



# BRIEFING PAPER

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## Caught in Confusion: Local Governance Structures in Afghanistan

### Overview<sup>1</sup>

Local government is the face of government for most Afghans, yet reform at the local level has to date been slow and difficult. Although there have been improvements in fiscal and administrative processes, large parts of the country still suffer from weak, ineffective and, in some places, corrupt government. Now, driven by the upcoming National Assembly elections as well as the counter-narcotics agenda, the attention of the government, policymakers and donors is focusing with increasing urgency on governance structures and processes outside Kabul. However, in the absence of an overall vision or strategy for local government, a multitude of uncoordinated and potentially contradictory bodies are being established at provincial and lower levels, some with access to large sums of donor funding.

The National Assembly elections will change the structures, processes and politics of subnational government in Afghanistan. The Constitution stipulates that provincial, district and village councils will be formed through free, direct and secret elections. The provincial and district councils will then elect two-thirds of the Meshrano Jirga (the Upper House) of the National Assembly. The implication is that the National Assembly cannot be established without the prior formation of these councils. Yet, aside from their task in electing representatives to the Meshrano Jirga, there remain many questions about the functions, funding and linkages of these councils. There is a significant danger that poorly funded and badly supported elected bodies with an unclear role will be created. These will inevitably struggle to gain legitimacy and exert influence, in competition with other better-funded structures that have clearer links to donors and powerful decision-makers.

Although these problems have been increasingly recognised by different actors, there has as yet been little consultation or inclusive discussion on government and governance outside Kabul. Of

### Local Governance

This briefing paper outlines key issues relating to the structures of local governance in Afghanistan, particularly in terms of the role of elected provincial and district councils.

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It is alarming that there appears to be little recognition that decisions about specific activities or structures, including the role of elected bodies, need to follow from a political consensus on broader strategic issues.

particular concern is the lack of public debate on these issues. Moreover many, especially in the international community, are working with implicit assumptions about the value and appropriateness of decentralisation, even though there is an unclear constitutional mandate and no widespread political buy-in for even modest devolution of central government functions. It is alarming that there appears to be little recognition that decisions about specific activities or structures, including the role of elected bodies, need to follow from a political consensus on broader strategic issues.

In the context of this lack of strategic consensus, this briefing paper lays out the main issues around the structures and processes of local governance, particularly in relation to the role of provincial and district councils. After considering different broad assumptions underlying the views of various actors on local governance, the paper looks at three key issues that need to be resolved: the unclear roles, mandates and budgetary powers of the councils; the unclear linkages of the councils to other bodies; and the overall lack of coordination between newly established provincial and district structures.

The following ways forward are recommended:

- There is an urgent need for an open and broad-based consultative process around the roles and mandates of provincial and district councils.
- The government should consider postponing district elections to allow more time for broader discussion and greater consensus about the role and mandate of district councils.
- Donors and other interest groups must commit to a coordinated approach to the development of provincial and district structures.
- Donors should also continue to commit to reform of subnational administrative structures.
- An appropriate legal framework should be established to encourage accountable government and broad-based citizen participation in governance.

# I. Different Assumptions; Different Agendas

Although it is often not made explicit, discussions about local governance, including the functions of locally elected bodies, are underpinned by assumptions about where and by whom decisions should be made, and for what purpose. What levels of political, fiscal and administrative decentralisation ensure not only political stability and equality of treatment for all citizens, but also responsive and accountable government? What are the appropriate relationships between political bodies and public administration at different levels? How can traditional forms of governance relate to formal structures of representative government? Of course, the answers to these questions vary, depending on context, history and tradition.

Among Afghans there are widely differing answers to these questions, informed particularly by opinions about the nature and past policies of the Afghan state. Some minority ethnic leaders, in particular, have tended to push for either power-sharing within the central state or recognition of their identities through mechanisms of local self-government.<sup>2</sup>

Regardless of ethnicity, however, many Afghan politicians and policymakers from across the country favour a strong central state in order to curb powerful regional figures who often receive support from outside the country, as well as to reduce the danger of criminal influence over the structures of local government. Research has also consistently shown that many ordinary Afghans favour a strong central government as a means to undermine the power of local commanders at whose hands they have suffered for so many years.<sup>3</sup>

The 1382 (2004) Constitution also affirms the nature of Afghanistan as a unitary state. Afghanistan, however, is not only politically centralised, it is also, in theory, fiscally and administratively one of the most centralised countries in the world. All budgetary and most staffing decisions are made in Kabul, and provincial departments of line ministries, as well as the governor's office, have virtually no discretionary spending power and limited input

into planning. The governor, accountable in theory to the Ministry of the Interior, has only a loose coordinating role, and does not have authority over representatives of other ministries. Of course, in practice, subnational administration is often highly decentralised, controlled by local power-holders, who may or may not be closely related to the governor.

Deconcentration or devolution of some fiscal and administrative powers to lower levels is not contradictory to the concept of a unitary state, and is, in fact, explicitly allowed within the Constitution. Article 137 of the Constitution states that:

*The government, while preserving the principle of centralism, shall delegate certain authorities to local administration units for the purpose of expediting and promoting economic, social, and cultural affairs, and increasing the participation of people in the development of the nation.*

However, widespread and understandable concern about the dangers of "federalism," coupled with a lack of understanding of the different potential "types" of decentralisation, tends to stifle a more informed and measured debate about what measure of decentralisation may actually be appropriate to ensure efficient and accountable government at lower levels.

In the vacuum created by the lack of open public discussion about local governance structures, donors and other international bodies are moving ahead with their own assumptions about what is appropriate in the medium and long-term for Afghanistan. These assumptions are often informed by a widespread consensus among international actors about the desirability of quite advanced forms of decentralisation. This desirability is partly due to a belief that decentralisation allows more direct participation and is therefore democratically "better." It is also based on the assumption of efficiency gained from circumventing an unresponsive central government. This assumption can be particularly strong when, as in Afghanistan, the state suffers from acute capacity shortages at all levels.

<sup>2</sup> These different positions played themselves out in debates at the Constitutional Loya Jirga (CLJ). See Rubin, B., 2004, *Crafting a Constitution for Afghanistan*, *Journal of Democracy*, 5(3): 5-19.

<sup>3</sup> See, for example, Evans, A., Manning, N., Osmani, Y., Tully, A., and Wilder, A., 2004, *A Guide to Government in Afghanistan*, AREU/World Bank: Kabul and Washington, DC.

**Box 1: Understanding “decentralisation”**

Decentralisation is an ambiguous term. In general, decentralisation may be seen as “the transfer of authority to plan, make decisions or manage public functions from the national level to any organisation or agency at the sub-national level” (Mills, A. 1990: 89) However, decentralisation can involve different institutions and functions, and these are described by terms which are not always used consistently by different actors.

**Deconcentration** is the allocation of particular powers or functions by central government to subordinate levels of national or sectoral bureaucracies. It may involve relocation of staff, but lower level agencies remain part of a national hierarchy. This may strengthen the capacity of central government to exercise its functions throughout the country. This tends to be a form of **administrative decentralisation**.

**Devolution** is a form of power sharing between national and sub-national units, in which the sub-units are granted legal, financial and /or political autonomy over agreed areas of activity. The allocation of some element of legally guaranteed status represents a reduction in the scope of central power. This usually involves **political** and **fiscal decentralisation**. **Federalism** can be seen as one especially strong sub-type of **devolutionary decentralisation**.

**Democratic decentralisation** is the transfer of funds and powers from higher levels in political systems to *elected* bodies at lower levels. This is usually a form of devolution.

**Delegation** is the allocation of specified functions or services to other agencies outside the main governmental hierarchies, such as NGOs or parastatal corporations.

Sources: Crook, R. and Manor, J., 1998, *Democracy and Decentralisation in South Asia and West Africa*, Cambridge: Cambridge University Press. Norwegian Institute for Urban and Regional Research, 2003., *Synthesis study on supporting decentralisation and local government – lessons learned, good practices and emerging issues*, Report for the DAC Working Party on Aid Evaluation. Mills, A., et al., (ed.), 1990, *Health System Decentralisation: Concepts, Issues and Country Experience*, Geneva: WHO.

Despite the international consensus about the desirability of decentralisation, comparative international experience shows that the realities of decentralisation are often very different from the plans, and there are very important issues around timing and phasing. In countries across the world, central governments and their officials have been very unwilling to relinquish control, and have often actively inhibited local governments from fulfilling their responsibilities, whatever structures have been mandated by legislation, or encouraged by donors. Moreover, the implementation of decentralisation often changes the political landscape, both by encouraging political power groups to promote their own narrow interests, and by encouraging intra-governmental infighting, particularly between ministries of local government and line ministries.

In Afghanistan short-term measures are being designed in the light of assumptions about the overall appropriateness of decentralisation, with

the expectation of a phased devolution, although plans for such a devolution are not in place. In practice this means that there is a strong push towards lower-level planning, with the assumption of forthcoming budget discretion at lower-levels. Indeed, some of those designing the roles of provincial and district councils are assuming quite high levels of fiscal decentralisation in the future. These actions by the international community are, in some cases, apparently due to a lack of understanding of Afghan political and legal realities. In others, they seem motivated by a determination to push through measures that are deemed appropriate, regardless of the lack of political support. Whatever the reason, there is little evidence of political buy-in by the government to the longer-term vision of many international actors.

## II. Unclear Roles, Powers and Resourcing of Provincial and District Elected Bodies

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The Constitution of Afghanistan states that, in addition to electing members to the Upper House of the National Assembly, provincial councils are to have an advisory role and be involved in development activities related to their province, but provides no further guidance. The specified role of district councils is even more vague – to provide opportunities for participation in local administration and to organise activities (see Box Two below).

More specific roles and functions must be assigned by government to these provincial and district councils before their establishment. The creation of elected bodies without clear roles and appropriate support would inevitably lead to bodies with limited effectiveness, running the risk of exacerbating a growing dissatisfaction with the perceived ineffectiveness of government as it is experienced at local levels. Electoral processes more generally risk being delegitimised if voters do not understand what type of bodies they are being asked to elect, and cannot see the outputs or benefits of such councils. It is also not yet clear whether the elected bodies will have any discretionary budget of their own, or any influence over the budget allocation of line ministries. Limited budget influence by the elected councils in comparison to other bodies that are being established at provincial and district levels would further reduce their influence and status.

Discussions about the potential functions of these councils are currently taking place in different fora. However, they are not yet widespread and consultative in nature, despite the considerable time pressure to produce appropriate legislation and carry out extensive voter education before the elections. Rather, discussions are being held behind closed doors in Kabul, mostly between different groups of donors and international actors.

Once the roles and budgetary powers of provincial and district councils have been decided, it will be critically important that they have both the powers to carry out their assigned roles effectively and the right support to enable them to do so. If, for example, councils are expected to monitor the activities of local administration, they must have the legally enshrined right of access to the necessary information, as well as the power to sanction or refer issues to other sanctioning bodies to

ensure accountability. While Article 50 of the Constitution lays the basis of a right to information,<sup>4</sup> experience from elsewhere suggests that this must be reinforced by appropriate laws and legally approved processes.<sup>5</sup>

With generally low capacity available at provincial and district levels, there is a danger that human resources will be concentrated in other, better-resourced bodies. The lack of financial and human resources could have a negative impact on the perceptions and legitimacy of government and democratic processes, if elected councils fail to perform. The councils must therefore receive sufficient technical and logistical support to enable them to function effectively. Appropriate safeguards against corruption will also need to be introduced.

Aside from capacity constraints, there is also a significant issue around the ongoing costs of the bodies themselves, as there are increasing indications of an impending revenue crisis in Afghanistan, as many institutions are being established at all levels, but the supporting revenue base is very weak. Aside from the initial cost of establishing the councils, the ongoing costs of funding their operation, as well as providing the necessary technical and logistical support, are far from negligible. The method chosen to fund such councils will also influence the extent of their autonomy.

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<sup>4</sup> Article 50: "The state shall adopt necessary measures to create a healthy administration and realize reforms in the administrative system of the country. The administration shall perform its duties with complete neutrality and in compliance with the provisions of the laws. The *citizens of Afghanistan shall have the right of access to information from state departments in accordance with the provisions of the law. This right shall have no limit except when harming rights of others as well as public security.* The citizens of Afghanistan shall be recruited by the state on the basis of ability, without any discrimination, according to the provisions of the law."

<sup>5</sup> McGee et al., 2003, *Legal frameworks for citizen participation: synthesis report*, Logolink Research Report Series, IDS: Brighton, UK.

**Box Two: Constitutional provisions on provincial and district councils**

## Article 84

- Members of the Meshrano Jirga are elected and appointed as follows:
  - 1- From among the members of each provincial council, the respective council elects one person for a period of four years.
  - 2- From among the district councils of each province, the respective councils elect one person for a period of three years.
  - 3- The President from among experts and experienced personalities – including two representatives of the disabled and impaired and two representatives from the Nomads – appoints the remaining one-third of the members for a period of five years.

## Article 138

- In every province a provincial council is to be formed.
- Members of the provincial council are elected in proportion to the population by free, direct, secret ballot, and general elections by the residents of the province for a period of four years in accordance with the law.
- The provincial council elects one of its members as Chairman.

## Article 139

- The provincial council takes part in securing the developmental targets of the state and improving its affairs in a way stated in the law, and gives advice on important issues falling within the domain of the province.
- Provincial councils perform their duties in cooperation with the provincial administration.

## Article 140

- In order to organise activities involving people and provide them with the opportunity to actively participate in the local administration, councils are set up in districts and villages in accordance with the provisions of the law.
- Members of these councils are elected by the local people through, free, general, secret and direct elections for a period of three years.

### III. Unclear Linkages Between Elected Councils and Other Structures

The relationship of provincial and district councils to structures of subnational administration is currently unclear, but will largely be determined by the roles and powers assigned to them. Whether the councils have a supervisory relationship with departments of ministries will depend on the extent to which the councils are granted formal oversight of these bodies. The range of different relationship options will also be affected by the extent to which fiscal and administrative deconcentration or devolution takes place in the structures of public administration. In the current context of extremely centralised decision-making within line ministries in Kabul, it is hard to envisage how provincial and district-level bodies might significantly influence decision-making related to lower levels. Some are suggesting that, in the medium-term, block grants should be assigned to district or provincial councils. However, the range of activities on which these grants could be spent will be limited by the corresponding decision-making authority of the relevant subnational structures of the line ministry. If, for example, a

district council wishes to use its block grant to build a school, but decisions about education provision and staffing of facilities in that district are taken in the Ministry of Education in Kabul, then such a council decision would require difficult, and probably unfeasible, multi-layer relationships. Even if such relationships between provincial/district authorities and central ministries were possible, they would leave provincial and district education authorities increasingly isolated and irrelevant.<sup>6</sup> However, it is feasible to consider, as some have suggested,

<sup>6</sup> This problem has, to some extent, been encountered in the village-level block grants made through National Solidarity Programme (NSP). It has been managed by, in effect, limiting the range of options for NSP Community Development Committees (CDCs) to small-scale rural infrastructure projects. However, this becomes less feasible when both the grants and areas of coverage are scaled-up, partly because of the political problems of limiting the options, but also because of the increasing spillover effects of even infrastructure projects at a district or provincial level.

that such councils might have a monitoring role, as long as appropriate channels for using the information gained through that monitoring are established.

Relationships to informal structures at the subnational level, such as shuras and tribal structures, are also far from clear. Some evidence from AREU research and elsewhere suggests that in parts of Afghanistan there is an increasing acceptance of, and desire for, more locally representative and inclusive structures. The limited information available about voting patterns for Constitutional Loya Jirga (CLJ) representatives and National Solidarity Programme (NSP) Community Development Committees (CDCs) also suggests that when people are confident that ballots are secret they are beginning to elect people other than traditional leaders (particularly if those traditional leaders are viewed as corrupt or linked with criminal activities). It should also be recognised that many of the structures that function at district and provincial levels as “shuras” do not necessarily have any “traditional” legitimacy, but may have been established at different times by different aid agencies or governments.

It is far from clear that there would be popular support for a formal role for so-called “traditional” bodies in local-level government. It is also not clear how support for this would vary across the country and in relation to different “types” of shuras. However, many traditional structures still carry considerable legitimacy with much of the population and cannot simply be bypassed. Traditional structures also contain a wealth of local knowledge and understanding that can benefit local government enormously. There are a variety of models from other countries as to how “traditional” bodies can be linked into formal state structures, such as giving them advisory roles or paying them as government officials. What is important is that there is a public debate led by government, that clarifies how, and with what legitimacy, traditional leaders and informal structures are able to feed into and contribute to the efforts of elected councils, as well as local government more broadly.

## IV. Duplication of Coordination Structures

At the same time as attention is being focused on the formation of elected councils, a number of initiatives are establishing or reforming other structures at the subnational level, often with scant regard for the role to be played by the elected councils. In general, there is a failure to distinguish between core governance structures (both administrative and political) and a range of *ad hoc* measures that should be transitory. Instead, *ad hoc* measures are being designed and implemented without appropriate linkages to core structures, and with no clear indication of the timescale or method by which they will be phased out, or by which powers and activities will be handed over to core structures, such as the newly elected bodies. *Ad hoc* measures are also being created by those with an unclear mandate to do so, thus increasing the potential for damaging inter-ministerial rivalry.

In recent months, a number of different coordinating structures have been established at the subnational level. Box Three summarises various initiatives, although there is considerable variation by province and district.

There are two main factors driving the establishment of these coordinating bodies and

### Box Three: Existing and emerging coordinating structures

#### Provincial level

- *Governor's office*: various committees to coordinate line ministries and municipalities, as well as security committees (provincial variation)
- *Afghanistan Stabilisation Programme (ASP)-related coordinating processes*: especially around the Provincial Stabilisation Fund (PSF)
- *Provincial Reconstruction Team (PRT)-related processes*: Provincial Reconstruction Offices in some provinces; Regional Development Zone concept (Kandahar); now proposed Provincial Development Committees developed with Ministry of Finance to coordinate National Priority Programmes (NPPs).
- *Alternative Livelihood related processes*: proposed Provincial Development Committee and Provincial Development Shura (MRRD, MAAH, EC, DFID, USAID)
- *Ad-hoc initiatives*: donor and governor's office coordinating committees (Bamyan)

#### District level

- *Uluswali*: depending on capacity/inclination of district governor's office
- *NSP-related processes*: proposed clustering of NSP CDCs at district level
- *Alternative Livelihood related processes*: District Development Shura, the first of which was launched on 22 February in Jalalabad.
- *Existing district shura and other structures involving "traditional" leaders* (vary by district)

processes. Firstly, there is a desire, especially on the part of many donors, for more effective provincial level reconstruction and development planning. This is an understandable desire, and there have been some notable successes in donor-driven coordination activities in some provinces. In Bamyán, for example, the Provincial Reconstruction Team (PRT) and the United Nations Assistance Mission in Afghanistan (UNAMA) office have been instrumental in ensuring appropriate provincial level coordination. However, most of those who are developing broader proposals in this area are tending to pay only tokenistic attention to the structures of subnational administration. Moreover, they fail to understand, or perhaps are choosing to ignore, the current limited legal and political mandate for lower level planning.

The second, and very significant, factor driving the creation of other structures is the counter-narcotics agenda, and planning for “alternative livelihoods.” The political weight behind counter-narcotics, as well as timing issues related to crop cycles, mean that it is being pushed forward at break-neck speed, often ignoring provincial structures and other government supported initiatives.

The significance of these two factors is further exacerbated by the delays and difficulties encountered in projects related to the reform of public administration at the subnational level. Numerous administrative and political difficulties have assailed the Afghanistan Stabilisation Programme (ASP), the National Priority Programme tasked with administrative reform at provincial and district level, the rebuilding of district-level infrastructure and the disbursement of a block grant of one million US dollars to each province through the Provincial Stabilisation Fund (PSF). Indeed, the ASP has also been attempting to develop provincial coordinating mechanisms, especially around the use of the PSF. However, the difficulties encountered by the programme have rendered it largely unable to play an overall coordinating role at a provincial level, and in many provinces it has been largely sidelined. Other initiatives affecting the reform of subnational administration, including Priority Reform and Restructuring (PRR) have also suffered delays and had less impact than initially hoped.

## IV. Possible Ways Forward

This briefing paper has laid out some of the key local governance issues in Afghanistan, particularly those related to current debates about the appropriate roles and mandates of the forthcoming provincial and district councils. The argument here is not that provincial and district councils should not be established. Aside from the constitutional imperative, the potential for local level elected bodies to enhance representative democracy and provide greater opportunities for citizen participation in governance is not in question. Rather, this paper has explained linkages to other structures and processes, and argued that appropriate decisions about provincial and district councils can only be made in the context of an overall vision and strategy for local government and governance in Afghanistan.

To achieve consensus on a strategy for local governance, the following recommendations have been identified:

- ***There is an urgent need for an open and broad-based consultative process around the roles and mandates of provincial and***

***district councils.*** This discussion must be led by government and held with political forces in the country, Afghan civil society, donors and other key stakeholders. Careful consideration must be given to the appropriate location of this debate and the extent of participation by different actors. This discussion should be linked to the development of an overall strategy for local government, including the establishment of a political and policy consensus around medium and longer-term goals in reform of public administration. It may be that there is not time for such a wide-ranging debate to be held before National Assembly elections. In this case, there should be an interim decree covering only a minimal set of essential core functions and relationships, in order to facilitate subsequent discussion and revision. There should be an explicit recognition that a wider debate must be held after the elections.

- ***The government should consider postponing district elections*** to allow more time for broader discussion and greater consensus about the role and mandate of



district councils. While this argument could also be applied to provincial council elections, the additional cost and complexity of district elections strengthens the argument for a postponement of district elections until there is a clearer sense of the purpose of those bodies. If the decision to postpone is taken, a creative legal solution must be found to enable the formation of the National Assembly in the interim. It is important to note that, if district council elections are not held at the same time as other elections for the National Assembly, there is a danger that they may not be held at all within the five year life of the forthcoming National Assembly, particularly if donors are unwilling to fund another round of elections. Whether this would be an acceptable outcome must be carefully considered.

- ***Donors and other interest groups must commit to a coordinated approach*** to the development of provincial and district structures, recognising that apparently laudable efforts in one arena and a desire to ensure development, reconstruction or other

activities moving may actually undermine longer-term and more sustainable efforts in another arena. An appropriate approach to coordinating should be established urgently.

- ***Donors should also continue to commit to reform of subnational administrative structures***, whether through the ASP or another mechanism agreed with government. This will include ensuring appointments are merit-based. Increasing capacity at lower levels will improve the ability of government to play an appropriate coordinating role.
- ***An appropriate legal framework should be established to encourage accountable government and broad-based citizen participation in governance.*** Those developing legislation around the elected bodies should enhance the constitutional mandate for the right to information to strengthen the ability of elected councils (and others) to demand the provision of information from government bodies.

The Afghanistan Research and Evaluation Unit (AREU) is an independent research organisation that conducts and facilitates action-oriented research and learning that informs and influences policy and practice. AREU also actively promotes a culture of research and learning by strengthening analytical capacity in Afghanistan and by creating opportunities for analysis, thought and debate. Fundamental to AREU's vision is that its work should improve Afghan lives. AREU was established by the assistance community working in Afghanistan and has a board of directors with representation from donors, UN and multilateral agencies and non-governmental organisations (NGOs).

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