

Afghanistan's political and constitutional development

Summary and key recommendations

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About this report

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Executive summary

Introduction

The events of 11 September brought dramatic changes to the political landscape of Afghanistan. For the first time in more than two decades, there was a real possibility of peace and stability in the country. Unlike in the wake of the Soviet withdrawal in 1989, this time the international community pledged not to walk away – yet the task of transition is enormous in a country riven by factional power and beset by insecurity.

The agreement signed in Bonn in December 2001 lays out the path to be followed, including the creation of a new constitution and the holding of free and fair elections. This study aims to identify ‘the key issues underpinning Afghanistan’s constitutional and political development’ and the ‘key policy options for the Afghan Transitional Administration and other members of the international community’. This is on the basis that little independent analysis has been done in these areas.

During the course of this study, 11 provinces were visited; over 250 Afghans took part in individual interviews or group discussions, and 31 expatriates were interviewed. Interviewees included high-level government officials, UN and NGO staff, *loya jirga* representatives, diplomats, students, teachers, commanders, members of the US and Afghan military and members of civil society institutions and organisations.

This document summarises a more detailed report describing and analysing these issues. The report argues that achieving the constitutional and electoral processes provided for under the Bonn Agreement will depend upon improvements in security throughout the country. This in turn will be contingent upon enhancing the legitimacy of the Afghan Transitional Authority (ATA); more rapid and effective demobilisation and reintegration of armed personnel; more coherent international policies on peace-building in Afghanistan; and moves to address the climate of impunity currently associated with armed groups.

At present, each of these vital elements of an improved framework for security remains weak. While recent efforts to speed up the creation of a unified army are welcome, lack of progress on the demobilisation and reintegration of armed forces and on the strengthening of police forces remains of deep concern. More broadly, in important ways the Afghan economy has evolved over the past decades as a means to finance war and private gain, not primarily to support the public good. Addressing the distorting effects of this violent war economy through tackling the production and export of narcotics, illegal trade and the

continued flow of arms into the country will be vital preconditions for a sustainable peace.

The significance of security cannot be underplayed since this issue reflects the evolving political and economic conditions in the country. The deterioration in security in many areas of the country since the overthrow of the Taliban reflects a process of political fragmentation linked to a weak central state on the one hand, and on the other the need to maintain within the government a fragile coalition of formerly feuding faction leaders.

While the Bonn Agreement sought to resolve internal conflicts in Afghanistan, it is being implemented alongside a continued international conflict against al-Qa’eda. In prosecuting this war, the US remains dependent upon forming alliances with local warlords. This often means that US policy in Afghanistan appears to be pulling in opposite directions, simultaneously trying to rebuild the devastated Afghan state while continuing to arm, fund and train warlords who threaten that process. At the same time, political discontent creates the space for regional actors once again to interfere in Afghanistan’s internal affairs. International actors therefore have a key role to play in contributing to the enhanced security necessary for a realisation of the political process set out at Bonn.

Recommendations

Improvements in security are a precondition for the constitutional and electoral reform provided for under Bonn. Measures to improve security must remain a priority. These should include:

- accelerating the formation of a national army and police force and ensuring that these bodies come under civilian control;
- speeding up disarmament, demobilisation and reintegration (DDR); and
- developing strategies to reduce the power of warlords and control the illegal economy.

Responsibility for security needs to lie with the President and a broad-based National Security Council, rather than narrowly with the Ministry of Defence.

The remit of international peacekeeping forces should be extended beyond Kabul, and their continued presence committed to for as long as is necessary.

The Bonn Agreement: the framework for peace and political reform

The Bonn Agreement of December 2001 opened the possibility of a new political future for Afghanistan. It offered a vision of a state with a 'broad-based, gender-sensitive, multi-ethnic and fully representative' government.

This liberal vision of the future Afghan state, though shared by many Afghans, represents a marked departure from most of the country's political history. Even before the war shattered Afghanistan, the government had only ever had limited sway over the countryside, control had to be negotiated with local power-holders, communications were poor, health and education services were to a considerable extent the preserve of the elite and women's rights were limited, especially outside Kabul. Now much of the meagre infrastructure has been destroyed, warlord power has become a feature of the political landscape, many parties to the conflict have been responsible for serious human rights abuses, and regional powers continue to intervene in Afghanistan. Meanwhile, although the Bonn Agreement was a remarkable achievement, its wording left a number of important matters vague. The lack of clarity about exactly what was to be decided at the emergency *loya jirga* (ELJ), the lack of detail about the path to be followed thereafter and the UN's role in relation to that, the ambiguities surrounding the various commissions and the lack of specificity over which part of the UN would investigate human rights violations and whether the mandate included past as well as current violations – all have led to difficulties.

While the Bonn Agreement was significant in providing the basis for a new political process in Afghanistan, it was not really a peace agreement. Rather, it represented a deal for power-sharing between victorious factions, brokered in the wake of a war that was won largely by an external power. The agreement negotiated a way through, but did not resolve, the underlying conflicts which predate the rise of the Taliban. The fact that one faction of the Northern Alliance, the Shura-i Nizar, was already in power in Kabul resulted in an interim administration that was not representative of the Afghan people and that left members of the largest single ethnic group, the Pashtuns, feeling marginalised from the political process.

The transition envisaged in the Bonn Agreement was one of a movement towards increased legitimacy of the state at each stage of the political process: first the ELJ (in June 2002) to decide on an Afghanistan Transitional Authority (ATA), including a broad-based transitional administration; then a new constitution passed by a second *loya jirga* (scheduled for the end of 2003); and finally elections (by mid-2004). The aim was that each

step would result in a more representative form of government. However, the international community's unwillingness to challenge the Shura-i Nizar's power has meant that control of state structures still lies predominately with one faction, the President has little real power and the ATA's writ does not extend far outside the capital. The presence of several factional leaders within government further weakens its legitimacy within many parts of Afghan society.

History suggests that peace will not be achieved through the military domination of one faction; there are too many outside powers willing to supply weapons and other resources to those who wish to challenge whatever factional interest presumes to take power. Rather, peace will have to come from a political solution. In the search for this, formulating and ratifying a new constitution and the elections that follow are key.

Building legitimacy

At the heart of the debate on the constitution and elections is the wish to build a peaceful and stable state. To achieve this, the government must have a minimum level of legitimacy such that it can retain the active support of the powerful in society, and at least the passive acceptance of the population in general. The achievement of such legitimacy is a complex process. This report is concerned primarily with the formal systems of governance, including the constitutional and electoral processes. Equally important will be consideration of issues regarding fiscal policy and reform of the public administration, including the staffing and pay of the civil service.

The way in which aid resources are disbursed in Afghanistan will have important implications for peace-building and for the immediate security situation. Increasing the coordination of such assistance, both among donors and between donors and the government, will be important. Equally, strengthening support for the Ministry of Finance's attempts to centralise control of revenue and expenditure and to develop systems of accountability will be important in laying the foundations for a stronger and more legitimate central state, underpinned by an effective public administration. At present, separate lines of financing, to either individual ministries or to regional power-holders, undermine attempts to strengthen fiscal systems. All assistance to Afghanistan, in cash or in kind, needs to be recorded in the National Development Budget (NDB). There is also a need for a much stricter prioritisation of measures that promote greater security and legitimacy. One of the problems this study has identified is the common tendency to plan as if Afghanistan were already at peace. Attempts to develop comprehensive programmes across all sectors, in a country with limited capacity and still on the edge of war, have hindered progress on basic

actions that would normally be a prerequisite for building confidence in the embryonic state.

Historically, the Afghan state has been highly dependent upon international resources to sustain itself. Its political vulnerability has in part derived from this dependence, which has obviated the need for successive governments to build legitimacy internally. Currently, most of the potential state revenue that could be generated internally would come from taxes on trade across the country's borders. However, despite the government's attempts to negotiate for these customs to be remitted to the centre, most of this revenue remains with the regional power-holders who control the trade. Even with greater internal legitimacy, collecting these revenues would be difficult. Yet as long as the perception of illegitimacy prevails, the task might prove impossible. Without its own source of finance, the government will remain dependent on the largesse of the international community. The respective responsibilities of the centre and the regions for raising and allocating public revenues will therefore be of critical importance in the design of the constitution, and will also have implications for the shape of political representation at central and regional levels.

Recommendations

Measures to improve the accountability of government and to limit corruption should be strengthened. These should include:

- Developing simple and transparent procedures and systems for all state transactions, and making information on public expenditure publicly available. Reform of public administration should be made a priority.
- Disbursing international assistance in such a way that it supports the development of a legitimate and accountable government. This should include much stricter prioritisation of the use of donor funds to ensure progress on basic services and job creation, and strong support to the Ministry of Finance's efforts to control public expenditure.

Drafting and approving a new constitution

The Bonn Agreement established a very tight timeline for drafting and approving a new constitution. Within two months of the establishment of the ATA (ie, in September 2002), a Constitutional Commission was to be established to draft the constitution, and a constitutional *loya jirga* (CLJ) was to be convened within 18 months in order to approve it.

The Constitutional Commission has not as yet been appointed; instead, only a technical drafting committee of nine members, appointed by the ATA, has been established. This will draft the new constitution over a six-month period, ready to be presented to a larger commission of up to 35 members, who will revise the draft. The technical drafting committee comprises scholars and lawyers. It is unclear who is defining the political framework within which this technical process of drafting is taking place. While the constitution will theoretically be subject to revisions by both the Constitutional Commission and the CLJ, it will be harder to make changes at these later stages than had the process been opened up earlier. It is therefore vital that the drafting committee is given the best possible opportunity to draw on relevant experience from elsewhere in the world, and that the political framework within which it is working is made more explicit and transparent.

At present, it appears that neither the ATA nor the UN has any plans to carry the debate on the draft constitution to a broader group, because of the fear that doing so would open it up to capture by conservative forces. Other groups, however, are planning to hold training sessions, consultations and working groups to try to contribute to the process from outside. While the work of such independent groups is important, and could prove critical to expanding the debate, leaving this process to non-governmental groups could provide an uneven and ultimately more polarising result. The constitutional process will deal with weighty issues concerning Afghanistan's future: the structure of the state, the role of Islam and civil and minority rights. Many of these matters are central to the schisms dividing Afghan society, which means that decisions will require negotiation and compromise to achieve long-term unity and stability. The resolution of these issues cannot be left to a technical process, as they are the very heart of the unfinished peace process.

There is also a key question around how the delegates to the CLJ are selected. This must be done in a manner that will guarantee broad and independent representation. Finally, there are clear lessons from the ELJ to be taken on board in both the preparation for the CLJ and how it is conducted. While the ELJ was in some ways a notable achievement, its legitimacy is seen by many to be compromised by the fact that its outcomes were limited by intimidation, procedural confusion and poor chairmanship, and by behind-the-scenes manoeuvring.¹ Clear rules of procedure, produced well in advance and accompanied by good chairing, would do much to enable free debate and decision-making.

¹ These points were backed up by many interviewees for this study.

Recommendations

The team drafting the constitution should be given the resources to bring in specialists with experience from elsewhere to discuss the various constitutional options.

A wide-ranging public consultation on the draft constitution should start at least six months before the CLJ. As part of this:

- funds should be made available for civil society initiatives to encourage dialogue;
- a wide range of educational materials should be produced; and
- the media and other methods of public dissemination should be fully utilised.

The lessons from the ELJ process should be taken on board to ensure that the Constitutional Commission is effective, the preparations for the CLJ are adequate and the event itself offers a genuine opportunity for debate and decision-making. Thus:

- delegates should be chosen well in advance of the CLJ so that they have sufficient time to familiarise themselves with the draft constitution and the rules of procedure, and to carry out extensive local consultations;
- a technical drafting committee should be formed early on to draft rules of procedure well in advance of the CLJ, which would then be approved by the appropriate authority; and
- delegates should be given training on these.

The structure of the state

A key question in the debate about the structure of the state is the degree to which power is centralised. Despite expressed wishes for a strong central state, political power in Afghanistan has almost always had to operate through a negotiation between the central authority and local power-holders. Strong and autonomous local structures mean that decisions imposed from outside are usually resented at the local level, and distrust of central government is also based on the experience of authoritarianism and brutality. In addition, the turmoil of the last 23 years has created a strong degree of regional autonomy. Ethnic groups that were relatively disenfranchised in the past now have autonomous military capacity and, to a lesser extent, political structures. Factional party structures at times have functioned as mini-state governments, carrying on foreign relations, issuing visas and even printing currency; some have considerably more resources than the central government. The issue of how to relate to these regional centres is one of the

fundamental questions in the design and management of the Afghan state. It cannot be settled by the use of force but will have to be negotiated, for the central state authorities simply do not have the resources to push through coercive control of the entire country.

Calls by Afghans for strong central government are always accompanied by demands that it be fair and not ethnically biased.² Yet at present, levels of distrust are such that no central government is likely to be able to satisfy all groups. This means that there will need to be alternative loci of legitimate political power where people feel their voices can be heard. Striking a balance between this and avoiding fragmentation will not be easy, and requires a clear examination of which aspects of the Afghan state should be centralised, and which would be better devolved to local or regional government.

In many ways, the heart of Afghan society still lies at the local level, and many Afghans have little contact with the central state. This should not be romanticised, as local structures have in places been captured by commanders who know little of reciprocal relationships between leader and people, and are intent only on extraction. Nevertheless, this is where social and political structures have best survived the war. There is at this level an enormous will to make the current state-building enterprise work, but it is a source of strength that has been curiously neglected by those planning for the country's future. The *jirga* (Pashtu) or *shura* (Dari), best translated as 'council', is the key mechanism for solving disputes and taking community decisions. Usually open to all male adults in a community (though some have more influence than others), the *jirga/shura* meets as needed. Women do not normally have a formal role, though they sometimes exercise significant informal influence. What the war has done, however, is to disconnect this local level from a legitimate state. There is little left, either politically or administratively, of district-level government, or even in some places government at the provincial level. Rebuilding these links will be important in making governance systems work. Surprisingly, alongside the *de facto* devolution of power goes a high degree of administrative centralisation. Before the state began to disintegrate, the payroll for government employees at local level came from the centre, and all taxes were remitted to the centre. In theory at least, everyone at local level still appears to believe in this, even when their practice is quite different.

Due to the fragile political situation, the design of the government must take both present circumstances and Afghanistan's possible political evolution into account. As the attempt on President Hamid Karzai's life in September 2002 shows, the risk of political violence should not be ignored. Crucial issues lie in the design of the executive, legislature and judiciary and the relationships between

² This sentiment was expressed by numerous interviewees from all parts of the country.

them. The creation of a structure which incorporates the necessary checks and balances between each branch of government is fundamental to democracy. Long-term stability in Afghanistan requires government structures and systems that maximise representation.

A strong executive is needed in order to mediate contested interests between different factions, minorities and regions, to maintain law and order and to govern international resource flows. However, the executive branch must be designed so as to disallow capture by one faction. Therefore, an executive branch that incorporates power-sharing mechanisms will be vital to the consolidation of peace. First, it will be important to have a cabinet that represents opposition factions, thus sharing power and locking potential spoilers into the government. Second, the executive branch, or significant aspects of it, should be made responsible to the legislature. The legislature is likely to represent a wide array of groups, and this diversity will act as a check on the executive. Third, constitutional authority over the security forces will be critical. The relationship between the chief executive, the minister of defence and the chief(s) of the military services should be institutionalised within the constitution and accompanying laws. Key issues include command and control of forces, the power of military appointment, the power to declare martial law or states of emergency, and the succession.

The 1964 Constitution envisioned a bicameral legislature with a directly elected lower house of 214 members, the *Wolesi Jirga* (House of the People), and a smaller upper house of 84 members, the *Meshrano Jirga* (House of Elders). Due to the extremely short trial period of this model, the modalities of power-sharing between the two houses of the legislature or between the executive and the legislature were never fully explored. The lower house, whose members were directly elected from single-member districts, held the dominant legislative position. The upper house was comprised of a third directly elected one from each province, one-third elected by each provincial assembly and one-third appointed by the King. Retaining the two-house structure could be a way of allowing people to vote for geographic representation, while ensuring adequate representation of Afghanistan's ethnic diversity. By requiring a more deliberative legislative process, a bicameral legislature also acts as a check against the legislature imposing unnecessary changes on a functioning executive.

The constitutionally defined *loya jirga* occupies an interesting place in Afghan political culture. In the 1964 Constitution, it was composed of both houses of the legislature and of the chairman of each provincial assembly. It is something of a 'super-parliament', a manifestation of the will of Afghan society that is capable of standing in for a dissolved government. However, the possibility of the *loya jirga* being used as a political trump may introduce a degree of instability into the system. Careful consideration must be given to the powers (and limitations) of a

constitutional *loya jirga*, and the circumstances under which it is invoked.

Recommendations

If government structures and systems are to maximise representation and stability and reduce the tendency towards conflict, this requires:

- creating a strong executive branch that incorporates power-sharing mechanisms such as a multi-factional cabinet and a degree of responsibility to the legislature;
- clearly delineating control over security forces;
- incorporating other checks and balances such as a bicameral legislature, and devising systems that will manage conflict within the cabinet and between the cabinet and the President/Prime Minister;
- ensuring that the legislature represents parties/factions, minorities and geographical areas in relative proportion to their strength in Afghan society; and
- if a constitutionally-mandated *loya jirga* is desired, this should be created in such a way that it can overcome political stalemates without threatening the integrity of the constitutional system.

The justice system

Under the 1964 Constitution, the judiciary was to be a fully independent and co-equal branch of government, with the Supreme Court the highest judicial authority in the country. The judiciary was charged with applying the laws and constitution of Afghanistan, and the court's writ of jurisdiction was broadly worded, explicitly including litigation brought against the state. The supremacy of the constitution and the laws of Afghanistan were made clear.

The formal justice system of Afghanistan, however, faces serious difficulties. Many courts lack the most basic facilities, and appointments have often been for political reasons, resulting in an often ill-qualified judiciary. There is frequently little interaction between the various components of the system – the Supreme Court, the Ministry of Justice, the police and the prison service. Corrective regimes or rehabilitative programmes do not exist, and there is currently little provision for justice for women, or for juveniles of either sex. The responsibility for keeping internal law and order needs to move from the army to the police. In turn, the police need to be built up as a respected, well-trained and impartial force, with a multiethnic character and free from factional interests.

On the positive side, there is a strong tradition of local dispute settlement. This is at its most comprehensive in the traditional Pashtun tribal areas, but also exists to some degree throughout the country. Dispute resolution is based on a process of mediation/reconciliation between the parties, which commonly involves seeking forgiveness and pardon, and the obligatory acceptance of a truce offer. Many Afghans prefer the *jirga/shura* to formal judicial institutions because the former is conducted by respected elders and decisions are reached in accordance with accepted local traditions and values. Also unlike state courts, *jirga/shura* settle disputes without long delays and without financial costs. Illiteracy also discourages people from using courts – the overwhelming majority of Afghans are unable to make applications as they cannot read or understand the laws, and cannot do the proper paperwork. Furthermore, while the state justice system criminalises and excludes offenders, the traditional system by and large aims at the reconciliation of disputants and at the reintegration of offenders into the village and/or tribe. Given the lack of resources to operate the formal system and the frequent corruption encountered, it will be important to build on these mechanisms of local justice and to link them into the formal system. There is also an urgent need for the Judicial Commission to begin work. This body was authorised by the Bonn Agreement, but dissolved four months after its establishment and has only just been reinstated. Key tasks will include clarifying, and where necessary reforming, the legal codes of Afghanistan.

Recommendations

Priorities for strengthening the justice system should include:

- clarifying and, if necessary, reforming the existing laws of Afghanistan to ensure that they are uniformly applied;
- assessing the number of qualified and independent judges, qualified prosecutors and court staff throughout Afghanistan, and their training needs;
- establishing standards and giving basic training at all levels;
- drawing upon the existing traditional justice system, as well as the formal system, in order to produce a service that is accessible to all, fair and free of corruption;
- devising Judicial Appointment Standards. The judiciary suffers from a lack of qualified appointees. Qualification will require training courses and refresher courses, as well as some basic standards for appointment; and
- paying urgent attention to conditions in Afghan prisons.

Human rights and transitional justice

Linked to issues of justice are broader questions of human rights and transitional justice. The question of responsibility for past war crimes is something Afghans will have to wrestle with, and as yet there is no agreement amongst them as to what the best course of action might be. Some argue that, without justice, peace is impossible. Others contend that all parties have been involved in human rights abuses and that, since it is impossible to deal with past crimes, the way forward must lie in ensuring that such things never happen again. The UN Assistance Mission in Afghanistan (UNAMA) has so far taken the view that, at the present time, it is impossible to have both justice and peace, and that human rights has to be seen within the overriding objective of securing a peaceful transition.

The UN's position, coupled with the levels of intimidation experienced at the ELJ, has done little to reassure the members of the Human Rights Commission that they will be able to carry out the investigative aspects of their work. This and other problems have meant that the Commission has been slow in establishing itself.

Other aspects of human rights lie not in the responsibility for past abuse but in the creation of an environment conducive to the realisation of rights in the future. Although Afghanistan has legal obligations as the ratifier of numerous treaties guaranteeing equal rights for women, women today say they 'do not feel safe' and that they still await the realisation of their rights. The publicity given by the international community to the Taliban's treatment of women has not been matched by an equal concern for the situation of women under the new regime. There remains much that could be done, even in relatively uncontroversial areas, such as ensuring access to health and education.

Ensuring that all groups have rights to their own culture, religion and language will also be an important part of creating a state in which all can feel they have representation. Although political organisation to some extent runs along ethnic lines, and levels of ethnic tension have certainly increased during the years of war, the conflict has never fundamentally been an ethnic one, and there exists within Afghanistan a strong sense of being one nation. Many Afghans want to overcome ethnic tensions, and many have clear ideas as to how this might be done. It is important that international action supports this. Afghans interviewed for this study repeatedly stressed that safeguarding group rights within the constitution would be important in reducing ethnic tension and the potential for conflict.

Recommendations

Human rights should be promoted by:

- ensuring that minority and women's rights are fully guaranteed within the constitution;
- developing clear strategies to implement these rights in practice;
- ensuring political, financial and administrative support to the Human Rights Commission and assuring protection for its members;
- taking steps to break the climate of impunity and bring people to account for any future human rights abuses;
- strengthening the UN's role in monitoring and investigating human rights abuses and ensuring that it has adequate staff capacity to fulfil these responsibilities; and
- maintaining space for independent human rights monitoring groups to function in Afghanistan. The creation of an international human rights task force to consolidate and focus international support for and attention to the human rights situation could be considered.

Elections

The Bonn Agreement sets out a timetable for 'free and fair' elections within two years of the appointment of the ATA. Free and fair elections, however, presuppose a high degree of security. Unless there is a marked improvement in the security situation in the near future, it seems unlikely that this timetable can be kept, at least not without compromising the integrity of the electoral process.

Premature elections could further destabilise the fragile equilibrium between factions and plunge the country back into war. There not only needs to be security within the election period but also for a sufficient time to form political parties, create electoral laws and an electoral system, select and train staff, and register and educate voters. While it would clearly be undesirable to delay polls indefinitely, the two-year timeframe should not be seen as immutable.

There is also a danger in placing the whole burden of change onto elections. Experience from recent post-conflict elections shows that massive shifts in power due to elections can spur the defeated to turn away from the ballot box and back to the gun. The electoral process will reinforce the transition to peace only if conducted in parallel with wider moves to promote demobilisation and civilian control over a unified army, the establishment of effective judicial systems, public sector reforms and moves to share power more equitably within government.

The electoral system itself will need to allow for representation of Afghanistan's diversity, and give all contenders for power enough of a stake in the system that they remain bound to democratic politics. First-past-the-post systems, which exaggerate the rewards to the winner, should be avoided. Given the factionalised nature of Afghan politics, the primary goal should be to produce reasonable proportionality, in that each group secures a proportion of seats broadly in accordance with the proportion of votes received. In addition, most Afghans want an opportunity to vote for candidates from their own area, and the distrust of political parties means that voters should be given the chance to vote for individuals, rather than only parties (although this will to some degree derogate from strict proportionality). Voting procedure will also need to be simple and transparent; illiteracy and innumeracy limit the complexity of possible voting systems, and inexperience with voting also means that results must be easily explicable.

Elections are the end point of the Bonn process, but they should not signal a rapid end of international support for Afghanistan, as has been the case in many post-conflict transitions. While the international community will certainly need an exit strategy, particularly with UNAMA and international peacekeeping forces, this will need to be carefully planned, and will need to take place in the long term.

Recommendations

Major improvements need to be made in security if elections are to be held according to the timetable agreed at Bonn. Substantial and credible human, material and financial resources also need to be committed soon to support an electoral process. If free and fair elections cannot be assured, the election timetable should be renegotiated. An independent electoral commission of Afghan and international specialists should be appointed as soon as possible to assess:

- the election timetable and necessary procedural steps;
- the formation, development and regulation of political parties; and
- the design of the electoral system, so that it has the confidence of the population and produces a fair and representative government.

The international community should ensure that the necessary political, financial and security support is in place for the elections.

Immediate action should be taken to regulate political parties so that legitimate parties can begin their work. Consideration should be given to providing basic equal-access support to nascent parties competing in the general election.

Relationships with the UN and the international community

Unlike in East Timor, the UN is not administering Afghanistan. It does, however, have a mandated responsibility to promote good governance. This includes a specific responsibility to promote respect for human rights. These duties need to be balanced with support for the Afghan administration. Finding this balance requires a recognition that the administration is not a monolithic bloc which international players must either wholly support or else bypass. It is possible to strengthen those structures and processes that will bring the state under greater control by a legitimate authority, such as ensuring that presidential authority is not bypassed and routing all financial support through the Ministry of Finance, and to guard against actions that support factional interests.

While the ATA is legally the repository of Afghan sovereignty and occupies the country's seat at the UN, it is not the final stage in the process agreed to at Bonn. Rather, it is an intermediate body designed to lead to the eventual adoption of a fully representative government through free and fair elections. This leads to differences of approach within the international community. While there are those who take the line that the role of the international community is to fully support the ATA as the 'government', there are others who argue that the international community's responsibility is to 'monitor and assist in the implementation of all aspects of this agreement' (Annex II, Bonn Agreement). This can lead to differences of strategy where the transitional administration is seen as falling short of implementing the agreements made. There is widespread concern, for instance, that the agreement to demilitarise

Kabul has not been fulfilled, that stronger action has not been taken on human rights abuses, that the Constitutional Commission has yet to be formed and that the Judicial Commission has been non-operational for many months. The continued concentration of military and political power in the hands of one faction suggests that it remains important for UNAMA to fulfil its role in relation to the full implementation of the Bonn Agreement.

The UN also retains a responsibility for humanitarian assistance to Afghanistan, as well as support to recovery and reconstruction. Under UNAMA's mandate, all the UN's activities in this regard were to be integrated into a single mission, under the overall authority of the Special Representative of the Secretary-General (SRSG). One of the features of this mission was to have been its 'light footprint'. The practice has, however, proved very different; agencies have been more responsive to their headquarters than to the mission, and frustration and anger is being generated among Afghans by the sight of large numbers of white vehicles and luxurious air-conditioned offices, while basic assistance is failing to reach ordinary people.

It is important to be realistic about how progress can be made in Afghanistan. There will not be a 'grand solution' to the country's problems. One cannot rebuild in a couple of years what it has taken more than two decades to destroy. Member states will need not only to maintain a flow of funds to Afghanistan, but also to stay engaged in the political process, including the wider regional dimensions. Afghans firmly believe that the international community has not just a role but also a responsibility for what happens next in their country. It was the international community, they point out, which gave guns to the warlords who now exercise power.