54.6% of the vote and Dr Abdullah 27.75%. Following an audit of a sample of suspect ballot boxes in 10% of polling stations (representing close to 25% of votes), the ECC found that about 1 million Karzai votes and 200,000 Abdullah votes could be considered fraudulent. This resulted in an adjustment of votes that gave Mr Karzai 49.67% and Dr Abdullah 30.59% of the votes. With Mr Karzai's score now below the required 50% threshold, a run-off election was scheduled for 7 November 2009.

41. On 1 November, however, Dr Abdullah decided to withdraw from the second round, citing doubts that a second round would fulfil conditions for a fair election. The IEC cancelled the run-off the following day, declaring Mr Karzai the winner.

42. The process of post-election certification of the provincial councils was also protracted, with the last outstanding results established on 26 December 2009.

Assessment of the election

43. Local and international observers⁵ denounced deeply flawed elections, including massive fraud on election day. While ballot stuffing, particularly in favour of the incumbent, was the most widespread form of fraud, campaigning at polling stations, multiple voter registration, proxy and underage voting and other technical deficiencies also undermined the good conduct of the election.

44. The IEC was heavily criticised by observers for its lack of independence, transparency, accountability and credibility. According to the EU Election Observation Mission, IEC staffers likely engaged in election fraud themselves.

45. Also according to observers, the ECC was established too late to be able to adequately perform its role and did not possess sufficient institutional weight to influence the IEC's decisions substantially. The unclear division of labour and mutual suspicion between the IEC and the ECC also led to a high level of confusion regarding audit and recount procedures.

46. International observers also identified a number of shortcomings in the implementation of election regulations. The lack of a reliable, complete and accurate voter register led to numbers of registered voters that were likely inflated.⁶ The criteria and procedure for vetting candidates were not followed strictly, resulting in a failure to bar ineligible candidates from running. The media coverage was largely biased in favour of the incumbent, and the government's decision to ban journalists from reporting election day violence undermined freedom of speech. The lack of regulation and transparency in campaign financing was also seen as problematic. Finally, all observers lamented the fact that many women were de facto disenfranchised.

2. 2010 parliamentary elections

47. Elections for the Lower House of Parliament⁷, initially set for 22 May 2010, were postponed until 18 September 2010 in recognition of the logistical difficulties which could affect the organisation of the elections. Parliamentary elections are held according to the single non-transferable voting system. Each province forms a multi-candidate constituency. The number of seats allocated to each constituency varies from 2 to 33 depending on the province's population.

48. Following last year's experience, the parliamentary elections were seen as an important test and an opportunity to restore public confidence in the electoral process and the institutions. An amended election law was adopted in April 2010 following clarifications and assurances from the Afghan government, after the initial draft had caused strong objections in the Parliament and in the international community.

49. Several measures were also taken with regard to the IEC. In February 2010, the Commission decided not to rehire some 6,000 persons who worked at polling stations where significant fraud was committed in 2009. Fraud-mitigation measures were also implemented in the polling centres where most irregularities took place. The appointment of Fazel Ahmed Manawi to head the IEC was also widely saluted. Overall, however, these measures only very partially address the major flaws revealed during the presidential elections.

⁵ Developments below rely mainly on the report of the EU Election Observation Mission and the final report of the OSCE/ODIHR Election Support Team.

⁶ The total number of registered voters in the 2009 elections was 17 million, up from 10.5 million in 2004 and 12.5 million in 2005.

⁷ Following elections to the Lower House, provincial councils will also select new members for the Upper House.

50. Campaigning was again severely restricted because of the worsening security situation. Four candidates were killed in the pre-election period. Ultimately, 2,502 candidates ran for the *Wolesi Jirga*, down from 2,707 in 2005. Only 31 ran on party platforms. On the positive side, the presence of women in certain provinces increased, with some even vying for seats not exclusively allotted to female candidates. In the run up, 36 candidates were excluded because of links with illegal armed groups and 40 because they did not resign from civil service positions in time. Management of the technical aspects of the pre-election process by the IEC was also generally assessed positively. The electoral timetable was kept on track, recruitment and training of personnel was completed successfully, the security assessment of polling stations was conducted effectively, and the final list published one month before the election. Of the 6,835 polling centres originally foreseen by the IEC, 5,897 were deemed safe enough to open and 5,510 actually opened on election day.

51. Violence was again high on election day. According to ISAF, close to 400 insurgent attacks took place, a third more compared with the 2009 elections. Some 30 people were killed in these incidents.

52. Partial results were released by the IEC on 20 October. According to this data, about 4.3 million valid votes were cast on election day, or an estimated turnout of 37.7%. If this figure is confirmed, this would be one point lower than the 2009 elections, and the lowest turnout in Afghan elections post-2001.⁸

53. While it is still too early to tell how these elections compare with previous ones, it is clear that significant fraud has taken place. Over 3,600 complaints have been filed with the ECC, over half of which have been classified as priority A, meaning they can potentially change the outcome of the vote.⁹ The IEC decided on 3 October to invalidate the votes of 11 polling centres in different provinces and ordered a recount in 63 other polling centres. This comes in addition to previous invalidation of part or all of the votes from 141 polling centres and recounts in 202 polling centres. Some 1.3 million votes were considered by the IEC to be invalid.¹⁰ The way complaints and recounts are managed will provide an important indication as to the reliability and credibility of the election process. It is therefore essential that this process is conducted efficiently, effectively and in a fully transparent manner.

54. The announcement of final results, originally expected by 30 October, will likely be postponed to a later date. However, even before these final results are announced, the conduct of parliamentary elections has confirmed the need for long-term electoral reform. The Afghan government itself has recognised this and pledged at the Kabul Conference in July 2010 to initiate an electoral reform strategy within six months. This will be a very challenging yet necessary process, and your Rapporteur hopes that it will be conducted in close co-operation with relevant international institutions, with a view to incorporating the wide-ranging recommendations put forward following both the 2009 and 2010 elections. According to the UN, the following issues should feature on the agenda for long-term electoral reform: the legal framework, the sustainability of the electoral calendar, the currently temporary nature of the ECC, the creation of a single

⁸ However, as the IEC itself emphasizes, turnout figures are far from reliable, and different methods have been used to calculate turnout in successive elections.

⁹ In contrast to the 2009 elections, most complaints will be adjudicated at the provincial level by the newly established provincial ECC offices.

¹⁰ In a statement released on 20 October, UNAMA concluded that "[t]he number of votes invalidated and identified by the IEC point to considerable fraud and electoral irregularities on election day"; however, it also commended the IEC for its handling of the post-election process, noting that "[t]he IEC has shown significant improvements in the management of the post-polling day process and we commend them for this. The IEC has identified irregularities and has been committed to ensuring the process is transparent. We further recognise the thorough review they have undertaken prior to announcing the preliminary results."

nationwide voter register, boundary demarcations for local elections, support to national observation groups and political groups, and institution- and capacity-building for the IEC.¹¹

C. HUMAN RIGHTS AND WOMEN'S RIGHTS

55. The Afghan Constitution commits the government to observe the UN Charter, the Universal Declaration of Human Rights and other international human rights treaties which Afghanistan has ratified. It explicitly recognizes a number of fundamental rights for its citizens, including the right to life, liberty and respect for human dignity, freedom of expression, prohibition of torture, the right to a fair trial, and non-discrimination. The Constitution established the Independent Human Rights Commission of Afghanistan (AIHRC) with the mandate to monitor respect for human rights as well as to foster and protect it.

56. Since the fall of the Taliban regime, the government of Afghanistan, in partnership with the international community, has achieved a number of major steps towards the protection of human rights. These have included:

- adapting Afghanistan's legal framework to match the commitments undertaken under the new Constitution and international treaties;
- establishing institutions responsible for the promotion and protection of human rights, and putting in place monitoring and reporting mechanisms; the remarkable work accomplished, in particular, by the AIHRC should be saluted;
- implementing capacity-building initiatives for these new institutions;
- developing strategies and specific benchmarks for future efforts, including objectives set in the Afghan National Development Strategy (ANDS) and the National programme for human rights and civic responsibilities presented at the Kabul Conference.

57. Several other positive developments have taken place. Thus, 6 million children were enrolled in primary schools in 2008 (of which 2 million were girls), up from only one million under the Taliban. The media landscape has also progressively expanded, and access to the internet is growing rapidly.

58. Significant measures have also been adopted to promote gender equality and women's rights. These have included improved access to education, literacy campaigns, greater representation of women in political institutions¹² and public administration¹³, adoption of a National Action Plan for the Women of Afghanistan and of a law on the elimination of violence against women, implementation of various measures to protect women from violence, etc. The Ministry of Women Affairs spearheads these efforts within the Afghan government.

59. Nevertheless, the protection of human rights in Afghanistan continues to face daunting challenges on many accounts¹⁴:

- discrepancies still exist between legislation on the one hand, and the Constitution and Afghanistan's international obligations on the other;

¹¹ See the UN Secretary General's report of 14 September 2010 "The situation in Afghanistan and its implications for international peace and security", A/64/911.

¹² A minimum of two female representatives on average from each of the 34 provinces must be elected into the Lower House, i.e. a minimum of about 68 members. In the Upper House, 50 % of the members appointed by the President must be female, i.e. 17 members. 25% of provincial council seats are also reserved for women.

¹³ Legally, at least 25% of members of Parliament must be women. According to official Afghan statistics, 5.4% of all judges, 9.4% of all prosecutors and 21.5% of all civil servants (excluding the Ministry of Defence) are women (2009 data).

¹⁴ On all these challenges, see the remarkably candid and lucid report submitted by the Afghan government to the UN Human Rights Council as part of the Universal Periodic Review, A/HRC/WG.6/5/AFG/1, 24 February 2009.

- respect of human rights by several state institutions remains a problem; use of violence, torture and arbitrary detention by law enforcement bodies is of particular concern;
- structural weaknesses within the justice sector mean that access to justice for all, the right to fair trial, and equal treatment for all before the law, are not guaranteed;
- the critical condition of prisons and detention centres, and the treatment of detainees, are particular concerns;
- corruption continues to undermine respect for human rights;
- the ongoing insecurity across Afghanistan also seriously restricts the enjoyment of fundamental rights;
- freedom of the media continues to be restricted by insecurity, but also by intimidation and harassment from certain state institutions;
- human rights related bodies continue to lack capacity to perform their functions; this includes in particular a very weak role of civil society organisations;
- monitoring mechanisms also need to be strengthened;
- awareness of human rights among the population remains limited, and education and training insufficient.

60. A lot remains to be done in particular to promote women's rights, including further improving access to education for women and girls, and addressing the widespread occurrence of underage marriages, forced marriages and domestic violence. The adoption of the Shiite Personal Status Law, even in the amended version, was widely seen outside Afghanistan as a setback for women's rights.

61. It is therefore essential for Afghanistan's international partners to support the government in its efforts to implement the commitment it has undertaken to enhance the protection of human rights and women's rights in particular, while at the same time remaining vigilant. In particular, the current discussion on national reconciliation should not come at the expense of the fundamental rights that the Constitution guarantees to all Afghan citizens. Conversely, it is critical that the international civilian and military presence in Afghanistan be seen as exemplary in their respect for human rights and the rule of law.

D. SECURITY, RECONCILIATION AND REINTEGRATION

62. The challenging security situation and the persistent presence of an active insurgency in parts of the country remain the most serious obstacles to the establishment of governance and rule of law across Afghanistan. While military efforts continue, with a renewed focus on the South in particular, a key challenge for enhancing governance is to reconcile and reintegrate elements of the insurgency.¹⁵

63. The past year has seen a new momentum towards reintegration and reconciliation, and a multiplication of contacts with representatives of the insurgency both by Afghan authorities and by international partners. Reconciliation and reintegration featured prominently in President Karzai's inauguration speech in November 2009 and again at the London Conference, where President Karzai outlined a peace and reintegration programme. The London Conference welcomed reinvigorated reintegration efforts, as well as plans to hold a peace *jirga*.

64. The Consultative Peace *Jirga* was held in Kabul on 2-4 June 2010 with some 1,600 representatives.¹⁶ Despite criticism regarding the representative character of the *jirga*, the

¹⁵ Reconciliation refers to political negotiations with the higher ranks of the insurgency regarding an end to hostilities, whereas reintegration refers to efforts to provide "foot soldiers" with incentives to lay down their arms and re-engage in legitimate activities.

¹⁶ Delegates included parliamentarians, local officials, representatives of civil society, ethnic communities and refugee groups. Close to 350 delegates were women.

convening of this forum was in itself a success. Insurgent attacks did not succeed in disrupting the meeting.

65. Participants endorsed President Karzai's initiative to seek a lasting end to the conflict by peaceful means, and called for the development of a national strategy. They stressed that "no peace efforts should bring to question the achievements made so far and its legal values", and set a number of principles, which should form the framework of talks with insurgents. These include in particular: a commitment by insurgents to renounce violence and dissociate themselves from Al Qaeda and other terrorist groups; a just peace which can guarantee the rights of all citizens, including women and children, and an equal application of the law to all citizens; guaranteed protection and safety for those who join the peace process. In addition, they called for the liberation of detainees wrongfully imprisoned, and the removal of insurgent leaders from UN blacklists.

66. As a result of the Consultative Peace *Jirga*, a 70-member High Peace Council (HPC) was set up in September 2010 with broad responsibilities in leading the reconciliation process. There are already numerous reports of an intensification of contacts with different insurgent groups, including, most recently, official confirmation of contacts between high-level representatives of the Taliban and high-level Afghan officials.

67. Building on the London commitments, an Afghanistan Peace and Reintegration Programme (APRP) was presented in April 2010, and endorsed "in principle" at the Kabul Conference in July 2010. The APRP is a very complex and wide-ranging programme. It will be Afghan-led and funded through the peace and reintegration trust fund launched at the London conference, to which donors have pledged over USD 200 million. The plan focuses mostly on low- and possibly mid-level insurgents through different reintegration measures, including enrolment into community security initiatives or the ANSF, as well as community-based, literacy, vocational training, de-radicalisation, and public works and agricultural programmes.

68. If past reintegration programmes are any indication, implementation of this new plan is likely to face difficult challenges. Critics have already raised questions regarding bureaucratic complexity, risk of abuse, and insufficient funding. So far very little money has been spent, and only several hundred insurgents have reintegrated this year. However, with the official start of the APRP on 28 September 2010, it is hoped that the initiative will gain traction. It is essential to build on the momentum created by the peace *Jirga* and the Kabul conference, and deliver on the commitments that will help convince insurgent fighters that the APRP is a credible and attractive process. In particular, Afghan institutions need to demonstrate their ability to manage this ambitious programme in an efficient and accountable manner, and international partners need to deliver on – and possibly augment – their pledges to the trust fund. The success of the reintegration programme will also partly depend on progress achieved on reconciliation.

III. LOCAL GOVERNANCE CHALLENGES

69. While international and Afghan efforts have for years focused on strengthening central governance, local governance is receiving increasing attention. The situation remains extremely challenging, but combined international and Afghan efforts seem to be achieving tangible progress.

70. In the debates leading up to the new Constitution, the question of centralism vs. decentralisation was a key issue. While many minority factions wanted devolution of power from the centre, the predominant view was that this could have fractured the country beyond repair. As a result, the Constitution provides for a unitary and highly centralised State, in which the government is tasked with "preserving the principles of centralism".

71. Below the central level, the country is divided into 34 provinces and 365 districts. Provincial and district governors are appointed by the President while the Constitution provides for the direct election of provincial, district, village and municipal councils.

72. All provinces and districts have designated governors; similarly mayors have been appointed in major municipalities. In certain key provinces – notably Helmand –, new governors have been able to achieve measurable improvements in disrupting the narcotics trade, improving local economies and increasing local support for the government.

73. However, the ability of local governments to function effectively – particularly at the district and municipal levels – is severely circumscribed by the security situation, the insurgency's operation of parallel governance structures, corruption, as well as by the dearth of trained personnel and essential resources such as communications systems, vehicles and offices.

74. The situation is even more challenging regarding local councils. Elections have so far only been held for provincial councils in 2005 and 2009. The organisation of district council elections has been hampered by the non-resolution of the issue of delimitation of boundaries. Municipal elections are also yet to be organised.

75. The situation is slowly improving, however, thanks to a greater focus by international and Afghan authorities on strengthening local governance.¹⁷ President Karzai has announced plans to hold district council elections nationwide in the spring of 2011. He also mentioned the prospect of a direct election of mayors in all municipalities, although a concrete time has not been set.

76. Established in August 2007, the Independent Directorate of Local Governance (IDLG) has played a key role in:

- screening candidates for local offices, including provincial and district governors, police chiefs and other key local officials;
- helping extend the reach of the official government locally; and
- helping enhance the quality and effectiveness of local administration, including through regular assessments of governors' performance, and training of local officials.

77. The Community Development Councils (CDCs) are widely seen as another successful experiment in local empowerment and ownership. Established with the support of the Ministry of Rural Rehabilitation and Development under the National Solidarity Programme, the CDCs aim to provide a forum for local communities to decide on development projects for their area. Some 22,000 CDCs have been created thus far; a total of 30,000 are planned. The establishment of CDCs has helped tie communities to the government, thereby increasing their trust in and reliance on official structures.

78. The adoption in March 2010 of the Sub-National Governance Policy (SNGP) marks another major step towards enhanced local governance. The policy envisions strengthening provincial councils' oversight powers and empowering them to approve provincial development plans and provincial budgets before their submission to the central government. It also introduces a budgeting process at the provincial level, which grants provincial councils powers to create their

¹⁷ Thus, the Afghanistan Civil Service Support programme, a partnership between the IARCSC and the US Agency for International Development, aims to train 16,000 civil servants over the next two years, including 14,000 from the provinces and districts, in 5 major areas: financial management, human resources management, policy and strategy development, project management and procurement. The Capacity Development Programme run by the IARCSC also aims to conduct 15,000 training sessions for civil servants in provincial offices and district training facilities between January 2010 and February 2011, a commitment undertaken at the London Conference.

own alternative budget for their respective areas. The SNGP also clarifies the roles of sub-national entities. Finally, it calls for district council and municipal council elections by March 2011 and gives municipal councils powers to enact legislation, approve annual budgets, and set tax rates.

79. At the Kabul Conference, the Afghan government committed to implementing the SNGP within 12 months “in a phased and fiscally sustainable manner”, to strengthening local institutional capacity and to developing sub-national regulatory, financing and budgetary frameworks.

80. Nevertheless, the development of local governance in Afghanistan continues to face a number of serious challenges:

- The powers of local councils are limited and ill-defined. In particular, they have very limited control over local budgets. In this sense, they neither provide an effective local decision-making body nor a strong check to the powers of governors. Implementation of the Sub-national Governance Policy will hopefully help address some of these issues. It should be noted also that, through their power to select members of the Upper House, provincial and district councils can exert significant influence over legislative affairs at the central level. The direct election of governors could be envisaged in the long term as a way to enhance the representative character and democratic legitimacy of local institutions, as well as strengthen the partnership between governors and local councils.
- Local authorities have to compete with many other parallel structures at the local level. Some of these are traditional informal forms of local governance (the traditional *shuras* and *jirgas*, who act as consultative decision-making bodies, as well as fora for settling disputes). Others are formal institutional structures, such as the CDCs. While CDCs provide a useful temporary forum in the absence of proper district and municipal councils, a clear and adequate division of labour will have to be worked out once elected local councils are finally formed.
- Most worryingly, local authorities also face an ongoing challenge from Taliban-sponsored institutions, including shadow governors and a competing justice system.
- Local authorities – particularly at the district level – also continue to lack adequate capacity and resources, including financial resources. Addressing this challenge will require in particular diverting resources away from the Taliban’s taxation scheme towards a legal taxation system in support of legitimate local authorities.

IV. RULE OF LAW CHALLENGES

81. This chapter will not discuss the building-up of security-related rule of law institutions, as this issue is addressed in depth in the General Report of the Defence and Security Committee “Preparing the Afghan National Security Forces for Transition” [211 DSC 10 E]. Instead, it will focus on three main challenges: corruption, justice reform and drugs.

A. CORRUPTION

82. Corruption within the government and administration remains a serious problem in Afghanistan with little progress achieved in recent years. Thus, in 2010, Transparency International ranked Afghanistan as the second most corrupt country in the world, outdone only by Somalia.

83. Pressure from the international community has nevertheless led Afghan authorities to take a number of recent positive steps. In his inaugural speech on 19 November 2009, President Karzai announced several anti-corruption measures:

- strengthened powers for the High Office of Oversight for Countering Corruption, established in 2008 with a mandate to investigate police and justice officials, as well as collect information on the overseas possessions of Afghan officials;
- the establishment of two new bodies: an anti-corruption unit within the Office of the Attorney-General and an Independent Anti-Corruption Tribunal; and
- a review of key anti-corruption laws.

84. Also in November 2009, two of the sitting ministers and three former ministers were investigated for charges for corruption, and were not reappointed to the new cabinet presented in December.

85. The issue of corruption featured prominently on the agenda of the London Conference, which set a number of priority measures to be adopted within tightly-defined timeframes:

- empowering the High Office of Oversight to investigate and sanction corrupt officials, and lead the fight against corruption, through decree within one month;
- during 2010, establishing a statutory basis for related anti-corruption bodies, including the Major Crimes Task Force (MCTK) and the Anti-Corruption Tribunal, guaranteeing their long-term independence;
- enhancing the effectiveness of the senior civil service appointments and vetting process and revising the civil service code. This will include, by the time of the Kabul Conference, identifying the top-level civil service appointments;
- the intention of the President to issue a decree prohibiting close relatives of Ministers, ministerial advisers, Members of Parliament, Governors and some Deputy Ministers from serving in customs and revenue collection departments throughout government;
- as a priority during 2010, adopting comprehensive legislation agenda to make Afghan laws consistent with the United Nations Convention Against Corruption (UNCAC), including the Anti-Corruption Penal Code, to expand provisions related to asset declaration; and
- inviting Afghan and other eminent experts to participate in an independent Ad Hoc Monitoring and Evaluation Mission which will develop clear and objective benchmarks for progress; and prepare periodic reports on national and international activity.

86. A first set of measures were adopted by presidential decree on 18 March 2010. These include in particular a strengthened mandate for the High Office of Oversight for Countering Corruption and stricter rules for the registration of assets owned by government officials. Additionally, the Afghan government announced a significant increase in police salaries (the base pay is now USD165 per month).

87. However, implementation of other commitments undertaken in London has lagged behind. New deadlines were set at the Kabul Conference regarding the MCTK and the Anti-Corruption Tribunal, the revision of Afghanistan's legislation in accordance with the UNCAC, and the establishment of the Joint Monitoring and Evaluation Committee. Further commitments were also spelled out with a view to expanding audits of government activities, and publishing the asset declarations of senior officials on an annual basis. Given the current pace of reform, significant improvements are likely to be slow, and can only succeed through a still more determined commitment by the highest spheres of the Afghan government.

B. JUSTICE REFORM¹⁸

88. Justice reform, although a key component of the establishment of the rule of law, has only received limited attention in the first years of the post-Taliban transition. As a result, and as noted in the UN Secretary General's March 2010 report on Afghanistan, "[t]he formal justice system remains beyond the reach of many Afghans."

89. Several obstacles have hampered reform on the Afghan side, including lack of capacity and weak leadership of the reform; at times difficult relations and bureaucratic battles between the Ministry of Justice, the Supreme Court and the Attorney General's Office; and the influence exerted by known criminal figures over the power structures.

90. The international community has also approached justice reform in a piecemeal fashion rather than through a coherent strategic approach. Initiatives have only addressed parts of problem, focusing largely on the formal justice sector while largely ignoring informal structures, and giving priority to national-level and centrally-led initiatives. Additionally, justice reform has been implemented largely in isolation from other security sector reform initiatives.

91. Justice reform was only given greater priority starting in 2005. The adoption in June 2008 of the Afghan National Development Strategy (ANDS) and of the National Justice Strategy was a major step in enhancing the coherence of local and international efforts. The National Programme for Law and Justice for All, announced in July 2010, is expected to further refine these policies. This document should include four main components: according to the Afghan government, "[t]he first three components are concerned with the ability of justice institutions to deliver justice services to the people, including through: (i) Improving physical infrastructure and equipment and conducting administrative and organizational reform to improve service delivery; (ii) finalizing commentaries for Civil and Penal Codes, reviewing and revising laws and optimizing the law-making processes, and the simplification of operational processes; and (iii) Creating a dedicated police force tasked with providing security to judges and other justice personnel. The fourth component aims at improving access to justice to the Afghan people through a range of initiatives, including: (i) Addressing the urgent need to link informal and formal justice systems; (ii) Creating legal awareness; (iii) Promoting legal aid; and (iv) Improving criminal punishments."¹⁹ Once completed, these documents will provide an adequate framework for implementing justice reform. At the Kabul Conference, the Afghan government committed to a number of specific implementation benchmarks relating in particular to the legal framework, access to legal aid, and the coherence of strategies and policies.

92. However, progress has been slow and many challenges remain. These include:

- serious problems regarding the independence of the judiciary and corruption of judges;
- lack of capacity;
- lack of access to justice for large parts of the population;
- difficulties relating to the variety of stakeholders responsible for different components of the justice sector: Ministry of Justice, Attorney General's Office, Ministry of Interior, Ministry of Defence (responsible for military courts and high security detention facilities), National Security Directorate (with its own affiliated court system and special detention centres); and
- limited progress in prison reform.

¹⁸ On this issue, see in particular the comprehensive study by Sari Kouvo, "State-Building and Rule of Law: Lessons from Afghanistan", NATO Defence College Forum Paper 6, March 2009, available at: http://www.ndc.nato.int/download/publications/fp_06.pdf.

¹⁹ ANDS Prioritisation and Implementation Plan Mid-2010-Mid-2013, Volume 1.

93. Limited access to the formal justice system and concerns regarding corruption, delays, costs and, more broadly, the inefficiency of the judiciary, have led many Afghans to resort to informal justice for dispute resolution through local elders and *shuras*. While this often provides a useful alternative or complement to the formal justice sector, particularly for simple low-level cases, only limited progress has been achieved in integrating both systems. Afghan authorities are still working to develop a draft policy on the integration of the formal and traditional systems, which will need to be aligned with the National Programme for Law and Justice for All. The Kabul Conference communiqué calls upon Afghan authorities to start implementation of this policy in the next twelve months.

94. Parallel Taliban-sponsored justice poses another more serious challenge to the establishment of the rule of law throughout Afghanistan. Given the current weaknesses of the formal justice system, Taliban justice is often seen as quicker, more reliable and less corrupt. Implementation of justice reform should thus be seen not only as a governance issue but also as a security priority.

C. DRUGS

95. The persistent strength of the illicit drug economy in Afghanistan continues to pose a serious challenge to the establishment of the rule of law across the country. The value of the drug trade originating in Afghanistan was estimated at around USD\$2.8 billion in 2009, or 26% of GDP. According to the World Bank, the country's narco-economy employs over 1.6 million people. Afghanistan alone accounts for over 90% of the world's supply of opiates.

96. Nevertheless, some progress has been achieved in recent years. In 2009, the UNODC reported a drop in poppy cultivation by one third over the previous two years. The number of poppy-free provinces reached 20 out of 34 in 2009 - from 13 in 2007 and only six in 2006. The evolution of the situation in Helmand has been particularly striking. Poppy cultivation there decreased by one-third between 2008 and 2009.

97. UNODC data for 2010 shows less positive developments across Afghanistan than in the previous year: overall stabilisation of the land area under poppy cultivation, number of poppy-free provinces, stabilisation in Helmand and negative trends in a number of central and northern provinces. Only opium production declined sharply to half the levels of 2009. However, according to the UNODC, this was due mainly to the occurrence of diseases in major growing areas that affected opium plants at a late stage of plant development.

98. These positive trends witnessed in 2009 were due to a combination of factors, including weather conditions, market trends and better governance. In 2010, while plant diseases led to a major drop in production, this also brought prices to a hike. The UNODC warns that "the current high sale price of opium in combination with a lower wheat price may encourage farmers to go back to opium cultivation."

99. While eradication has slowed down following the US government's decision to discontinue its programme, the increased focus on alternative livelihood and agricultural and economic support programmes in rural areas should be welcomed. These policies seek to encourage and facilitate a long-term transition towards licit economic activities. Thus, according to an independent study by Cranfield University in the United Kingdom²⁰, the "food zone programme" implemented by the governor of Helmand with financial and technical assistance from the United Kingdom and the United States, helped reduce opium cultivation by 37% in the area covered by the programme across six districts in Central Helmand. Opium crops were mostly replaced by cereal crops. The programme included anti-poppy awareness raising campaigns, the distribution of wheat seed and

²⁰ Cited in the UNODC 2009 Afghanistan Opium Survey.

fertilizer to farmers, and law enforcement activities including eradication. The US government's Good Performers Initiative also rewards poppy-free provinces with additional agricultural and economic support.

100. At the London Conference in January 2010, Afghan authorities committed to stepping up their efforts and updating the National Drugs Controls Strategy. The Kabul conference welcomed these efforts. However, few new specific commitments were undertaken, beyond declarations of intent.

101. Recent gains need to be consolidated. This will require a combination of local, national and international efforts. Law enforcement should obviously remain a key priority. In this regard, capacity building of Afghan counter-narcotics law enforcement forces should receive sustained attention. Coalition efforts to target facilities and traffickers known to support the insurgency should also continue, in close partnership with Afghan security forces. Strengthened local governance has proved a key factor and needs to receive continued attention and support from Kabul as well as from the international community. Similarly, crop substitution and alternative livelihood programmes need to form an essential part both of counterinsurgency efforts, and of the Afghan government's long-term development agenda. ISAF (International Security Assistance Force) nations should further support efforts in this area, particularly by contributing qualified civilian agricultural experts to Provincial Reconstruction Teams (PRTs). As recent negative trends in Badakhshan and Nangarhar show, it is also important to spread efforts across all regions, rather than focus excessively on problematic regions. Projects aimed at long-term structural change and job creation should also be preferred to short-term cash-for-work programmes. Finally, continuing to engage Afghanistan's neighbours in Central Asia, Russia and Iran – particularly through UNODC-led initiatives – is also essential, as reaffirmed by Kabul Conference participants.

V. THE INTERNATIONAL COMMUNITY'S APPROACH TO GOVERNANCE IN AFGHANISTAN: ISSUES AND CHALLENGES

102. A host of problems has negatively impacted the international community's efforts to develop and consolidate governance in Afghanistan, but three of them stand out:

- The absence of a shared long-term strategy and a clear division of labour:

In the first years of the intervention, international efforts have suffered from weak co-ordination and integration. Initiatives in the field of security, development and governance have been largely disconnected. Co-ordination of efforts proved deficient even within the same pillar, among international military actors, among international civilian actors, between civilian and military actors, as well as between the international community and the Afghan government.

- A narrow mandate and limited resources:

After the fall of the Taliban regime, the international community – in agreement with the transitional Afghan authorities – decided against an extensive involvement in state- and institution-building in Afghanistan. In particular, a "light footprint" approach was chosen for the establishment of the United Nations presence in-country. The adoption of a narrow mandate combined with limited resources thus circumscribed from the very beginning the role that the United Nations were able to play politically, legally and in practice in support of state building and governance. Resources committed to Afghan reconstruction were also limited in the early years of the post-Taliban transition in comparison with other post-conflict situations.

- The unstable security situation:

The persistent instability and insecurity have limited the ability of the international community, and in particular of civilian agencies, to support governance-building efforts across the country, particularly in those areas most affected by the insurgency. The re-emergence of the Taliban as a major threat after 2006 further complicated the joint Afghan and international venture to increase the quality of governance.

Facing the challenge: Adjusting international strategies

103. As a result of these different challenges and shortcomings, the international community's approach to governance has focused largely on building central institutions to the detriment of local governance. It has also heavily focused on building up the security sector to the detriment of other areas of governance. Additionally, the military has had to take the lead in many areas, including certain aspects of governance and development.

104. As we know now, initial strategies have tended to underestimate the scale of the challenge and of the efforts needed to stabilize and reconstruct the country. International efforts have progressively been adjusted along three main lines: clearer and more focused strategies and objectives; a greater focus on governance, supported by increased resources; and a better co-ordination of efforts.

Clearer and more focused civil and military strategies and objectives in support of governance

105. International strategies for Afghanistan have been progressively reviewed and refined at a series of major international conferences. Broadly speaking, these reviews have aimed to better connect international and national efforts in the three main areas of security, development and governance; to complement broad long-term objectives with specific, time bound, verifiable commitments; and to draw the path towards a transition to Afghan lead in all areas. As part of these reviews, the international community has recognised the need to better address the challenges of governance.

106. A major step in this process was the adoption in April 2008 of the Afghan National Development Strategy (ANDS), which laid out the government's development plans for 2008 to 2013. The ANDS acknowledged the central importance of rapidly improving the country's governance structures. The ANDS remains still today the main roadmap for Afghan and international efforts. It provides a comprehensive framework for a largely Afghan-led and Afghan-owned state-building and reconstruction strategy.

107. At this year's London Conference, the Afghan government committed itself again to improving governance across Afghanistan, with an international promise of a better co-ordinated and resourced civilian effort and an increase in the transparency and effectiveness of aid. These goals were reaffirmed and detailed further during this summer's Kabul Conference. In particular, the Afghan government presented 23 national priority programmes, including 6 programmes focusing on governance²¹, which provide a blueprint for action and reform in the next three years.

²¹ The National priority programme for financial and economic reforms; the National transparency and accountability programme; the Afghanistan programme for efficient and effective government; the national programme for local governance; the national programme for law and justice for all; the national programme for human rights and civic responsibilities.

108. The military contribution to stabilisation and reconstruction efforts in Afghanistan was also re-assessed on several occasions to take into account the need for a more coherent and focused effort. The current strategy is based on the so-called Comprehensive Approach, i.e. an approach that integrates security, development and governance to deliver maximum effect and benefits to the Afghan population.

109. The adoption of former ISAF Commander General Stanley McChrystal's counterinsurgency strategy in 2009 and the strengthening of NATO's civilian presence in Afghanistan, have helped further refine NATO's strategy. The main tenets of the new strategy include:

- moving away from an enemy-centric approach to a population-centric approach, i.e. focusing on delivering security in population centres;
- developing a genuine partnership with Afghan security forces with a view to a progressive transition towards full Afghan responsibility for security provision across the country;
- providing a favourable environment in which legitimate Afghan authorities will be in a position to deliver governance and development; and
- promoting a regional approach.

110. Overall, this approach thus aims to better integrate the imperatives of governance and development into the military planning process, in order to ensure a seamless transition from the "clear" phase – which aims to clear the area from insurgents militarily – to the "hold" phase – which focuses on establishing enduring local control over the area.

111. Planned in close consultation with Afghan authorities, ongoing operations in Marjah and Nad Ali in Helmand province and in Kandahar, all Taliban stronghold areas, provide clear cases of implementation of the new strategy. However, progress has been slow in Marjah, and operations in Kandahar have been repeatedly pushed back and scaled down. Military and civilian officials have been calling for patience, stressing that the full impact of new troop deployments and of operations in Helmand and Kandahar would be felt over time.

More resources for governance

112. Over the years, the scope of the UNAMA's (United Nations Assistance Mission in Afghanistan) mandate was broadened, more emphasis placed on institution-building, and funding augmented. UNAMA gained new roles in supporting elections, building up the judicial system and the rule of law, and co-ordinating overall efforts. However, only in 2008 was the central role of the UN in leading and co-ordinating international efforts recognized more clearly, and UNAMA's authority strengthened accordingly. This included a push to enlarge UNAMA's presence throughout the country, play a bigger role in Afghan-led reconciliation, and improve governance. Aid pledges from international donors have also progressively increased.

113. The strengthening of NATO's civilian pillar in Afghanistan is also aimed at supporting the greater focus on building governance, particularly at the local level. The military surge is indeed being complemented by a civilian surge in many provinces.²² Efforts are co-ordinated at the central level thanks to a reinforced mandate for NATO Senior Civilian Representative's (SCR).

A better co-ordination of efforts

114. The 2006 London Conference established a Joint Co-ordination and Monitoring Board (JCMB), consisting of Afghan and international actors, in order to provide coherence of national and international efforts. Calls for greater co-ordination intensified over the course of 2007, but the

²² The number of US civilian advisors thus reached about 1,000 at the beginning of 2010 and should increase further. Over 350 of these are deployed outside Kabul, compared with 67 before the "surge".

concept of a 'super-envoy', who would have represented not only the UN, but also the EU and the civilian side of NATO, had to be abandoned due to Afghan reluctance. Nevertheless, several positive steps have been taken over the last years with a view to enhancing co-ordination at all levels: among the military, among civilian institutions, between civilian and military efforts, and between international and Afghan efforts. These have included: strengthening UNAMA's mandate; placing a far greater share of U.S. troops under ISAF command, and rethinking ISAF's command structure; and increasing the mandate of the top NATO civilian official. The greater level and quality of the coordination between the Special Representative of the UN Secretary General, EU Special Representative, ISAF Commander and NATO Senior Civilian Representative, are also widely seen as a very positive development.

115. The JCMB's role was progressively strengthened with a view to better monitoring the implementation of joint commitments, thereby increasing both co-ordination of efforts and accountability. The Kabul Conference thus provides for Board meetings to take place every four months in order to take stock of progress, identify gaps and address obstacles to implementation.

116. In recent years, priority has also been given to consolidating the Afghan lead over all aspects of reconstruction. President Karzai's inaugural speech in November 2009, the London Conference in January 2010, the Consultative Peace *Jirga* and the Kabul Conference in July 2010 marked major steps in the process of transition towards greater Afghan leadership, also referred to as the "Kabul process". The Kabul process aims to lay the foundations for a renewed partnership between Afghanistan and its international partners. It relies on a mutual commitment: on the one hand, a renewed commitment by the Afghan government to guarantee security and deliver concrete benefits to its citizens, and on the other, a pledge by international partners to realign their assistance to advance Afghanistan's priorities.

117. Thus, at the London Conference, donors pledged to channel 50% of development aid through the Afghan government within two years. This aimed to address one of the main criticisms of international assistance in Afghanistan: that delivering an overwhelming share of the aid through international channels actually contributed to undermining the development of Afghan governance and administrative capacity. Nevertheless, this objective was made conditional upon improved government capacity and performance, including improved financial management and budget execution, reduced corruption, and the development of a financing strategy with the attending government capacity for such a strategy. In addition, in Kabul, donors also expressed their readiness to align 80% of their aid behind Afghanistan's own priorities within two years.

The way forward

118. Undoubtedly, partners in Afghanistan have acknowledged the vital importance of strengthening governance in conjunction with spreading security and promoting economic development. The emphasis on this sector has increased, and relevant institutions have been given a firmer mandate and greater resources. The combination of a more coherent and Afghan-led effort in support of the National Development Strategy, and of NATO's new counterinsurgency strategy, provide a genuine opportunity for decisive progress, including on strengthening governance.

119. However, decisive progress will depend both on the Afghan authorities' ability to deliver on its reform commitments and on the continued resolve of coalition partners to contribute necessary personnel – military and especially civilian. On both these accounts, 2010 has provided a mixed picture.

120. On the side of Afghan authorities, the Consultative Peace *Jirga* and the Kabul Conference provided important demonstrations of the government's willingness to take full responsibility for the country's future course. With the adoption of the national priority programmes, significant progress

has also been achieved in refining the broader objectives of the National Development Strategy. However, elections in 2009 and 2010 have also shown the ongoing fragility of the situation, and the immensity of the challenge that Afghanistan faces in establishing sustainable structures of governance.

121. On the side of Afghanistan's international partners, the military and civilian surge and careful preparations for intensified operations in Southern Afghanistan have aimed to retake the initiative from the insurgency. However, shortcomings of the electoral process and challenges encountered in the campaign in the South have put to the test the stated resolve to stay the course.

122. In the current context, the greatest danger lies in premature disengagement. Allies need to continue to give the current strategy time to bear fruits, only fine-tuning it whenever necessary. The trend towards increased Afghan lead, which almost necessarily implies a diminishing international role and fewer resources, needs to be managed with great care. Further steps taken in this process must be based on a thorough and realistic assessment of progress.

123. To achieve decisive progress, Afghan authorities need to pursue current efforts to implement the time-bound, specific, result-oriented commitments taken at the London and Kabul conferences. Two areas should receive particular attention: stepping up efforts to eradicate corruption; and initiating an in-depth review of election laws, taking into account the lessons learned from the presidential and parliamentary elections, and recommendations from competent international bodies. Implementation of the national priority programmes also needs to be supported by complementary efforts at the local level.²³

124. NATO Allies in turn need to step up support for Afghan capacity-building efforts in the field of governance, with a view to enhancing the government's ability to deliver services to its population. They should focus specifically on the following priority areas: justice, civil service and public administration, public finances and local governance. In addition, Allied government and parliaments should support the newly elected parliament as it takes up its duties.

125. Progress in the implementation of the mutual commitments undertaken in London and Kabul needs to be assessed through a thorough review process. Provided that conditions are met, delivering on the London commitment to channel a greater share of international assistance through Afghan institutions is essential. Finally, recent efforts to enhance the coherence of international assistance in support of Afghan governance need to continue.

²³ See in particular, the UN Secretary General's September 2010 report: "While the current emphasis on strengthening the capacity of line ministries is laudable, it is critical that efforts in Kabul are accompanied by capacity-building efforts at the provincial and district levels."