



European Asylum Support Office

# Afghanistan State Structure and Security Forces

Country of Origin Information Report



August 2020

SUPPORT IS OUR MISSION





# Afghanistan

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ISBN: 978-92-9485-650-0

doi: 10.2847/115002

BZ-02-20-565-EN-N

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Taliban On the Doorstep: Afghan soldiers from 215 Corps take aim at Taliban insurgents.



# Acknowledgements

This report was drafted by the European Asylum Support Office COI Sector.

The following national asylum and migration department contributed by reviewing this report:

The Netherlands, Office for Country Information and Language Analysis, Ministry of Justice

It must be noted that the review carried out by the mentioned departments, experts or organisations contributes to the overall quality of the report, it but does not necessarily imply their formal endorsement of the final report, which is the full responsibility of EASO.

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# Disclaimer

This report was written according to the EASO COI Report Methodology (2019).<sup>1</sup> The report is based on carefully selected sources of information. All sources used are referenced.

The information contained in this report has been researched, evaluated and analysed with utmost care. However, this document does not claim to be exhaustive. If a particular event, person or organisation is not mentioned in the report, this does not mean that the event has not taken place or that the person or organisation does not exist.

Furthermore, this report is not conclusive as to the determination or merit of any particular application for international protection. Terminology used should not be regarded as indicative of a particular legal position.

'Refugee', 'risk' and similar terminology are used as generic terminology and not in the legal sense as applied in the EU Asylum Acquis, the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees.

Neither EASO nor any person acting on its behalf may be held responsible for the use which may be made of the information contained in this report.

The drafting of this report was finalised on 30 June 2020. Any event taking place after this date is not included in this report. More information on the reference period for this report can be found in the methodology section of the [Introduction](#).

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<sup>1</sup> The EASO methodology is largely based on the Common EU Guidelines for processing Country of Origin Information (COI), 2008, and can be downloaded from the EASO website: <http://www.easo.europa.eu>.

# Glossary and abbreviations

AAN	Afghanistan Analysts Network
AGEs	Anti-Government Elements are individuals and armed groups involved in armed conflict with, or armed opposition against, the government of Afghanistan and/or international military forces. Examples of such groups include the Taliban, the Haqqani Network, Islamic Movement of Uzbekistan, Islamic Jihad Union, Lashkari Tayyiba, Jaysh Muhammed and groups identifying themselves as Islamic State/'Daesh'. <sup>2</sup>
AIHRC	Afghanistan Independent Human Rights Commission
ANASOC	Afghan National Army Special Operations Command
ANSF/ANDSF	Afghan National Security Forces/Afghan National Defense And Security Forces, an umbrella term which includes. <sup>3</sup>
ABF	Afghan Border Force
ALP	Afghan Local Police
ANA	Afghan National Army
AAF	Afghan Air Force
ANP	Afghan National Police
ANCOF	Afghan National Civil Order Force
ASF	Afghan Special Forces
ANA TF	Afghan National Army Territorial Force
NDS	National Directorate of Security
<i>Arbaki</i>	Tribal police; Afghan Local Police
Attrition	Attrition is unplanned and planned total losses, including Dropped from Rolls, Killed in Action, Separation, and Other losses [disappearance/captured, disability, death (not in action), retirement, exempted (i.e. AWOL or permanent medical), or transfer to the ANA/ANP] <sup>4</sup>
<i>bacha bazi</i>	A practice whereby boys are exploited by wealthy or powerful men for entertainment, particularly for dancing and sexual activities <sup>5</sup>
CSIS	The Center for Strategic and International Studies
Civilian	UNAMA refers to international law for a definition of 'civilians': persons who are not members of military/paramilitary forces or members of organised armed groups with continuous combat

<sup>2</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict Annual Report 2018, 24 February 2019, [url](#), pp. 59, 61

<sup>3</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict Annual Report 2018, 24 February 2019, [url](#), p. 61

<sup>4</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, 23 January 2020, [url](#), p. 35, footnote 24

<sup>5</sup> UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), p. 88

	function and are protected against direct attacks unless and for such time as they directly participate in hostilities. <sup>6</sup>
Ground engagements	Ground engagements include kinetic ground operations, stand-off attacks, crossfire and armed clashes between parties to the conflict. Ground engagements include attacks or operations in which small arms, heavy weapons and/or area weapons systems, i.e. mortars and rockets are fired. <sup>7</sup>
HIG	Hezb-e Islami/Gulbuddin Hekmatyar
<i>Huquq/ Huqooq</i> Department	A department within the Justice Ministry dedicated to resolve family issues or civil cases through mediation under the Civil Procedure Code prior to referral to court; provincial departments/offices exist in all 34 provinces <sup>8</sup>
IEC	Independent Election Commission
IECC	Independent Elections Complaints Commission
IED	<p>Improvised Explosive Device. A bomb constructed and deployed in ways other than in conventional military action. IEDs can broadly be divided into four categories:</p> <p>Command-Operated IEDs – Radio or remote controlled IEDs operated from a distance that can enable operators to detonate a pre-placed device at the precise time a target moves into the target area. Magnetic IEDs are IEDs attached by a magnetic or other device and are a sub-category of command-operated IEDs.</p> <p>Victim-Operated IEDs – These detonate when a person or vehicle triggers the initiator or switch which could be a pressure plate (PP-IED) or pressure release mechanism, trip wire or another device, resulting in an explosion.</p> <p>Other IEDs – This category includes command-wired IEDs and timed-IEDs and IEDs where the trigger/switch type for detonation could not be determined.</p> <p>Suicide IEDs – Separately from data on IEDs, UNAMA documents civilian casualties resulting from complex and suicide attacks. Suicide IEDs are generally either Body-Borne IEDs (BB-IEDs) or Suicide Vehicle-Borne IEDs (SVB-IEDs). Body-Borne IEDs refer to situations where a suicide bomber wears an explosive vest or belt while Suicide Vehicle-Borne IEDs is defined as the detonation of a vehicle rigged with explosives by a driver or passenger inside the vehicle, or the detonation of a BB-IED by the driver or a passenger while inside the vehicle.<sup>9</sup></p>
IS, ISKP	Islamic State, also called ISIS, ISIL or Daesh. Islamic State in Afghanistan is referred to as Islamic State Khorasan Province (ISKP).

<sup>6</sup> UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), p. 88

<sup>7</sup> UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), p. 89

<sup>8</sup> Afghanistan, MoJ, General directorate of huqoq, *n.d.*, [url](#)

<sup>9</sup> UNAMA, Afghanistan, Protection of Civilians in Armed Conflict, Special Report - Increasing Harm to Afghan Civilians from the Deliberate and Indiscriminate Use of Improvised Explosive Devices, October 2018, [url](#), p. 10

Islamic Emirate of Afghanistan	The Islamic Emirate of Afghanistan was the state in Afghanistan from 1996 to 2001 under the Taliban regime. The Taliban still uses this name.
<i>Jirga</i>	A council or assembly of tribal elders held for dispute resolution; <i>jirgamar</i> refers to elders whose profession is dispute settlement.
<i>Loya Jirga</i>	Grand assembly
Khost Protection Force	A ‘campaign force’ that was established after 2001 under international (CIA/US special forces) control. There are long-standing allegations against the Khost Protection Force of extrajudicial killings, torture, beating and unlawful detentions. <sup>10</sup>
<i>Kuchi</i>	Nomadic Pashtuns
<i>Lewat</i>	Sodomy
MoD	Ministry of Defense
MoI	Ministry of Interior
NGO	Non-Governmental Organisation
NUG	National Unity Government
OFS	Operation Freedom’s Sentinel
PDPA	People’s Democratic Party of Afghanistan
PGF	Pro-Government Forces. Afghan National Security Forces and other forces and groups that act in military or paramilitary counter-insurgency operations and are directly or indirectly under the control of the government of Afghanistan. <sup>11</sup>
Red Unit/Red Brigade	In 2015, the Taliban established a ‘special forces’ unit named Red Unit or Red Brigade (‘sra qet’a’ in Pashto). They are better equipped and trained and are generally used as a ‘rapid reaction force’. <sup>12</sup>
RFE/RL	Radio Free Europe/Radio Liberty
RS	Resolute Support
<i>sharia</i>	The religious law of Islam; Islamic canonical law
SIGAR	Special Inspector General for Afghanistan Reconstruction
UNAMA	United Nations Assistance Mission to Afghanistan
USDOD	United States Department of Defense
USDoS	United States Department of State
<i>Wolesi Jirga</i>	Lower house of the Afghan Parliament
<i>Meshrano Jirga</i>	Upper house of the Afghan Parliament

<sup>10</sup> Clark, K., Khost Protection Force Accused of Fresh Killings: Six men shot dead in Zurmat, AAN, 21 January 2019, [url](#)

<sup>11</sup> UNAMA, Afghanistan Protection of civilians in armed conflict Annual Report 2018, 24 February 2019, [url](#), p. 64

<sup>12</sup> Times (The), Helmand teeters after Taliban storm in with British tactics, 21 August 2016, [url](#)

# Introduction

The purpose of this report is to provide relevant information for the assessment of international protection status determination, including refugee status and subsidiary protection, and in particular for use in EASO's country guidance development on Afghanistan.

The report provides an overview of the state structure, security institutions and state judiciary in Afghanistan. It is meant to be read in conjunction with other 2020 EASO COI reports on Afghanistan, which provide relevant information regarding topics such as customary law and informal dispute resolution, the main insurgent groups, targeted violence, security situation and armed conflict developments, and key socioeconomic indicators.

## Terms of Reference

The terms of reference (ToR) of this report were defined by EASO based on discussions held and input received from COI experts in the EASO COI specialist network on Afghanistan and from policy experts in EU+ countries<sup>13</sup> within the framework of a Country Guidance development on Afghanistan. Terms of reference for this report can be found in [Annex II](#).

## Methodology

This report is produced in line with the EASO COI Report Methodology (2019)<sup>14</sup> and the EASO COI Writing and Referencing Style Guide (2019).<sup>15</sup>

The information gathered is a result of research using public, specialised paper-based and electronic sources until 30 June 2020. Some additional information was added during the finalisation of this report in response to feedback received during the quality control process, until 10 July 2020. Sources in Pashto and Dari used in this report were duly assessed and informally translated by EASO.

## Structure and use of the report

The report is divided into three parts. The first part focuses on presenting an overview of the state structure in Afghanistan, including governance, corruption, and the latest developments on the 2019 elections. The second part focuses on the state security institutions, their mandate and structure, integrity, and the main reported cases of violations perpetrated by these security forces. The third part of the report provides a general overview of the state judiciary, focusing on its capacity, integrity, effectiveness in prosecution, as well as prison conditions.

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<sup>13</sup> EU Member States plus Norway and Switzerland

<sup>14</sup> EASO, EASO Country of Origin Information (COI) Report Methodology, June 2019, [url](#)

<sup>15</sup> EASO, Writing and Referencing Guide for EASO Country of Origin Information (COI) Reports, June 2019, [url](#)



# 1. State structure and governance

## 1.1 Historical overview of the Afghan state

In 1747, the first Afghan state was established based on the Afghan traditional institution of the *Loya Jirga* (grand assembly in Pashto language), where tribal leaders from different Afghan ethnic groups gathered and elected Ahmad Shah Durrani as the King of Afghanistan and Kandahar as the capital of the country.<sup>17</sup> In 1838, the British army invaded Afghanistan, which led to three Anglo-Afghan wars.<sup>18</sup> In 1919, King Amanullah Khan declared a war of independence, starting the so-called Third Anglo-Afghan War, which ended the same year with the Treaty of Rawalpindi, recognising Afghanistan as a sovereign state.<sup>19</sup> In 1923, King Amanullah promulgated the first Afghan Constitution<sup>20</sup>, which established the structure of the government and gave the *Amir* ('commander', 'ruler') executive and legal authority,<sup>21</sup> aimed at limiting the powers of tribal leaders.<sup>22</sup>

In 1923, Zahir Shah became the king of Afghanistan and the monarchy lasted for four decades. In 1973, Mohammad Daud took the power in a coup and established the first Republic. On 27 April 1978, Daud was ousted and killed in a pro-Soviet coup. The so-called *Saur* Revolution brought the People Democratic Party of Afghanistan (PDPA), the Afghan communists, to power.<sup>23</sup> In 1979, the government of the former Soviet Union invaded Afghanistan to support the communist Afghan government headed by Babrak Karmal, which faced opposition by armed groups, often referred to as the '*Mujahidin*'. The invasion was followed by a decade of armed conflict between the Afghan government, supported by Soviet troops, and US-backed *Mujahidin* groups. These groups were divided into several different factions, but they all participated in a nationwide armed uprising that lasted until the government finally collapsed in 1992, following the Soviet withdrawal in 1989.<sup>24</sup>

A period generally referred to as 'Civil War' followed, which saw different *Mujahidin* groups who had formed new alliances and fronts fighting for control of Afghanistan.<sup>25</sup> In 1994, a group called the Taliban emerged, bringing stability in areas under their control, which won them support from segments of the population.<sup>26</sup> The Taliban gradually gained more control and conquered Kabul in 1996. By 2001, the Taliban controlled most of the Afghan territory. But by the end of the year, as a consequence of the 11 September attacks in the US, they were ousted by a US-led military operation.<sup>27</sup>

<sup>17</sup> The Cairo Review of Global Affairs, Afghanistan since 1700, 2014, [url](#); RFERL, Loya Jirga – Afghan tradition explained, 20 November 2013, [url](#); Etilaatroz, میان افسانه و واقعیت؛ به تاج و تخت رسیدن احمدشاه ابدالی؛ [informal translation: 'reaching the crown and the throne by Ahmad Shah Abdali, between legends and realities'], 19 February 2020, [url](#); Barfield, T., A Cultural and Political History, 2010, pp. 99-103

<sup>18</sup> BBC, Afghanistan profile – Timeline, 9 September 2019, [url](#)

<sup>19</sup> Barfield, T., A Cultural and Political History, 2010, p. 181; Foschini F., The 1919 War of Independence (or third Anglo-Afghan War): a conflict the Afghans started (and ended), AAN, 21 September 2019, [url](#)

<sup>20</sup> Maine Law, the path of law in Afghanistan: from custom to code, 9 May 2019, [url](#)

<sup>21</sup> Barfield, T., A Cultural and Political History, 2010, p. 182

<sup>22</sup> The Cairo Review of Global Affairs, Afghanistan since 1700, 2014, [url](#)

<sup>23</sup> Clark, K., An April Day that Changed Afghanistan 2: Afghans remember the 'Saur Revolution', AAN, 27 April 2018, [url](#); BBC, Afghanistan profile – Timeline, 9 September 2019, [url](#)

<sup>24</sup> Barfield, T., A Cultural and Political History, 2010, p. 234; BBC News, Afghanistan profile – Timeline, updated on: 31 January 2018, [url](#); Ipsos/ICRC, Our world. Views from the field. Summary report: Afghanistan, Colombia, Democratic Republic of Congo, Georgia, Haiti, Lebanon, Liberia and the Philippines. Opinion Survey, June 2009, [url](#), p. 10; Oxfam International, The Cost of War, Afghan Experiences of Conflict, 1978-2009, November 2009, [url](#), pp. 7-9.

<sup>25</sup> BBC News, Afghanistan profile – Timeline, updated on: 9 September 2019, [url](#); HRW, Afghanistan: Crisis of Impunity, July 2001, [url](#), pp. 13-17; International Crisis Group, The Insurgency in Afghanistan's Heartland, 17 June 2011, [url](#), p. 3

<sup>26</sup> Giustozzi, A. and Ibrahim, N., Thirty Years of Conflict: Drivers of anti-Government Mobilisation in Afghanistan, 1978-2011, January 2012, [url](#), p. 22

<sup>27</sup> CFR, The Taliban in Afghanistan, 4 July 2014, [url](#)

The US gave its support to the *Mujahidin* front opposing the Taliban, at that time known as Northern Alliance or Northern coalition.<sup>28</sup>

On 22 December 2001, based on the Bonn Agreement, an Afghan interim government was formed, led by Hamid Karzai,<sup>29</sup> a Pashtun, who also won the first presidential elections in October 2004.<sup>30</sup> In 2014 and 2019, presidential elections were held during which Mohammad Ashraf Ghani was elected president. For more information see Section [1.6 Elections](#).

The Afghan government continues to be involved in ‘multiple and overlapping non-international armed conflicts’ between government forces and Anti-Government Elements (AGEs), mainly against the Taliban and Islamic State Khorasan Province (ISKP), among others.<sup>31</sup> On 29 February 2020, after more than 18 years of conflict, the US and the Taliban signed<sup>32</sup> the ‘Agreement for Bringing Peace to Afghanistan’.<sup>33</sup> However, the Afghan government was not involved in the deal.<sup>34</sup> Simultaneously with the Doha Agreement, the US signed a ‘Joint Declaration’<sup>35</sup> with the Government of Afghanistan, as an attempt to involve the Afghan government in the discussions, enabling political settlement and a permanent ceasefire, while also affirming continued support to the Afghan security forces and refraining from intervention in domestic affairs.<sup>36</sup>

## 1.2 Overview of the state structure and governance

According to Article 1 of the 2004 Constitution, Afghanistan is an Islamic Republic<sup>37</sup>, and the state is comprised of three branches: Executive, Legislative and Judiciary. The president is the head of state and exercises his authority in all three branches in line with the Constitution. The president is elected with more than 50 % of ballots through direct universal suffrage. The president serves a five-year term and can serve a maximum of two terms.<sup>38</sup> Article 60 of the Afghanistan Constitution states that ‘the President shall have two Vice-Presidents, first and second.’<sup>39</sup>

The Constitution stipulates that ‘the Loya Jirga is the highest manifestation of the will of the people of Afghanistan and consist of members of the National Assembly, presidents of the provincial as well as district assemblies. Ministers, Chief Justice and members of the Supreme Court as well as the attorney general shall participate in the Loya Jirga sessions without voting rights.’<sup>40</sup> The political system is

<sup>28</sup> International Crisis Group, *The Insurgency in Afghanistan’s Heartland*, 17 June 2011, [url](#), p. 5

<sup>29</sup> Oxfam International, *The Cost of War, Afghan Experiences of Conflict, 1978-2009*, November 2009, [url](#), p. 13; UNAMA, *Eighth Anniversary Today of 2001 Afghan Interim Authority*, 22 December 2009, [url](#)

<sup>30</sup> Guardian (The), *The Afghan interim government: who’s who*, 6 December 2001, [url](#); New York Times (The), *Election of Karzai Is Declared Official*, 4 November 2004, [url](#); The Cairo Review of Global Affairs, *Afghanistan since 1700*, 2014, [url](#)

<sup>31</sup> RULAC, *Non-international armed conflicts in Afghanistan*, Last updated 30 April 2019, [url](#)

<sup>32</sup> BBC News, *Afghan conflict: US and Taliban sign deal to end 18-year war*, 29 February 2020, [url](#); Ruttig, T., *From Doha to Peace? Obstacles rising in the way of intra-Afghan talks*, 3 March 2020, [url](#); Zeino E., *Peace versus Democracy? Afghanistan between Government Crisis and a U.S. Peace Deal with the Taliban*, Pajhwo, 6 April 2020, [url](#)

<sup>33</sup> The full text in English of the US-Taliban agreement, referred in this report as the ‘Doha agreement’ is available at: AAN, *Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban and the United States of America*, 29 February 2019, [url](#); For a detailed explanation of the Doha Agreement and stipulations, see UNSC, *Eleventh report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2501 (2019) concerning the Taliban*, S/2020/415, 27 May 2020, [url](#)

<sup>34</sup> Ruttig, T., *From Doha to Peace? Obstacles rising in the way of intra-Afghan talks*, 3 March 2020, [url](#); Zeino E., *Peace versus Democracy? Afghanistan between Government Crisis and a U.S. Peace Deal with the Taliban*, Pajhwo, 6 April 2020, [url](#)

<sup>35</sup> The full text (in English, Dari, Pashtu) of the Joint Declaration between the US and the Afghanistan government is available at: AAN, *Joint Declaration between the Islamic Republic of Afghanistan and the United States of America for Bringing Peace to Afghanistan*, 29 February 2020 [url](#)

<sup>36</sup> Ruttig, T., *From Doha to Peace? Obstacles rising in the way of intra-Afghan talks*, 3 March 2020, [url](#)

<sup>37</sup> Afghanistan, MoJ, *Enforced Constitution of Afghanistan*, 30 July 2004, [url](#), Article 1

<sup>38</sup> Pajhwo, *Government structure*, 27 April 2013, [url](#)

<sup>39</sup> Afghanistan, MoJ, *Enforced Constitution of Afghanistan*, 30 July 2004, [url](#), Article 60

<sup>40</sup> Afghanistan, MoJ, *Enforced Constitution of Afghanistan*, 30 July 2004, [url](#), Article 110



centralised; the president appoints all ministers, provincial and district governors and mayors. Budget decisions are made in the capital, Kabul.<sup>41</sup> In practice, since 2014 executive power has been shared between a 'President and a Chief Executive Officer (CEO), a quasi-head of government not provided for in the constitution. This power triangle between the President, the CEO and the parliament has been marked by hostilities and destructive blockade policies'.<sup>42</sup> See Section [1.1 Executive Branch](#).

According to the Asian Institute of Research, as of November 2019, Afghanistan could not achieve the minimum standards for a good governance, mainly due to the corruption within the government, insecurity, unemployment, violation of human rights, lack of rule of law, illiteracy and lack of capacity into administrative reforms.<sup>43</sup> The Center for Strategic and International Studies (CSIS) concluded that Afghanistan has a 'failed governance as well as failed politics', with corruption as a key challenge and a central government that still cannot function without foreign aid.<sup>44</sup> SIGAR reported that, as of 31 March 2020, the US supported governance and economic development in Afghanistan with around 35.06 billion dollars.<sup>45</sup>

In an article analysing the political developments following the 2019 post electoral standoff, Dr Ellinor Zeino, Country director for Afghanistan at the political foundation Konrad-Adenauer-Stiftung (KAS), stated that government and the political system in Afghanistan continue to be weak and in parts dysfunctional:

'Executive and legislative powers have been, at times, overstretched or misused against each other. At times, the government sidelined the parliament or simply ignored legislative decisions. But also parliament members did not hesitate to misuse their legislative oversight powers such as no-confidence votes or the right to impeach government ministers for their own retaliatory or individual purposes.[...]'.<sup>46</sup>

## 1.3 Executive branch

The 2004 Afghanistan Constitution stipulates that 'the Government shall be comprised of Ministers who work under the chairmanship of the President. The number of Ministers as well as their duties shall be regulated by law' (Article 71).<sup>47</sup> The Afghan Government is comprised of 24 ministries.<sup>48</sup> It has the following duties:

'Execute the provisions of this Constitution, other laws, as well as the final decisions of the courts, preserve the independence, defend the territorial integrity and safeguard the interests and prestige of Afghanistan in the international community, maintain public law and order and eliminate every kind of administrative corruption, prepare the budget, regulate financial conditions of the state as well as protect public wealth, devise and implement social, cultural, economic and technological development programs, report to the National Assembly, at the end of the fiscal year, about the tasks achieved as well as important programs for the new

<sup>41</sup> Diplomat (The), Political reform urgently needed in Afghanistan, 22 February 2020, [url](#)

<sup>42</sup> Zeino E., Peace versus Democracy? Afghanistan between Government Crisis and a U.S. Peace Deal with the Taliban, Pajhwok, 6 April 2020, [url](#)

<sup>43</sup> Asian Institute of Research, The main challenges of public management in Afghanistan and the possible solution, 7 November 2019, [url](#), pp. 142-143

<sup>44</sup> CSIS, Afghanistan: The prospects for a real peace, 7 July 2020 [url](#), pp. 88-95

<sup>45</sup> SIGAR, Quarterly report to the United States Congress, 30 April 2020, [url](#), p. 98

<sup>46</sup> Zeino E., Peace versus Democracy? Afghanistan between Government Crisis and a U.S. Peace Deal with the Taliban, Pajhwok, 6 April 2020, [url](#)

<sup>47</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#), Article 71

<sup>48</sup> IRA, The Cabinet members, n.d., [url](#)

fiscal year, perform other duties that, in accordance with this Constitution and other laws, fall within the Government responsibilities.<sup>49</sup>

According to Article 64(11) of the Constitution, the president has the authority to appoint ministers.<sup>50</sup> However, regardless of the provisions contained in the Constitution, the executive power has been split since 2014 between President Ashraf Ghani and Chief Executive Officer (CEO) Abdullah Abdullah.<sup>51</sup> The disputed 2014 presidential election resulted in a political compromise which led to the establishment of the National Unity Government (NUG), under the Presidency of Ghani and Chief Executive Abdullah. Divisions within the government, particularly between Ghani and Abdullah and their camps, severely compromised the NUG's effectiveness.<sup>52</sup> According to the Afghanistan Analysts Network's (AAN), in January 2017, 'its complex power-sharing arrangements [have] paralysed governance in Afghanistan'.<sup>53</sup>

Following the 2019 disputed election result, President Ghani and his main contender Abdullah Abdullah, signed a power-sharing agreement on 17 May 2020,<sup>54</sup> (See Section [1.6 Elections](#)) which gave Abdullah the lead of the High Council of National Reconciliation with executive authorities, as well as the right to appoint 50 % of the cabinet,<sup>55</sup> including for some key ministries, while provincial governors will be appointed based on 'a rule agreed upon by the two sides'.<sup>56</sup> However, as of 13 June 2020, AAN's researcher Ali Yawar Adili and co-director Thomas Ruttig observed that it was not clear yet whether such a rule had been put in place, noting that a cabinet had yet to be fully formed.<sup>57</sup>

## 1.4 Legislative branch

The Afghan legislative branch is called the National Assembly and is a bi-cameral parliament. The National Assembly is comprised of two houses: the *Wolesi Jirga* (lower house) and *Meshrano Jirga* (Upper House).<sup>58</sup> According to the 2004 Constitution, 'the National Assembly of the Islamic Republic of Afghanistan, as the highest legislative organ, shall manifest the will of its people as well as represent the entire nation. The National Assembly consists of two houses: House of People and House of Elders.'<sup>59</sup> Article 83 of the Constitution stipulates that 'members of the House of People shall be elected by the people through free, general, secret, and direct balloting.'<sup>60</sup> Members of the *Wolesi Jirga* (lower house) are elected from the 34 provinces 'according to proportional representation' for 250 seats. The Sikh and Hindu communities have the right to one seat, and the nomadic Kuchi peoples to ten seats. A total of 68 seats are reserved for female representatives, two from each of Afghanistan's 34 provinces.<sup>61</sup>

<sup>49</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#), Article 75

<sup>50</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#), Article 64/11

<sup>51</sup> Zeino E., Peace versus Democracy? Afghanistan between Government Crisis and a U.S. Peace Deal with the Taliban, Pajhow, 6 April 2020, [url](#)

<sup>52</sup> Foreign Policy, NUG One Year On: Struggling to Govern, 29 September 2015, [url](#)

<sup>53</sup> AAN, What to Watch? Key issues to follow in Afghanistan in 2017, 27 January 2017, last updated 9 March 2020, [url](#)

<sup>54</sup> AP, Afghanistan President and rival announce power-sharing agreement, 17 May 2020, [url](#); Tolonews, Ghani and Abdullah sign an agreement to break political deadlock, 17 May 2020, [url](#)

<sup>55</sup> Adili A. Y., End of post-election impasse? Ghani and Abdullah's new power-sharing formula, AAN 20 May 2020, [url](#); Tolonews, Ghani and Abdullah Sign Agreement to Break Political Deadlock, 17 May 2020, [url](#)

<sup>56</sup> Adili A. Y., Ruttig T., Between Professionalism and Accommodation: The slow progress on the new cabinet, AAN, 13 June 2020, [url](#)

<sup>57</sup> Adili A. Y., Ruttig T., Between Professionalism and Accommodation: The slow progress on the new cabinet, AAN, 13 June 2020, [url](#)

<sup>58</sup> Pajhwok, Government structure, 27 April 2013, [url](#)

<sup>59</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#), Articles 81-82

<sup>60</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#), Article 83

<sup>61</sup> Al Jazeera, Understanding Afghanistan's elections 2018, 20 October 2018, [url](#)

On 20 October 2018, the third parliamentary elections in Afghanistan were held. The elections resulted in five major political parties within the lower house: Jamiat-e Islami (23 seats), People's Islamic Unity Party (11 seats), Hezb-e Wahdat-e Islami (7 seats), Hezb-e Jamhoori Afghanistan (9 seats), and Junbish-e Mili Islami Afghanistan (10 seats). Members of the *Meshrano Jirga* (upper house) have 102 seats reserved for 68 members elected by the provincial and district councils and 34 members are appointed by the president.<sup>62</sup>

Article 35 of the Afghanistan Constitution stipulates that 'the people of Afghanistan shall have the right, in accordance with provisions of the law, to form political parties.'<sup>63</sup> According to the Ministry of Justice of Afghanistan, as of 2016, there were 70 political parties officially registered in Afghanistan.<sup>64</sup> Transparency International observed that in Afghanistan, political parties do not represent 'coherent policy platforms' as they are formed on specific ethnic or personalities. The majority of the candidates run their campaign independently and shift alliance based on local and regional 'patronage networks'.<sup>65</sup>

Free and Fair Election Forum of Afghanistan (FEFA) published a survey in November 2019 among the members of *Wolesi Jirga* stating that during the survey 76.6 % of the MPs stated that they did not belong to any political parties and 23.4 % indicated that they belonged to a political party (7.6 % to Jamiat-e Islami, 3.4 % to Junbish-e Mili, 2.5 % to Hezb-e Harakat, 2.9 % to Wahdat-e Islami, 2.1 % to Hezb-e Islami and the remaining 4.9 % to other parties). The source also stated that during the legislative elections, only 8.5 % of the candidates responded that they belonged to a political party (3.4 % to Junbish-e Mili Islami, 3.4 % to Jamiat-e Islami, 2.7 % to Hezb-e Wahdat-e Islami Mardom-e Afghanistan, 1.8 % to Hezb-e Wahdat-e Islami, 0.9 % to Hezb-e Islami and 0.9 % to Hezb-e Harakat-Islami) while 91.5 % were independent candidates. According to the same source 28 % of the Members of *Wolesi Jirga* expressed their link to the President's team, 13 % to the Chief Executive Office's team, 3 % to the former President's team and 56 % to none of the sides in the Afghan Unity Government.<sup>66</sup>

According to the Asia Foundation, around 70 % of the newly elected MPs are relatively young and new to the political scene. The presence of young MPs in parliament generated a lot of faith and higher expectation amongst the ordinary Afghans. However, the newly constituted lower house *Wolesi Jirga* experienced tensions on the new leadership during the first session, which questioned the capacity of the legislature amongst the political elites and international observers.<sup>67</sup>

## 1.5 Judicial branch

Article 116 of the Constitution of Afghanistan provides that the judiciary shall be an independent organ of the country. According to the same article, 'the judiciary shall be comprised of one Supreme Court, Courts of Appeal as well as Primary Courts whose organization and authority shall be regulated by law. The Supreme Court shall be the highest judicial organ, heading the judicial power of the Islamic Republic of Afghanistan.'<sup>68</sup> The justice system comprises the judiciary, which is independent from the

<sup>62</sup> Al Jazeera, Understanding Afghanistan's elections 2018, 20 October 2018, [url](#)

<sup>63</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#), Article 35

<sup>64</sup> Afghanistan, MoJ, Registered political parties, 16 August 2016, [url](#)

<sup>65</sup> Transparency International, Anti-Corruption Resource Center, Corruption in Afghanistan and the role of development assistance, 29 April 2019, [url](#), pp. 6-8

<sup>66</sup> FEFA, شناسنامه مجلس نمایندگان - دور هفدهم [informal translation: 'information about the members of the House of Common – seventeenth term of office'], 5 November 2019, [url](#), pp. 4-5

<sup>67</sup> The Asia Foundation, A survey of the Afghan people, Afghanistan in 2019, 2 December 2019, [url](#), p. 135

<sup>68</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#), Article 116

executive branch, the Ministry of Justice, the Attorney General's Office (AGO), and the Ministry of Interior.<sup>69</sup> For more in-depth information on the State judiciary, see [3. State judiciary](#).

## 1.6 Elections

The Independent Elections Commission (IEC) has the mandate and is the only institution in charge of administrating and supervising elections including presidential elections, *Wolesi Jirga* elections, provincial council elections, district council elections, village council elections, municipal council elections, elections for Mayor's office and Referenda.<sup>70</sup> Article 156 of the Constitution of Afghanistan stipulates that 'the Independent Elections Commission shall be established to administer and supervise every kind of elections as well as refer to general public opinion of the people in accordance with the provisions of the law' and Article 157 of the said Constitution stipulates that 'the Independent Commission for supervision of the implementation of the Constitution shall be established in accordance with the provisions of the law. Members of this Commission shall be appointed by the President with the endorsement of the House of People.'<sup>71</sup>

In December 2018, the IEC announced a three-month delay for the presidential election which was originally scheduled for 20 April 2019.<sup>72</sup> In March 2019, the elections were postponed again, due to 'problems with the voting process'.<sup>73</sup> Presidential candidates included incumbent Ashraf Ghani, Chief Executive Abdullah Abdullah, former national security adviser, Muhammad Hanif Atmar and also Gulbuddin Hekmatyar.<sup>74</sup> Interior Minister Amrullah Saleh, once a devoted critic of the president stepped down from his position to join Ghani's team as a candidate for the post of vice president.<sup>75</sup> Appointing Saleh was an effort from the ethnic Pashtun Ghani to neutralise a political opponent and to get the support of the Tajiks, among whom Saleh has a strong backing.<sup>76</sup>

On 28 September 2019, the presidential elections were finally held, with the lowest election turnout recorded since the Taliban were ousted in 2001. In the immediate aftermath of the elections, both frontrunners, incumbent Ashraf Ghani and Chief Executive Abdullah Abdullah, declared victory;<sup>77</sup> which resulted in the following five months of political impasse.<sup>78</sup> After almost three months since the elections, and with delays due to allegations of fraud, irregularities, attacks and technical problems with biometric devices used for voting,<sup>79</sup> on 22 December 2019, the IEC announced the preliminary results showing 50.64 % of the votes (923 868) in favour of Ghani and 39.52 % of the votes (720 990) in favour of Abdullah Abdullah.<sup>80</sup> This latter rejected the preliminary results, stating they were based

<sup>69</sup> SIGAR, Rule of Law in Afghanistan: US Agencies Lack a Strategy and Cannot Fully Determine the Effectiveness of Programs Costing more than \$Billion, July 2015, [url](#)

<sup>70</sup> IEC, Vision and Mission, 1 January 2019, [url](#)

<sup>71</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#)

<sup>72</sup> France24, Afghan presidential election delayed until July 20, 30 December 2018, [url](#)

<sup>73</sup> Reuters, Afghanistan presidential election postponed to September, 20 March 2019, [url](#)

<sup>74</sup> Adili, A.Y., Afghanistan's 2019 elections (2): Who is running to become the next president?, AAN, 11 February 2019, [url](#)

<sup>75</sup> New York Times (The), Afghan Presidential Race Takes Shape as Ghani's Challengers Emerge, 18 January 2019, [url](#)

<sup>76</sup> Reuters, Afghanistan's Ghani launches bid for second presidential term, 20 January 2019, [url](#)

<sup>77</sup> BBC, Afghanistan presidential election: Rivals declare victory after record low turnout, 30 September 2019, [url](#)

<sup>78</sup> Adili A. Y., End of post-election impasse? Ghani and Abdullah's new power-sharing formula, AAN 20 May 2020, [url](#)

<sup>79</sup> Reuters, Afghan election runoff likely amid thousands of complaints: officials, 23 December 2019, [url](#); France24, Over 16,000 complaints filed in Afghan presidential polls, 26 December 2019, [url](#)

<sup>80</sup> BBC, Afghanistan presidential election: Ghani set for second term after initial results, 22 December 2019, [url](#); TKG, The preliminary results of the Afghanistan presidential elections announced, 22 December 2019, [url](#)

on fraud.<sup>81</sup> The election turnover was estimated to be over 1.8 million,<sup>82</sup> of which 31.5 % was composed of women.<sup>83</sup>

After three days since the announcement of the preliminary results, the Independent Elections Complaints Commission (IECC) said to have registered around 16 500 complaints, with about 8 000 submitted by the Stability and Integration team of Abdullah Abdullah; around 4 400 by Peace and Islamic Justice led by Gulbuddin Hekmatyar; over 3 000 complaints lodged by the Stable Builder team led by President Ashraf Ghani and 15 by the Security and Justice team led by Rahmatullah Nabil.<sup>84</sup>

The final results were announced in February 2020, confirming almost exactly the preliminary outcome.<sup>85</sup> Incumbent Muhammad Ashraf Ghani was declared the winner, with 50.64 % of votes. His rival Abdullah Abdullah, who was second with 39.52 % of votes,<sup>86</sup> rejected the results, declaring himself the winner;<sup>87</sup> he announced his intention to form an alternative, 'inclusive' government, and in the following weeks started appointing some provincial governors.<sup>88</sup> On 9 March 2020, both Ghani and Abdullah held separate inauguration ceremonies taking the oath of office as the president of Afghanistan.<sup>89</sup>

After months of tension, on 17 May 2020, President Ghani and Abdullah Abdullah, finally signed a power-sharing agreement,<sup>90</sup> which recognised Ghani as the President and Abdullah as the leader of the High Council of National Reconciliation with executive authorities; in addition giving to the latter the right to appoint 50 % of the cabinet.<sup>91</sup>

## 1.7 Political developments

The five-year power-sharing NUG had been run with continued tensions between Ghani and Abdullah Abdullah.<sup>92</sup> The disputed 2019 election outcome resulted in an intensified polarisation between Ghani supporters and opponents, primarily his main rival Abdullah,<sup>93</sup> plunging the country into a standoff and political crisis risking to jeopardise the peace talks.<sup>94</sup> The US expressed their disappointment on the failure of the Afghan leaders to reach a compromise, threatening to cut USD 1 billion aid to

<sup>81</sup> Reuters, Afghanistan's Ghani claims narrow win in preliminary presidential vote results, 22 December 2019, [url](#)

<sup>82</sup> Reuters, Afghan election runoff likely amid thousands of complaints: officials, 23 December 2019, [url](#)

<sup>83</sup> UN Security Council, The situation in Afghanistan and its implications for international peace and security A/74/753–S/2020/210, 17 March 2020, [url](#), p. 2

<sup>84</sup> Adili A. Y., Afghanistan's 2019 Election (28): ECC starts final, decisive phase of complaints procedure, AAN, 20 January 2020, [url](#)

<sup>85</sup> Ruttig T., Afghanistan's 2019 Elections (30): Final results... and parallel governments?, AAN, 19 February 2020, [url](#)

<sup>86</sup> IEC, Afghanistan 2019, Presidential election, n.d., [url](#)

<sup>87</sup> Ruttig T., Afghanistan's 2019 Elections (30): Final results... and parallel governments?, AAN, 19 February 2020, [url](#); Reuters, Ghani named winner of disputed Afghan poll, rival also claims victory, 18 February 2020, [url](#)

<sup>88</sup> UN Security Council, The situation in Afghanistan and its implications for international peace and security A/74/753–S/2020/210, 17 March 2020, [url](#), p. 3; Tolonews, Abdullah-Loyal governor installed in Sar-e-Pul, 22 February 2020, [url](#)

<sup>89</sup> New York Times (The), Ghani Takes the Oath of Afghan President. His Rival Does, Too, 9 March 2020, [url](#)

<sup>90</sup> Adili A. Y., End of post-election impasse? Ghani and Abdullah's new power-sharing formula, AAN, 20 May 2020, [url](#)

<sup>91</sup> Adili A. Y., End of post-election impasse? Ghani and Abdullah's new power-sharing formula, AAN, 20 May 2020, [url](#); Tolonews, Ghani and Abdullah Sign Agreement to Break Political Deadloc, 17 May 2020, [url](#)

<sup>92</sup> NYT, Ghani named Afghan election winner, his opponent claims victory, too, 18 February 2020, [url](#)

<sup>93</sup> Zeino E., Peace versus Democracy? Afghanistan between Government Crisis and a U.S. Peace Deal with the Taliban, Pajhow, 6 April 2020, [url](#)

<sup>94</sup> Adili A. Y., From parallel governments to a new form of power-sharing? Afghanistan's ongoing post-elections crisis, AAN, 7 May 2020, [url](#); Al Jazeera, Afghanistan's peace process is in danger of unravelling, 31 March 2020, [url](#); Reuters, Afghanistan's 'Game of Thrones' jeopardizes peace process, 9 March 2020, [url](#)

Afghanistan in 2020 and potentially another USD 1 billion in 2021, in a bid to get the two contenders reach a 'political settlement'.<sup>95</sup>

According to AAN's analyst Ali Yawar Adili for the second consecutive time, the presidential election resulted in a political dispute, and in order to resolve it, an 'extra-Constitutional arrangement' had to be made, (see Section [1.6 Elections](#)). The source also indicated that Abdullah Abdullah and other Afghan political actors, with whom Abdullah tried to create an alliance, issued a joint statement indicating that 'the national crisis emerging out of election fraud has affected the national peace process and might render the situation even more critical.'<sup>96</sup>

In February 2020<sup>97</sup>, President Mohammad Ashraf Ghani, who has been elected for the second term of office, announced that he maintained the previous cabinet members for two weeks before selecting new members.<sup>98</sup> On 31 March 2020, President Ghani appointed Arghandiwal as the acting finance minister and according to the presidential advisor, the process of appointing new cabinet members was going to continue, and would be followed by a vote of confidence from the Parliament before the newly appointed ministers take office.<sup>99</sup> On 4 April 2020, the President appointed Haneef Atmar as the acting minister of foreign affairs.<sup>100</sup> On 11 March 2020, President Mohammad Ashraf Ghani issued a decree that dissolved the Office of Chief Executive<sup>101</sup>, which was formed under the National Unit Government following the disputed elections in 2014.<sup>102</sup>

As of mid-June, a cabinet had yet to be fully formed. Only nine ministers and the governor of the central bank were nominated, along with two state ministers; all candidates were exclusively from Ghani's own side. The appointment process was being delayed by 'intra-factional consultation within both Ghani's and Abdullah's electoral teams', and by the 'need to accommodate other political forces'. Some of the nominees from Ghani's side were reportedly being made with the aim to award his electoral allies and loyalists as well as to accommodate political factions, mostly Pashtuns, who opposed him during the election. The AAN's analysts explained that Ghani was trying to accommodate in particular a 'group of influential politicians who gathered around former president Karzai'. This group had tried to push for President Ghani's removal during the latest post-electoral political impasse and place themselves as an 'unofficial third force' between Ghani and Abdullah's camps within the context of the US-Taliban negotiations. On Abdullah's side, no nominees had yet been proposed as of mid-June; which, according to AAN, reflected the difficulty to accommodate his heterogeneous political camp, 'supported by various, often conflicting, factions of his own Tajik-dominated political party, Jamiat-e Islami, but also by forces from the Hazara and Uzbek communities.'<sup>103</sup>

Next to fair and transparent elections, peace negotiations with the Taliban aimed at establishing a cease-fire continued to be a high priority for Afghans, and according to a survey conducted by the Asia Foundation, two thirds of the interviewed Afghans (88.7 %) expressed their strong support for the peace talks.<sup>104</sup> A consultative Loya Jirga – a gathering of Afghan politicians and tribal, ethnic and religious leaders - was initially planned in Kabul in March 2019 with the goal of creating a framework

<sup>95</sup> USDOS, On the Political Impasse in Afghanistan. Press Statement, Michael R. Pompeo, Secretary of State, 23 March 2020, [url](#); Adili A. Y., From parallel governments to a new form of power-sharing? Afghanistan's ongoing post-elections crisis, AAN, 7 May 2020, [url](#)

<sup>96</sup> Adili A. Y., From parallel governments to a new form of power-sharing? Afghanistan's ongoing post-elections crisis, AAN, 7 May 2020, [url](#)

<sup>97</sup> Reuters, Ghani named winner of disputed Afghan poll, rival also claims victory, 18 February 2020, [url](#)

<sup>98</sup> Reuters, Afghanistan's 'Game of Thrones' jeopardizes peace process, 9 March 2020, [url](#)

<sup>99</sup> Tolonews, Ghani appoints Arghandiwal as acting finance minister, 31 March 2020, [url](#)

<sup>100</sup> Khaama Press, Ghani appoints Atmar as acting minister of foreign affairs, 4 April 2020, [url](#)

<sup>101</sup> Khaama Press, Ghani dissolves the office of the Chief Executive, 11 March 2020, [url](#); Tolonews, Ghani, by Decree, "abolishes" Chief Executive Office, 11 March 2020, [url](#); TKG, Afghan President Ghani terminates the office of Chief Executive, 12 March 2020, [url](#)

<sup>102</sup> Foreign Policy, NUG One Year On: Struggling to Govern, 29 September 2015, [url](#)

<sup>103</sup> Adili A. Y., Ruttig T., Between Professionalism and Accommodation: The slow progress on the new cabinet, AAN, 13 June 2020, [url](#)

<sup>104</sup> The Asia Foundation, A survey of the Afghan people, Afghanistan in 2019, 2 December 2019, [url](#), p. 135

for the Afghan government to engage in peace negotiations with the Taliban. The Loya Jirga was eventually postponed.<sup>105</sup> On September 2019, US President Donald Trump declared the US-Taliban negotiations ‘dead’,<sup>106</sup> after the Taliban had killed a US soldier; however, the discussions between the two sides resumed within weeks behind the scenes.<sup>107</sup>

On 29 February 2020, the US and the Taliban signed the Doha agreement. The main points outlined in the agreement include guarantees by the Taliban on not providing protection to groups, such as Al Qaeda, that pose a threat to the US and its allies; guarantees by the US and their NATO allies to withdraw from Afghanistan; the question of ceasefire and the intra-Afghan negotiations.<sup>108</sup> However, the Afghan government was not involved in the deal, with the Taliban later refusing to engage with their negotiating team, leading to questions about the viability of the agreement, which is described as a ‘negotiated political settlement’ rather than a comprehensive peace deal.<sup>109</sup> The Doha agreement also stipulates that the modalities for a permanent ceasefire are to be negotiated in intra-Afghan negotiations, with a mutual release of prisoners as a measure for confidence-building.<sup>110</sup>

At the time of drafting this report, there was little clarity as to the scope of the intra-Afghan negotiations. Five political groups put forward proposals, with the main themes being: ‘structural framework, phases of the negotiation process and institutional arrangements.’<sup>111</sup> In mid-June 2020, the Taliban and the Afghan government finally agreed on Doha as the venue for their first session of high-level ‘intra-Afghan dialogue’, but held off confirmation pending disagreements over prisoner releases.<sup>112</sup> At the beginning of July 2020, Abdullah Abdullah announced an official visit to Pakistan as part of the efforts to initiate the intra-Afghan talks, described as ‘imminent’.<sup>113</sup>

Dr Ellinor Zeino observed that the political crisis derived by the 2019 post-electoral result, coinciding with the the US-Taliban deal, and the intra-Afghan talks in the making, have plunged Afghanistan into a ‘defining turning point’. She concluded:

‘With a US-Taliban peace agreement signed and NATO troops about to leave, Afghanistan is again at a decisive moment where its political and social order and its role as a Western partner are renegotiated. The Taliban leadership seems ready to move from combat to politics. The current government crisis and hardened intra-Afghan conflicts put the pluralist-democratic achievements of the past twenty years at risk when going to the negotiation table with the Taliban. If the inner political struggles remain unsolved, Afghans risk losing all, its hard-won democracy and prospects for peace.’<sup>114</sup>

<sup>105</sup> RFE/RL, Afghan Loya Jirga Aimed At Discussing Peace Talks Delayed, 3 March 2019, [url](#)

<sup>106</sup> Ruttig T., US-Taliban Agreement Still in the Air: Disputes about a ‘ceasefire’ versus ‘reduction of violence’, AAN, 30 January 2020, last updated 9 April 2020, [url](#)

<sup>107</sup> BBC News, Afghan conflict: US and Taliban sign deal to end 18-year war, 29 February 2020, [url](#)

<sup>108</sup> BBC News, Afghan conflict: US and Taliban sign deal to end 18-year war, 29 February 2020, [url](#); Ruttig, T., From Doha to Peace? Obstacles rising in the way of intra-Afghan talks, 3 March 2020, [url](#); Zeino E., Peace versus Democracy? Afghanistan between Government Crisis and a U.S. Peace Deal with the Taliban, Pajhow, 6 April 2020, [url](#)

<sup>109</sup> US, CRS, Afghanistan: Background and U.S. Policy: In Brief, 1 May 2020, [url](#), pp. 3-4; see also for further details on the deal’s provisions: Ruttig, T., From Doha to Peace? Obstacles rising in the way of intra-Afghan talks, 3 March 2020, [url](#)

<sup>110</sup> Afghanistan Times, More violence feared as freed Taliban inmates may return to the battlefield, 14 June 2020, [url](#)

<sup>111</sup> Adili A. Y., Hossaini K., Looking ahead to Intra-Afghan Negotiations: A scrutiny of different political groups’ plans for peace, AAN, 30 April 2020, [url](#)

<sup>112</sup> Reuters, Afghan government, Taliban agree to Doha as venue for first peace talks, 15 June 2020, [url](#); VOA, Prisoner Release Delays May Jeopardize Start of Intra-Afghan Negotiations, 6 July 2020, [url](#)

<sup>113</sup> Tribune, Afghanistan’s Abdullah Abdullah to visit Pakistan soon, 5 July 2020, [url](#)

<sup>114</sup> Zeino E., Peace versus Democracy? Afghanistan between Government Crisis and a U.S. Peace Deal with the Taliban, Pajhow, 6 April 2020, [url](#)

## 1.8 Corruption

UNAMA (United Nations Assistance Mission in Afghanistan) defines corruption as follows:

‘Corruption in its most general definition is the misuse of public trust for private gain and in that regard, it cannot exist without institutions designed to meet public or common interests.’<sup>115</sup>

According to Article 75(3) of the Constitution of Afghanistan, the Government has the duty to ‘maintain public law and order and eliminate every kind of administrative corruption’.<sup>116</sup> On 20 February 2004, Afghanistan signed the 2003 UNCAC (United Nations Convention Against Corruption) and ratified it on 25 August 2008 to prevent and prosecute corruption.<sup>117</sup> The September 2018 Afghan anti-corruption law deals with corruption in Afghanistan.<sup>118</sup>

According to Transparency International:

‘In 2018, an estimated 4.6 million Afghan adults paid a bribe in order to access services such as applying for jobs, interacting with provincial governor’s offices, meeting security services (e.g. border guards or the police), using healthcare facilities or to be admitted into schools and universities [...] The bulk of bribes in Afghanistan are demanded by the authorities.’<sup>119</sup>

In 2019, Afghanistan was ranked 173 out of 180 by Transparency International.<sup>120</sup> According to a survey conducted by the Asia Foundation, in 2019 majority of Afghans (81.5 %) perceived corruption a major problem in their daily life in Afghanistan. The level of perception of corruption was the same as last year. According to the same source, the perception of corruption by province during the same period was as follows:

‘Respondents in Panjshir (96.8 %), Helmand (95.0 %), Nangarhar (93.1 %), and Kabul (92.9 %) are the most likely to say corruption is a major problem in Afghanistan, while respondents in Paktia (50.0 %), Sar-e-Pul (56.3 %), Ghor (57.0 %), and Paktika (57.1 %) are least likely. Urban respondents are more likely to say corruption is a major problem in Afghanistan (88.7 %) than rural respondents (79.0 %).’<sup>121</sup>

### 1.8.1 Anti-corruption efforts and mechanisms

According to UNAMA, the Afghanistan Anti-Corruption law, which was adopted on 5 September 2018, provides a solid legal basis for the Anti-Corruption and Justice Centre (ACJC) and creates an Anti-Corruption Commission. The source also indicated that the adoption of September 2017 Government’s Anti-Corruption Strategy and the adoption of the new Penal Code of March 2017, which was enforced in February 2018, are the key developments made by the Afghanistan Unity Government, including the codification of all mandatory corruption offences in line with the United Nation’s Convention against Corruption (UNCAC) in the new Penal Code.<sup>122</sup>

The US Special Inspector General for Afghanistan Reconstruction (SIGAR) observed a progress by the Afghan Government to meet its Anti-Corruption Strategy Benchmarks since May 2018 despite ‘serious

<sup>115</sup> UNAMA, Afghanistan’s fight against corruption, groundwork for Peace and Prosperity, 20 May 2019, [url](#), p. 6

<sup>116</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#)

<sup>117</sup> UNODC, Signature and ratification status, n.d., [url](#)

<sup>118</sup> ACKU, Gazette, قانون مبارزه با فساد اداری [informal translation: ‘law on combating corruption’], 5 September 2018, [url](#)

<sup>119</sup> Transparency International, Anti-Corruption Resource Center, Corruption in Afghanistan and the role of development assistance, 29 April 2019, [url](#), pp. 6-8

<sup>120</sup> TI, Afghanistan, corruption perception index 2019, [url](#)

<sup>121</sup> The Asia Foundation, A survey of the Afghan people, Afghanistan in 2019, 2 December 2019, [url](#), p. 142

<sup>122</sup> UNAMA, Afghanistan’s fight against corruption, from strategies to implementation, 14 May 2018, [url](#), p. 3



challenges' which still remain including 'resource shortfalls at anticorruption institutions, the seeming impunity of powerful individuals, and declining activity at the corruption courts'.<sup>123</sup>

However, the UN General Assembly and Security Council indicated that Afghanistan's 'Anti-Corruption Strategy expired on 31 December 2019 without a successor document, leaving Afghanistan without a framework document for addressing corruption.'<sup>124</sup>

According to Afghanistan Public Policy Research Organization (APPRO), the Anti-Corruption Commission has the whole responsibility to monitor the implementation of National Strategy for Combating Corruption (NSCC), which was expected to be established in 2019.<sup>125</sup> The source indicated shortfalls during the development of NSCC such as the lack of consultation with the Parliament, local government authorities, and civil society. Additionally, as a Dari and Pashto version of the strategic document (which was only in English) was only available after adoption, consultation from the public had not been sought, according to the source.<sup>126</sup>

In March 2020, Freedom House observed that in Afghanistan corruption remained a widespread challenge, noting that 'Law enforcement agencies and the judiciary are themselves compromised by graft and political pressure, and the most powerful officials and politicians effectively enjoy impunity'. The source also mentioned that allegation of financial corruption and political influence questioned the legitimacy of the new elected Afghan Parliament. There is a lack of transparency within the government operations and widespread corruption in the 'management of public-sector contracting'.<sup>127</sup>

#### **Anti-Corruption Justice Centre (ACJC) and Major Crimes Task Force (MCTF)**

In 2016, the High Council for Rule of Law and Anti-Corruption (High Council), which was established to coordinate Afghanistan's anti-corruption efforts. It is Afghanistan's highest level anti-corruption organ. The High Council is chaired by President Ghani and Abdullah Abdullah, and other high-ranking politicians and civil servants are members.<sup>128</sup>

During the same period, the Afghanistan National Unity Government established the ACJC to address corruption in the country including cases of corruption that involve high ranking officials, such as Deputy Ministers and Governors, or those exceeding 500 000 AFN (about USD 7 500). 'The Center employs specialized police, prosecutors and courts that are independent from political and other pressures in order to impartially detect, investigate, prosecute and adjudicate corruption cases.'<sup>129</sup>

On 1 November 2019, SIGAR noted that the Afghan Government continued to face important challenges including resource shortfalls in its key anti-corruption institutions. While the Afghan Government increased the number of prosecutors at the ACJC, in other cases resource shortfalls remained, such as the Major Crimes Task Force (MCTF) which had an insufficient number of vehicles for the MCTF.<sup>130</sup>

Despite lack of sufficient progress to improve cooperation between the law enforcement authorities in corruption-related prosecutions, a number of cases were prosecuted by the ACJC.<sup>131</sup> For instance, during the period between July - September 2019, ACJC convicted three members of the Paktika provincial council, found guilty of using false documents; they were sentenced to 14 months'

<sup>123</sup> SIGAR, Quarterly report to the United States Congress, 30 January 2020, [url](#), p. 18

<sup>124</sup> UN Security Council, General Assembly, The situation in Afghanistan and its implications for international peace and security, Report of the Secretary-General [A/74/753-S/2020/210], 17 March 2020, [url](#), p. 11

<sup>125</sup> APPRO, National Strategy for Combating Corruption in Afghanistan: a critical assessment, 7 October 2019, [url](#), p. 12

<sup>126</sup> APPRO, Afghanistan's National Strategy for Combating Corruption: an assessment, 10 October 2019, [url](#)

<sup>127</sup> Freedom House, Freedom in the world 2020, Afghanistan, 6 March 2020, [url](#)

<sup>128</sup> Transparency International, Corruption in Afghanistan and the role of development assistance, 29 April 2019, [url](#), p. 10

<sup>129</sup> UNODC, Training for Anti-Corruption Justice Center (ACJC) officials, n.d., [url](#)

<sup>130</sup> SIGAR, Afghanistan's Anti-Corruption efforts: The Afghan Government made progress in meeting its anti-corruption strategy benchmarks, but serious challenges remain to fighting corruption, 1 November 2019, [url](#), p. 3

<sup>131</sup> Transparency International, Corruption in Afghanistan and the role of development assistance, 29 April 2019, [url](#), p. 10

imprisonment and fined a sum equivalent between 23 800 and 29 400 USD. The former chairs of the IEC and ECC, together with eight election commissioners, were convicted for manipulating the recorded vote count during the October 2018 parliamentary election. The court sentenced all of them to five years' imprisonment. During the same period, six employees of the Ministry of Refugees and Repatriation were convicted to two years in jail for crimes linked to procurements.<sup>132</sup>

During the period of 1 December 2019 to 16 February 2020, ACJC's primary court ruled on three cases and its appeal court ruled on seven cases. For instance, in February 2020, the ACJC appellate court sentenced a former Logar Province's district administrator to 10 and a half years in prison for bribes over settling a land dispute. The UN noted that, however, the output of the ACJC 'remained low'. Since its establishment in 2016, and as of February 2020, the ACJC has adjudicated a total of 68 cases at the primary court, with 260 defendants resulting in 208 convictions and 50 acquittals; while the appeal court has adjudicated 59 cases with 193 defendants, convicting 174 and acquitting 19 others.<sup>133</sup>

In order to better execute the outstanding arrest warrants, on 24 December 2019, the OAG and the Ministry of Interior (Moi) created the Arrest Warrants Joint Committee. However, the MCTF<sup>134</sup> reform was not finalised to have an active police component, as a result there is limited cooperation with law enforcement bodies, which has negatively affected the ACJC's work.<sup>135</sup> However, according to Transparency International the 'MCTF itself is not always free of corruption, and leaders have in the past resigned from the MCTF on corruption charges.'<sup>136</sup> In December 2019, UNAMA stated that 'while the ACJC has been adjudicating corruption cases, the United Nations notes that the Centre has yet to serve as an effective deterrent to high-level corruption', also the UN acknowledged the impact that corruption has on the lives of ordinary Afghan citizens on a daily basis.<sup>137</sup>

### Reporting corruption and misconduct by officials and police

Journalists avoid reporting on administrative corruption due to the fear of violent reprisal by provincial police officials and powerful families.<sup>138</sup> On 11 March 2020, the Afghanistan Attorney General's Office (AGO) published its annual report of the year 1398 (21 March 2019 to 11 March 2020), indicating that AGO registered, investigated and referred to relevant courts 1 685 cases of corruption (government-related) across Afghanistan including 506 cases in the provinces of Afghanistan via AGO's provincial assistants.<sup>139</sup>

The Moi reported that in 2019, 725 Moi officials were arrested on corruption-related cases and their files were sent to the competent authorities for prosecution.<sup>140</sup> The Supreme Court of Afghanistan reported, via its monthly Bulletin, on the corruption-related cases, which were prosecuted by the primary anti-corruption court of Kabul Province between 23 November and 21 December 2019. The source noted that 28 persons were arrested and accused of misuse of power, bribes, harassment,

<sup>132</sup> SIGAR, Quarterly report to the United States Congress, 30 October 2019, [url](#), p. 125

<sup>133</sup> UN Security Council, General Assembly, The situation in Afghanistan and its implications for international peace and security, Report of the Secretary-General [A/74/753-S/2020/210], 17 March 2020, [url](#), p. 11

<sup>134</sup> Transparency International indicated that 'the Major Crimes Task Force (MCTF) is the institution mandated with investigating claims of corruption alongside the attorney general, both of which investigate and prosecute smaller cases of corruption', Transparency International, Corruption in Afghanistan and the role of development assistance, 29 April 2019, [url](#), pp. 10-11

<sup>135</sup> UN Security Council, General Assembly, The situation in Afghanistan and its implications for international peace and security, Report of the Secretary-General [A/74/753-S/2020/210], 17 March 2020, [url](#), p. 11

<sup>136</sup> Transparency International, Corruption in Afghanistan and the role of development assistance, 29 April 2019, [url](#), p. 10

<sup>137</sup> UNAMA, On international anti-corruption day, UN acknowledges achievements and urges further progress in Afghanistan, 9 December 2019, [url](#)

<sup>138</sup> USDOS, Afghanistan 2019 Human Rights report, 11 March 2020, [url](#), p. 21

<sup>139</sup> AGO, رسیدگی کرده است, خورشیدی, در سال ۱۳۹۸ مبارزه علیه فساد اداری، قضیه را در بخش مبارزه علیه فساد اداری، در سال ۱۳۹۸ خورشیدی، رسیدگی کرده است [informal translation: 'Attorney General Office prosecuted 1 683 cases of corruption during the period of 2019-2020'], 11 March 2020, [url](#)

<sup>140</sup> Afghanistan, Moi, وزارت امورداخله گزارش سال 1398 برنامه ملی حسابدگی حکومت به ملت [informal translation: 'Ministry of Interior affairs, annual report 2018 – 2019, State's accountability programme for the Nation], 2 August 2019, [url](#), p. 6

embezzlement, robbery and possession of illegal weapons. Those who were found guilty were sentenced as follows:

‘Three persons were sentenced between one month to one year of imprisonment, five persons were sentenced between one to five years of imprisonment and fifteen persons were sentenced between five to fifteen years of imprisonment.’<sup>141</sup>

For instance, on 15 December 2019, President Ashraf Ghani ordered the arrest of a former commander of the Afghan Public Protection Forces, Zemarai Paikan on charges of corruption.<sup>142</sup> According to SIGAR, Zemarai Paikan was convicted in December 2017 for murder in absence and abuse of power, and during the reporting period, it could not be determined whether he was arrested despite Ghani’s order.<sup>143</sup> In March 2019, Haseebullah Qureshi, a former Public Order Police commander, was sentenced by a primary military court to 10 years’ imprisonment and fined with 8.6 million Afghani over corruption charges.<sup>144</sup>

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<sup>141</sup> Supreme Court, Special Bulletin of the Supreme Court, 8 March 2020, [url](#), pp. 34-35

<sup>142</sup> Tolonews, Ghani gives anti-corruption speech, orders arrest, 15 December 2019, [url](#)

<sup>143</sup> SIGAR, Report to the United States Congress, 30 January 2020, [url](#), p. 113

<sup>144</sup> Pajwhok Afghan News, Ex-police commander gets 10 years in jail for graft, 17 March 2019, [url](#)

## 2. Security institutions

The Afghanistan Constitutions delegates to the state the fundamental duty of providing security and the defence of the country and designates the President as the Commander in Chief of the Armed Forces of Afghanistan.<sup>145</sup> The President leads the National Security Council (NSC), which is the ‘supreme institution with the authority of making decisions regarding national security, national interests, territorial integrity and national sovereignty’. Members of the NSC are from amongst the ‘high-ranking government, civilian, military and security officials’.<sup>146</sup>

### 2.1 Afghan National Security Forces (ANSF)

The Afghan National Security Forces (ANSF) or Afghan National Defence and Security Forces (ANDSF) are comprised of the Afghan National Army (including the Afghan Border Force, Afghan Air Force Afghan Territorial Army, Afghan National Civil Order Force), Afghan National Police (including Afghan Local Police), and the National Directorate of Security (including the Afghan Special Force).<sup>147</sup>

According to the USDOD, ‘the current ANDSF authorised force level remains at 382 000. The MoD [Ministry of Defence] is authorised 227 103 personnel and the MoI [Ministry of Interior] is authorised 154 626 personnel’ including the authorisation for 30 000 ALP (Afghan Local Police) personnel.<sup>148</sup>

As of October 2019, the Combined Security Transition Command-Afghanistan (CSTC-A), quoted in a SIGAR report, indicated that 272 807 ANDSF personnel (176 019 Ministry of Defence and 96 788 Ministry of Interior) were biometrically enrolled, which does not include civilians or roughly 19 000 Afghan Local Police (ALP).<sup>149</sup>

Since the fall of the Taliban in 2001, the United States’ top priority was to build up new security forces but low morale, corruption and desertion have plagued this process.<sup>150</sup> In 2017, the Afghan government started implementing a four-year ‘Road Map’ to streamline and bolster the ANSF. The aim of the plan is to ensure the government’s control over population centres by tackling leadership issues, resource management and rampant corruption, and by doubling the size and combat power of the Special Forces, strengthening the air component, and moving the police away from a combat missions to civil policing.<sup>151</sup> Under the US-Afghan ‘Joint Declaration’ signed in February 2020 in parallel with the US-Taliban agreement,<sup>152</sup> the ‘US reaffirmed its existing commitment to seek funds on a yearly basis to support training, equipping, advising, and sustaining Afghan security forces, so that Afghanistan can independently secure and defend itself against internal and external threats’.<sup>153</sup>

In January 2019, President Ashraf Ghani said that more than 45 000 members of the Afghan security forces have been killed since he became leader in 2014.<sup>154</sup>

In its report for the year 2019, UNAMA stated it ‘remains concerned about the disproportionate rate of civilian deaths versus injuries in the context of search operations by Afghan national security forces,

<sup>145</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#), Articles 5, 64/3

<sup>146</sup> NSC, Office of the National Security Council, n.d., [url](#)

<sup>147</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict, Annual Report 2018, 24 February 2019, [url](#), p. 62

<sup>148</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, [url](#), p. 27

<sup>149</sup> SIGAR, Quarterly report to the United States Congress, 30 January 2020, [url](#), p. 73

<sup>150</sup> DW, Afghanistan security forces suffer steep decline in numbers, says SIGAR, 1 May 2018, [url](#)

<sup>151</sup> SIGAR, Quarterly Report to the US Congress, 30 July 2017, [url](#), p. 94; USDOD; Enhancing Security and Stability in Afghanistan, June 2017, [url](#), pp. 2-3; Marty, F. J., Expanding Afghanistan’s Special Operations Forces: Doubling their success or further diluting their mission?, AAN, 2 October 2017, [url](#)

<sup>152</sup> Ruttig, T., From Doha to Peace? Obstacles rising in the way of intra-Afghan talks, 3 March 2020, [url](#)

<sup>153</sup> SIGAR, Quarterly Report to the US Congress, 30 April 2020, [url](#), p. 105

<sup>154</sup> BBC, Afghanistan’s Ghani says 45,000 security personnel killed since 2014, 25 January 2019, [url](#)

primarily resulting from incidents attributed to NDS Special Forces'.<sup>155</sup> In 2019, a number of incidents were documented by UNAMA, in which family members of Taliban fighters were intentionally killed by ANSF, in retaliation for Taliban attacks against them.<sup>156</sup> Despite progress made, child recruitment by ANFS continued to be a 'concern' during 2019<sup>157</sup> (see Sections [2.1.2 Afghan National Police](#) and [2.1.3 Afghan Local Police](#)). Moreover, UNAMA received reports of sexual abuse and exploitation of boys, including the practice of *bacha bazi* perpetrated by the ANSF, despite the criminalisation of the practice in the revised Penal Code.<sup>158</sup>

### 2.1.1 Afghan National Army (ANA)

The Afghan National Army (ANA) operates under the responsibility of the Ministry of Defence (MoD) and is part of the Armed Forces of Afghanistan.<sup>159</sup> In April 2018, President Ghani announced the establishment of the Afghan National Army Territorial Force (ANA TF).<sup>160</sup> The goal was to create a local security force that is more effective, professional, sustainable and led by MoD. Contrary to the ALP, the MoD will command and control locally recruited, but nationally trained ANA TF personnel.<sup>161</sup> Each company (*tolai*) recruits soldiers from a particular district but is led by officers from outside that district, already serving in the regular ANA or being in the ANA reserves. The aim was for the ANA TF to be 36 000 strong.<sup>162</sup> The Afghan Air Force (AAF) is 'the primary air enabler for the ANA ground forces by providing aerial fires and lift support to ground forces across Afghanistan' with their headquarters in Kabul. As USDOD noted, human capital limitations are one of the largest challenges that AAF has to face with only a limited number of Afghans meeting the needed qualifications.<sup>163</sup> According to AAN, the ANA-TF is set to reach 10,000 men and be mobilised across districts in 32 of Afghanistan's 34 provinces in 2020.<sup>164</sup>

#### Mandate and structure

ANA is [informal translation] the 'guardian of the national sovereignty, territorial integrity and independence of Afghanistan'.<sup>165</sup> According to the USDOD, 'the ANA General Staff commands and controls all of Afghanistan's ground and air forces, including the ANA conventional forces, the Afghan Air Force (AAF), the Special Mission Wing (SMW), the Afghan National Army Special Operations Command (ANASOC), the Afghan National Civil Order Force (ANCOF) and the Afghan Border Force (ABF)'.<sup>166</sup>

According to USDOD,

'ANA elements are comprised of six regional corps. Each corps is composed of a headquarter *Kandak*, three/four infantry brigades, and different specialty *Kandaks*. The 201st Corps, 203rd Corps, 205th Corps, 207th Corps, 209th Corps, 215th Corps, and 217th Corps are responsible for their geographic regions that follow the provincial boundaries. The ANSF divided the

<sup>155</sup> UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), p. 54

<sup>156</sup> UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), p. 66

<sup>157</sup> UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), p. 24

<sup>158</sup> UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), p. 9

<sup>159</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, [url](#), p. 43; UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), p.87; The Washington Post, Unguarded nation, Afghan security forces, despite years of training, were dogged by incompetence and corruption, 9 December 2019, [url](#)

<sup>160</sup> Clark, K., The Afghan Territorial Force: Learning from the lessons of the past?, AAN, 15 January 2019, [url](#)

<sup>161</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2018, [url](#), p. 39

<sup>162</sup> Clark, K., The Afghan Territorial Force: Learning from the lessons of the past?, AAN, 15 January 2019, [url](#)

<sup>163</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2018, [url](#), p. 72; USDOD, Enhancing Security and Stability in Afghanistan, December 2019, [url](#), p. 51

<sup>164</sup> Clark K., Gaston E., et al., Ghosts of the Past: Lessons from Local Force Mobilisation in Afghanistan and Prospects for the Future, (AAN), 1 July 2020, [url](#), pp. 2-3

<sup>165</sup> Afghanistan, MoD, وضعیت فعلی اردوی ملی [informal translation: 'The current National Army status'], 26 June 2016, [url](#)

<sup>166</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, 23 January 2020, [url](#), p. 49

209th's previous sector to incorporate the 217th Corps. The 111th Capital Division is independent from any corps and is responsible for security in Kabul.<sup>167</sup>

A corps is comprised of six brigades and 24 000 soldiers.<sup>168</sup> Soldiers for ANA are recruited on a voluntary basis for an initial period of three years and shall be aged between 18 and 35 years old.<sup>169</sup> Article 3 of the Afghan Law on the prohibition of child recruitment in the military institutions prohibits child recruitment in the military units and Article 4 of the said Law punishes the perpetrators from 6 months to one year imprisonment.<sup>170</sup>

### Capacity and effectiveness

According to UNAMA, the security situation in Afghanistan during the third quarter of 2019, was extremely volatile.<sup>171</sup> The Taliban continued their attacks against the ANDSF (over 76 attacks in 24 provinces within a week). The deadliest attack on ANA soldiers was carried out in Kunduz Province by the Taliban Red Unit, killing 15 soldiers due to the lack of proper trenches.<sup>172</sup> During the period of 17 – 23 April 2020, 119 pro-government forces were killed, in particular 17 members of the Afghan Territorial Army, by the Taliban Red Unit in Takhar Province.<sup>173</sup>

The NATO-led RS (Resolute Support) mission provides ANA with training, advice and assistance including capacity building.<sup>174</sup> According to The Washington Post, as of December 2019, the ANA counted about 162 000 troops<sup>175</sup>, while SIGAR reported that as of 26 January 2020, the number of ANA personnel was 182 173, including 1 735 female personnel.<sup>176</sup> The authorised strength of ANA in 2019 remained 227 103, according to USDOD.<sup>177</sup>

The MoD reportedly indicated that the Afghan army strength should be 234 000 personnel, but currently it is believed to be around 200 000 active soldiers. The increasing number of losses amongst the Afghan forces is one of the reasons why ANA cannot reach the expected recruitment of more personnel. According to a former ANA officer who survived a battle, ANA suffer from serious challenges in the battlefield including lack of enough troops.<sup>178</sup>

In December 2019, it was reported that the number of soldiers who were absent without leave remained a major problem for ANA.<sup>179</sup> During the reporting period, the MoD had the logistic capacity to supply ANA, however, it did not have accurate information on its stocks and it was challenged to distribute materials to ANA, partly due to insurgent activity around the supplying routes, in particular the route that leads to the southern provinces.<sup>180</sup>

In rural areas, Afghan security forces remained in a defensive position and could not hold territories that were recaptured. For instance, according to the head of a district council in Badghis Province, government security suffered continued attacks and killings by the Taliban due to their lack of capacity

<sup>167</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, 23 January 2020, [url](#), p. 50

<sup>168</sup> Tolonews, New corps established to improve Northeast security, 11 April 2019, [url](#)

<sup>169</sup> Afghanistan, MoD, فهرست پالیسی و طرز العمل شمولیت اردوی ملی [informal translation: 'National army recruitment procedure and policy'], [url](#), p. 26

<sup>170</sup> ACKU, قانون منع استخدام اطفال در قطعات نظامی, رسمی جریده, [informal translation 'Official Gazette, Law on prohibition of child recruitment in military barracks'], 17 February 2015, [url](#)

<sup>171</sup> UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), p. 16

<sup>172</sup> NYT, Taliban ramp up attacks on Afghans after Trump says "no violence", 6 March 2020, [url](#)

<sup>173</sup> NYT, Afghan War Casualty Report: April 2020, 30 April 2020, [url](#)

<sup>174</sup> OFS, Lead Inspector General Report to the United States Congress, 1 October – 31 December 2019, 5 February 2020, [url](#), p. 17

<sup>175</sup> The Washington Post, Unguarded nation, Afghan security forces, despite years of training, were dogged by incompetence and corruption, 9 December 2019, [url](#)

<sup>176</sup> SIGAR, Quarterly report to the United States Congress, 30 April 2020, [url](#), pp. 74 and 82

<sup>177</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, 23 January 2020, [url](#), p. 49

<sup>178</sup> Tolonews, ANA not meeting target enlistment numbers: MoD, 27 December 2019, [url](#)

<sup>179</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, 23 January 2020, [url](#), pp. 45 and 49

<sup>180</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, 23 January 2020, [url](#), pp. 33, 45

to conduct offensive operations. It is believed that ground operations are conducted by the American-backed Afghan Special Forces.<sup>181</sup>

### Integrity

In October 2019, SIGAR reported that the ‘Afghan personnel and payroll systems in place created opportunities for corruption—including the creation of and payment to ghost soldiers—in early 2016.’ The source also stated that as of October 2019, ‘SIGAR investigation directorate found that Government officials within the MOD and MOI, and at various provincial police headquarters throughout Afghanistan, fraudulently created payroll records to receive payments to non-existent ANDSF personnel.’<sup>182</sup> Following the SIGAR report, the Afghan Ministry of Defence rejected the existence of ‘ghost soldiers’.<sup>183</sup> However, according to a national corruption survey carried out by Transparency International, the Afghan army was perceived as a trusted organ in Afghanistan with 74 % of the respondents believing that ANA worked for the well-being of the people.<sup>184</sup>

### Violations

The Constitution of Afghanistan stipulates in its Article 29 that the ‘persecution of human beings shall be forbidden. No one shall be allowed to or order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished. Punishment contrary to human dignity shall be prohibited.’<sup>185</sup>

According to UNAMA, in 2019, ANA caused 1 088 civilian casualties including 381 deaths and 707 injured including 113 deaths and 118 injured by Afghan Air Force.<sup>186</sup> On 21 March 2020, Afghan Air Force carried out an airstrike against Taliban in Imam Sahib District of Kunduz Province in which 11 civilians were killed, including seven children and three women, and injured a woman and a girl.<sup>187</sup>

ANA caused several civilian casualties while firing mortars on residential houses during the battle with the Taliban. For instance, on 6 March 2019, during a ground engagement against the Taliban, the ANA fired a mortar on a residential house where Taliban were hiding in Chemtal District, Balkh province killing three civilians including one boy aged 6 years old and injured three other children. In a separate incident, on 13 November 2019, a woman was killed, and a boy was injured by a mortar shrapnel fired by ANA on a residential home in Seori District of Zabul Province.<sup>188</sup> On 22 November 2019, three civilians were killed, including two women, and two others were wounded after a mortar fired by the Afghan soldiers on Taliban’s strongholds in the village of Dand-e Ghor in Pul-e Khumri City accidentally hit a house.<sup>189</sup>

USDOS also reported on the causes of extra-judiciary killings, forced disappearance, arbitrary detention and torture by the Afghan security forces without specifically mentioning the ANA.<sup>190</sup>

In April 2019, UNAMA published a report on the treatment of conflict related detainees in Afghanistan stating that:

‘Between of 1 January 2017 and 31 December 2018, UNAMA interviewed 33 detainees who had been held by the Afghan National Army (ANA) before being transferred to ANP or NDS. Twelve of them (36.4 per cent) gave credible and reliable reports of having been subjected to torture or other forms of ill-treatment whilst in detention, indicating severe beatings as main

<sup>181</sup> NYT, As USU.S. nears a pull out a deal, Afghan army is on the defensive, 12 August 2019, [url](#)

<sup>182</sup> SIGAR, Quarterly report to the United States Congress, 30 October 2019, [url](#), p. 83

<sup>183</sup> Tolonews, MoD rejects existence of ‘ghost soldiers’ in Afghan army, 3 August 2019, [url](#)

<sup>184</sup> Transparency International, Afghanistan in corruption and the role of development assistance, 29 April 2019, [url](#), p. 8

<sup>185</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#)

<sup>186</sup> UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), pp. 12, 51, 54

<sup>187</sup> UNAMA, Protection of civilians in armed conflict, First quarter report: 1 January – 31 March 2020, [url](#), p. 6

<sup>188</sup> UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), pp. 51, 54

<sup>189</sup> NYT, Afghan War Casualty Report: November 2019, 2 December 2019, [url](#)

<sup>190</sup> USDOS, Afghanistan 2019 Human Rights report, 11 March 2020, [url](#), p. 1

technique. These incidents took place in nine provinces: Balkh, Herat, Helmand, Kabul, Kandahar, Kunduz, Laghman, Logar and Nangarhar.<sup>191</sup>

According to USDOS, in some instances, ANA officials reportedly used promises of food and money to entice boys into *bacha bazi*.<sup>192</sup> In its report for the year 2019, UNAMA noted that, despite the fact that the practice of *bacha bazi* has been criminalised in the new Penal Code, there are reports that such crime continues to exist and is mainly perpetrated by the Afghan national security forces. There was only one case, to UNAMA's knowledge, in which such a crime was successfully prosecuted under the provisions of the revised Penal Code.<sup>193</sup> For more child specific issues in the context of the conflict of Afghanistan, such as the harmful practice of *bacha bazi* and the recruitment of children by the armed actors in the conflict, please refer to the [EASO Country of Origin Information Report Afghanistan: Individuals targeted under societal and legal norms \(2017\)](#) and the [EASO Country of Origin Information Report Afghanistan: Recruitment by armed groups \(2016\)](#).

## 2.1.2 Afghan National Police (ANP)

The ANP operates under the responsibility of the MoI and is the primary law enforcement agency in Afghanistan.<sup>194</sup>

### Mandate and structure

The ANP is mandated 'to maintain civil order; reduce corruption; prevent the cultivation, production, and smuggling of illegal narcotics; provide security for individuals and the community; and safeguard legal rights and freedoms'.<sup>195</sup> According to USDOD the ANP consist of four pillars: AUP (Afghan Uniform Police), PSP (Public Security Police), ABP (Afghan Border Police), and AACP (Afghan Anti-Crime Police) and three sub-pillars ALP (Afghan Local Police), APPF (Afghan Public Protection Force), and CNPA (Counter Narcotic Police of Afghanistan). The GCPSU (General Command of Police Special Units) is the MoI's component of the ASSF (Afghan Special Security Forces).<sup>196</sup>

### Capacity and effectiveness

According to the Washington Post, as of December 2019, the ANP counted about 91 000 personnel<sup>197</sup> while SIGAR reported that as of 30 April 2020, ANP personnel was 99 375, including 3 535 female officers.<sup>198</sup> In December 2019, USDOD reported that the number of ANP authorised personnel remained at 124 626.<sup>199</sup> In November 2019, Salaam Times reported on the importance of women within the police for Afghanistan. For instance, Kunduz police is recruiting more female police officers in addition to the current 80 female police officers that serve across the districts of Kunduz Province. According to the source, the presence of women within the police helped decrease security issues that affected women. In addition, female police officers were used to search women during house search operations in Kunduz in line with the Islamic tradition.<sup>200</sup>

<sup>191</sup> UNAMA, Treatment of conflict related detainees in Afghanistan: preventing torture and ill-treatment under the Anti-Torture Law, 17 April 2019, [url](#), p. 19

<sup>192</sup> USDOS, Afghanistan 2019 Human Rights report, 11 March 2020, [url](#), p. 16

<sup>193</sup> UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), p. 9

<sup>194</sup> UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), p. 83; The Washington Post, Unguarded nation, Afghan security forces, despite years of training, were dogged by incompetence and corruption, 9 December 2019, [url](#)

<sup>195</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, 23 January 2020, [url](#), p. 76

<sup>196</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, 23 January 2020, [url](#), p. 76

<sup>197</sup> The Washington Post, Unguarded nation, Afghan security forces, despite years of training, were dogged by incompetence and corruption, 9 December 2019, [url](#)

<sup>198</sup> SIGAR, Quarterly report to the United States Congress, 30 April 2020, [url](#), p. 82

<sup>199</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, 23 January 2020, [url](#), p. 76

<sup>200</sup> Salaam Times, Kunduz police seek women recruits amid growing female security role, 14 November 2019, [url](#)



Attrition remains a major problem within ANP. A large part of the attrition within ANP is due to ‘the combination of frequent and lengthy deployments to remote checkpoints with minimal provisions and equipment, difficult living conditions, and the near-constant prospect of attacks contribute to the high ANP attrition’.<sup>201</sup> An important part of the ANP and ANA personnel is dispersed in small numbers in static checkpoints across the country, which makes them vulnerable to attacks and reduces their capacity to deploy staff for other operations.<sup>202</sup> As of July 2019, 6 452 police outposts and checkpoints all over the country were assessed to be closed, in order to reduce losses and desertion among police officers. Over 210 police outposts and checkpoints, often in remote areas, had been closed in 17 provinces and another 200 had been identified for closure. Several checkpoints along the highway between Kabul and Kandahar had been removed as the police extorted money from truck drivers.<sup>203</sup>

In 1398 (Afghan calendar corresponding to 2018–2019), the MoI reported that during the joint operations with other ANSF personnel, ANP have retaken the control of nine Districts, killing 9 396 AGEs (Anti-Government Elements) including key members: shadow provincial and district governors, and military commanders across the country. The source also indicates that 2 983 AGEs were injured and 1 934 others were arrested, who were suspected of organising terrorist attacks.<sup>204</sup>

According to the Center for Strategic and International Studies (CSIS):

‘The Afghan National Police (ANP) and Afghan Local Police (ALP) – which are critical to securing the countryside and the population – receive only very limited outside support, are again in a side of turbulence because of ongoing problems and attempts at reform, lack the paramilitary capabilities they need, fail to properly support governance at the District and local levels and the rule of law, and present more serious problems in terms of corruption and extortion, and divided loyalties to powerbrokers, warlords, narcotraffickers as well as willingness to reach some accommodation with the Taliban.’<sup>205</sup>

According to USDOD, majority of the ANP personnel are stationed in the headquarters and there are less ANP personnel in the operation units.<sup>206</sup>

## Integrity

According to Freedom House, the police force is heavily militarised and primarily focused on its role as a first line of defence against insurgents in administrative centres. The police are highly implicated in corruption and organised crime, in particular near key smuggling routes.<sup>207</sup> Another source also indicated that the police is perceived to be highly corrupt.<sup>208</sup> Reuters quotes Khoshal, the new police commander stating that there was corruption within the MoI such as receiving money from contracts, food, fuel or taking money from hotels, shops, highways.<sup>209</sup>

In December 2019, Stars and Stripes reported that the Afghan population perceive police as ‘predatory bandits’ and call them as ‘the most hated institution’ in the country. Around 30 percent of the recruited police have deserted with their issued weapons to ‘set up their own private checkpoints’ and extort money from travellers.<sup>210</sup> Numerous truck drivers allegedly accuse border police personnel of forcing

<sup>201</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, 23 January 2020, [url](#), p. 76

<sup>202</sup> OFS, Lead Inspector General Report to the United States Congress, 1 October – 31 December 2019, 5 February 2020, [url](#), p. 5

<sup>203</sup> Reuters, Afghan police pull back from isolated outposts as losses mount, 24 July 2019, [url](#)

<sup>204</sup> Afghanistan, MoI, وزارت امورداخله گزارش سال 1398 برنامه ملی حسابدهی حکومت به ملت [informal translation: ‘Ministry of Interior affairs, annual report 2018 – 2019, National Government accountability programme to the Nation’], 2 August 2019, [url](#), p. 3

<sup>205</sup> CSIS, Military developments in the Afghan war, 10 September 2019, [url](#), p. 9

<sup>206</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, 23 January 2020, [url](#), p. 72

<sup>207</sup> Freedom House, Freedom in the world 2020, Afghanistan, 6 March 2020, [url](#)

<sup>208</sup> Transparency International, Anti-Corruption Resource Center, Corruption in Afghanistan and the role of development assistance, 29 April 2019, [url](#), pp. 6-8

<sup>209</sup> Reuters, New commander takes on corruption ‘mess’ in Afghanistan police, 4 June 2019, [url](#)

<sup>210</sup> Stars and Stripes, In documents, US military trainers describe Afghan security forces as incompetent, unmotivated and rife with deserters, 9 December 2019, [url](#)

to stop their vehicles and pay bribes. Similar incidents have reportedly occurred in Torkham town in Nangarhar province,<sup>211</sup> along the main border crossing between Afghanistan and Pakistan;<sup>212</sup> also in Herat province, where, on 27 January 2019, about 3 000 cargo truck drivers protested against allegedly police extortion on the Herat-Farah highway.<sup>213</sup>

### Violations

According to UNAMA, in 2019, ANP have caused 90 civilian casualties including 23 deaths and 67 injured. During the same period, UNAMA reportedly ‘verified nine incidents of abduction of children involving 14 boys, seven of which were attributed to the Taliban, one to Afghan National Police and one to a pro-Government armed group’.<sup>214</sup>

In 2019, UNAMA documented several intentional killings and summary executions that caused civilians casualties, including six killed and five injured by the ANP. The same source also indicated that ‘a provincial ANP confirmed the prosecution of one of its officers who shot and killed a man after a dispute on 28 September, in Arghandab district, Kandahar province’. In a separate incident, on 30 October 2019, in Qalat District of Zabul Province, two ANP officers, based at a checkpoint, reportedly shot and killed a truck driver who refused to pay the money they were demanding.<sup>215</sup> According to Human Rights Watch, the Kandahar police was allegedly responsible for human rights violations such as torture, forced disappearance, and extrajudicial executions.<sup>216</sup>

Even though to a lesser extent than the ALP, the ANP continued to use children in combat and in support role at checkpoints during 2019.<sup>217</sup>

### Kabul City ANP

The ANP strength within Kabul City, which is divided into 22 police districts<sup>218</sup>, is about 15 000 personnel. The majority amongst them are based in checkpoints and guarding buildings, but only 1 200 of them are assigned to criminal investigations, which is roughly one police officer per 5 800 Kabul residents for a population of about 6 million people. Police offices remain primary targets for car bombs.<sup>219</sup> Kabul City Commandment started to install GPS (Global Positioning System) in police vehicles to counter corruption and misuse of police vehicles.<sup>220</sup>

### Herat City ANP

During the reporting period, the number of ANP in Herat City could not be retrieved. According to Pajhwok, residents of Herat City complained on the rise of insecurity in the city and the deficiency in the number and capacity of the police to provide security for the population.<sup>221</sup> Another source quoted the commander of Herat police stating that there is a shortage in the number of police in Herat province and only in Herat city there is a need for 12 000 ANP in order to tackle insecurity.<sup>222</sup>

<sup>211</sup> Pajhwok, Corruption redux: Truckers forced to pay bribes in Torkham, 24 January 2019, [url](#)

<sup>212</sup> RFE/RL, Truckers Cite Corruption, Distress At Pakistan-Afghanistan Border 7 July 2020, [url](#)

<sup>213</sup> Pajhwok, Truck drivers protest in Herat against police extortion, 27 January 2019, [url](#)

<sup>214</sup> UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), pp. 23 and 54

<sup>215</sup> UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), pp. 66, 67, 120

<sup>216</sup> HRW, ‘The have shot many like this’, Abusive night raids by CIA-backed Afghan strike forces, 31 October 2019, [url](#), p. 30

<sup>217</sup> UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), p. 24

<sup>218</sup> AAN, Kabul unpacked, a geographical guide to a metropolis in the making, 19 March 2019, [url](#)

<sup>219</sup> NYT, They fight suicide bombers. But can Afghan police fight crime?, 8 February 2020, [url](#)

<sup>220</sup> Khaama Press, GPS system to be used to control, counter corruption and misuse of Kabul police vehicles, 23 February 2020, [url](#)

<sup>221</sup> Pajhwok, Worsening insecurity worries Herat residents, 19 December 2019, [url](#)

<sup>222</sup> Radio Azadi, فرمانده پولیس هرات: اگر نیروهای پولیس افزایش نیابد اقتصاد هرات فلج می‌شود [informal translation: ‘Herat Police commander: if the number of police personnel does not increase, economy of Herat will be impacted’], 17 December 2019, [url](#)

Another source reported that the chief of Police District 10 (PD 10) of Herat City has been removed from the office due to negligence after unknown gunmen attacked the PD 10 and killed three police officers.<sup>223</sup>

ANA reportedly shot and killed ‘accidentally’ the commander of ANP operations’ unit in the western part of Herat city.<sup>224</sup> More information on security incidents is communicated by the Herat ANP press office via social media channels including Telegram.<sup>225</sup>

### Mazar-e Sharif ANP

During the reporting period, the exact number of ANP in Mazar-e Sharif could not be found, however, the Governor of Balkh indicated that the number of ANP for the Balkh province should increase by 3 275. He further suggested to add six more Police Districts to the current 12 ones in Mazar-e Sharif.<sup>226</sup> Residents of Mazar-e Sharif reportedly expressed their concern on the increasing number of armed robberies in the city and the lack of capacity within the Mazar-e Sharif ANP to provide security.<sup>227</sup>

A local source reported that due to the lack of security forces on the road connecting Balkh District to Mazar-e Sharif, the Taliban established a checkpoint in the *Chawk-e Daisoor*, (Daisoor intersection) where they killed two persons during vehicles search operation.<sup>228</sup>

## 2.1.3 Afghan Local Police (ALP)

In August 2010, the ALP was created as a security initiative led by the Mol and funded by the US Government.<sup>229</sup> Officially, the ALP reports to the Mol at national level but, in practice, since June 2015, it has been subordinated to the AUP<sup>230</sup>, however it is not counted as part of the ANSF’s authorised strength.<sup>231</sup> Since 2001, the Afghan state and international military have tried to develop a ‘local force model’ in order to fill security gaps and defend the territory from Anti-Government Elements (AGEs). According to an analysis by AAN, although this model has worked in some cases, in others has not proved to be successful mainly due to the fact that ‘local forces have been co-opted by ethnic, factional or criminal interests and abused the local population’. These factors have contributed to decision to dissolve the ALP, which has been the main local force for the last ten years. According to AAN, the ALP was due to be dissolved by September 2020, although the ‘exact means of dissolution, disbandment or transition’ was not clear yet at the time of finalising this report.<sup>232</sup>

<sup>223</sup> Pajhwok, *آمر حوزه دهم امنیتی پولیس هرات به دلیل غفلت وظیفوی برکنار شد* [informal translation: ‘chief of Police District 10 of Herat has been removed from office due to negligence’], 17 December 2019, [url](#)

<sup>224</sup> Tolonews, *Police commander killed by ANA at checkpoint “accidentally”*, 8 February 2020, [url](#)

<sup>225</sup> Press Office, Herat Police, n.d., [url](#)

<sup>226</sup> AVA, *ورود دو قطعه ویژه وزارت داخله و امنیت ملی؛ تشکیل پولیس بلخ افزایش پیدا می کند* [informal translation ‘arrival of two Mol and NDS special units; Balkh police strength increases’] 11 February 2020, [url](#)

<sup>227</sup> Tolonews, *نگرانی باشندگان مزارشریف از افزایش دزدی های مسلحانه* [informal translation: ‘Mazar-e-Sharif’s population express concerns on rising armed robberies’], 29 March 2020, [url](#)

<sup>228</sup> AVA, *احداث چک پاینت طالبان در مسیر ولسوالی بلخ*. مزارشریف [informal translation: ‘Taliban establishing checkpoint on the way between Balkh District-Mazar-e-Sharif’], 31 December 2019, [url](#)

<sup>229</sup> Los Angeles Times, *Afghanistan tries to clean up its militias*, 31 October 2016, [url](#)

<sup>230</sup> SIGAR, *Quarterly Report to the US Congress*, 30 April 2016, [url](#), p. 107

<sup>231</sup> SIGAR, *Quarterly Report to the US Congress*, 30 July 2017, [url](#), p. 104; Clark, K., *Update on the Afghan Local Police*, AAN, 5 July 2017, [url](#)

<sup>232</sup> Clark K., Gaston E., et al., *Ghosts of the Past: Lessons from Local Force Mobilisation in Afghanistan and Prospects for the Future*, (AAN), 1 July 2020, [url](#), pp. 2; 9; 75

## Mandate and structure

The ALP personnel have the responsibility to provide security within villages and rural areas to protect the population from insurgent attacks and to protect facilities. ALP personnel are not included in the overall ANDSF authorisation and the US funds the salaries for the ALP.<sup>233</sup>

In a case study of ALP in Takhar Province by AAN, it is reported that, based on the rules and procedures, ALP personnel should be appointed by the Government. They should be loyal to the District Chief of Police. On the contrary, mostly, ALP belong to the members of Parliament, former commanders of *Mujahidin* factions, drug dealers and are appointed based on the family ties with Police or NDS commanders.<sup>234</sup> According to the same source, residents of Shajoy District of Zabul Province stated that ‘in the various districts of Afghanistan where the ALP operates, people’s experience of it has been mixed: in some places, it protects people, contributing to stability; in others, it behaves as a predatory militia, with locals powerless to protect themselves or get abusive commanders removed.’<sup>235</sup>

## Capacity and effectiveness

According to USDOD, the total MoI-authorized ANP personnel of 154 626 includes 30 000 ALP personnel. When the ALP was formalised in 2010, in the counter-Taliban military strategy, as a way of mobilising local communities against the Taliban and improving gaps in state services by enrolling communities into local community defensive forces (eventually in 31 of 34 provinces). However, the ALP was controversial from the start.<sup>236</sup>

According to an investigation by the Washington Post<sup>237</sup>, some US officials held in contempt the ALP, which the source said to be known for their ‘brutality’.<sup>238</sup> USDOS noted that, since most of the ALP personnel are illiterate and lack training, they are largely unaware of their responsibilities and defendants’ rights under the law.<sup>239</sup> On 9 April 2020, Salaam Times reported that local police in Kunduz received literacy training to improve their professionalism and to build people’s trust towards the police.<sup>240</sup>

## Integrity

The Washington Post indicated that according to a former analyst at the US Institute of Peace, the Afghan Local Police was ‘dysfunctional – in many areas it was a corrupt force, run by warlords’.<sup>241</sup>

According to Ufuq news, residents of Samarqandian Char Sang in Balkh District of Balkh Province complained about commander Karim (known as Karim-Broot) ALP chief in the region, on cases of beatings of people, money extortion and harassment of people.<sup>242</sup> There were also reports of ALP involved in drug trade, imposing illegal taxes, and shooting a farmer who refused to pay.<sup>243</sup>

<sup>233</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, 23 January 2020, [url](#), p. 77

<sup>234</sup> AAN, A maelstrom of militias: Takhar, a case study of strongmen co-opting the ALP, 14 November 2019, [url](#)

<sup>235</sup> AAN, How to replace a bad ALP commander: in Shajoy success and now calamity, 21 September 2016, [url](#)

<sup>236</sup> USDOD, Enhancing Security and Stability in Afghanistan, December 2019, 23 January 2020, [url](#), pp. 27 and 38

<sup>237</sup> In December 2019, the Washington Post released the ‘The Afghanistan Papers’, an investigation made of hundreds of interviews collected during the years by SIGAR with US officials and never made public before. See, Washington Post, The Afghanistan Papers, 9 December 2020, [url](#)

<sup>238</sup> The Washington Post, Unguarded nation, Afghan security forces, despite years of training, were dogged by incompetence and corruption, 9 December 2019, [url](#)

<sup>239</sup> USDOS, Afghanistan 2019 Human Rights report, 11 March 2020, [url](#), p. 6

<sup>240</sup> Salaam Times, Kunduz literacy training programme helps local police built citizen’s trust, 9 April 2020, [url](#)

<sup>241</sup> The Washington Post, Unguarded nation, Afghan security forces, despite years of training, were dogged by incompetence and corruption, 9 December 2019, [url](#)

<sup>242</sup> Ufuq news, «کریم بروت» به زور تفنگ باج می گیرد [informal translation: ‘breaching of law by Balkh local police; ‘Karim-e-Broot’ extort money with the power of gun’], 5 November 2019, [url](#)

<sup>243</sup> Clark, K., A Maelstrom of Militias: Takhar, a case study of strongmen co-opting the ALP 14 November 2019, [url](#)

## Violations

AAN concluded that ‘ALP forces were prone to abuse and political capture, and frequently exacerbated community divisions and conflict’.<sup>244</sup> In February 2020, UNAMA indicated that in 2019, ALP was responsible for the death of nine civilians and 27 injured. The source also stated that amongst the dead and injured civilians, four were killed and six were injured in intentional killings and summary executions by ALP.<sup>245</sup>

According to UNAMA, there were numerous incidents in which family members of Taliban were intentionally killed by ANSF. For example, on 25 November 2019 in Pul-e Khumri district, Baghlan province, two Taliban fighters killed an ALP commander. ‘In retaliation, Afghan Local Police went to the house of one of the Taliban fighters and shot and injured his brother - a healthcare worker. During that incident, Afghan Local Police opened fire on villagers and wounded two more civilians.’<sup>246</sup>

UNAMA received credible and reliable accounts from nine detainees interviewed between 1 January 2017 and 31 December 2018, which showed that six out of the nine (66 %) detainees experienced torture or other forms of ill-treatment, including severe beatings as the main technique used by ALP. The incidents reportedly occurred in Badakhshan, Balkh, Faryab, Kandahar, Jawzjan and Parwan provinces.<sup>247</sup>

The source also indicated that the detainees were reportedly held by ALP for a period of between one and six days while ALP are required to hand over any suspected insurgents to ANP or NDS immediately. UNAMA expressed its concern over the high percentage of detainees held by ALP who provided credible and reliable accounts of torture or ill treatment.<sup>248</sup>

Voice of Jihad, Taliban’s news media, claimed on 20 April 2020 that *Arbakis* (local police) have beaten and detained eight villagers in Badghis Province, Sang-e Atash District, in Jafaryan area.<sup>249</sup>

According to USDOS, ‘accountability of ALP officials for torture and abuse was weak, not transparent, and rarely enforced’. The source also indicated that ‘independent judicial or external oversight of ALP in the investigation and prosecution of crimes or misconduct, including torture and abuse, was limited or non-existent.’<sup>250</sup>

The use of children by the ALP, including in combat and in support role at checkpoints, remained a concern in 2019, according to UNAMA, despite the progress made by the ANSF in preventing child recruitment.<sup>251</sup> USDOS observed that Afghan security forces, in particular ALP, reportedly recruited boys specifically to use them for *bacha bazi* (sexual exploitation of children) in every province of the country.<sup>252</sup>

## 2.1.4 National Directorate of Security (NDS)

NDS (National Directorate of Security) is the State intelligence and security service of Afghanistan.<sup>253</sup> The command structure of the NDS is independent and the head of NDS reports directly to the

<sup>244</sup> Clark, K., Gaston E., et al., Ghosts of the Past: Lessons from Local Force Mobilisation in Afghanistan and Prospects for the Future, (AAN), 1 July 2020, [url](#), p. 3

<sup>245</sup> UNAMA, Afghanistan protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), p. 54, 66

<sup>246</sup> UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), p. 66, 67

<sup>247</sup> UNAMA, Treatment of conflict-related detainees in Afghan custody, 17 April 2020, [url](#), pp. 18-19

<sup>248</sup> UNAMA, Treatment of conflict-related detainees in Afghan custody, 17 April 2020, [url](#), pp. 18-19

<sup>249</sup> Voice of Jihad, سنک آتش کې کوداګې اړیکيانو ۸ تنه کلیوال له وهلو ډېولو وروسته بندیان کړي [informal translation: ‘Badghis: Local police detained 8 villagers after beating them’], 20 April 2020, [url](#)

<sup>250</sup> USDOS, Afghanistan 2019 Human Rights report, 11 March 2020, [url](#), p. 6

<sup>251</sup> UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), p. 24

<sup>252</sup> USDOS, Afghanistan 2019 Human Rights report, 11 March 2020, [url](#), p. 16

<sup>253</sup> AIHRC & OSF, Torture, transfers, and Denial of due process: the treatment of conflict-related detainees in Afghanistan, 17 March 2012, [url](#), p. 9; UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), p. 91

President. The agency was established in 2002 with the support of CIA to collect intelligence in rural and urban areas related to the Taliban.<sup>254</sup>

### Mandate and structure

The NDS is in charge of investigating national security-related criminal cases.<sup>255</sup> Its primary responsibility is to manage national security cases including conflict-related detainees.<sup>256</sup> It shares responsibility for law enforcement and maintenance of order in the country with the MoI and the MoD.<sup>257</sup> The agency is organised by departments and units, which are designated by numbers. For instance, the counter-terrorism department is number 241 and the internal surveillance department is number 34.<sup>258</sup>

The Special Forces of the Afghan intelligence agency is one of the units of NDS, which is divided into four main units, each has a regional area of operation. For instance, NDS-01<sup>259</sup> operates in the central region (Kabul, Parwan, Wardak, Logar and possibly other bordering provinces), NDS-02 in the eastern region (Nangahar and possibly in bordering regions), NDS-03 in the southern region (Kandahar), and NDS-04 in the north-eastern regions (Nuristan, Kunar and other neighbouring regions).<sup>260</sup>

The investigative branch of the agency is located in Kabul, where it holds national security prisoners before their trial for prosecution.<sup>261</sup>

### Capacity and effectiveness

The estimated number reported for NDS agents varies between 15 000, 20 000 and 30 000, according to sources from 2011 and 2014 cited in a 2018 OFPRA report. The status of these agents is regulated by the military code of discipline for breaching the NDS laws.<sup>262</sup> The agency recruits, trains and uses a pro-government militia group called *Sangorian* who conducts offensive operations against the Taliban. The group is made up of around 500 to 1 000 fighters.<sup>263</sup>

In April 2020, NDS Afghan Special Forces arrested the ISKP (Islamic State of Khorasan Province) leader in Afghanistan named Abdullah Orakizai and known as Aslam Farooqi, including his top 19 commanders.<sup>264</sup> The Afghan Special Forces are considered to be Afghanistan's toughest and the best troops.<sup>265</sup> During the operations, NDS Special Forces units often receive airstrike support from the US and Afghan Forces.<sup>266</sup> According to SIGAR, 'Afghan special forces conducted fewer ground operations in the fourth quarter of 2019, lower than any other quarter in 2019, and only 31% of their operations were conducted without US or Coalition assistance.'<sup>267</sup> Another source observed in 2018 that due to

<sup>254</sup> SWJ, Strengthening Afghanistan's National Directorate of Security: is it equipped to counter "emerging" threats?, 2 March 2018, [url](#)

<sup>255</sup> USDOS, Afghanistan 2019 Human Rights report, 11 March 2020, [url](#), p. 1

<sup>256</sup> AIHRC & OSF, Torture, transfers, and Denial of due process: the treatment of conflict-related detainees in Afghanistan, 17 March 2012, [url](#), p. 9

<sup>257</sup> USDOS, Afghanistan 2019 Human Rights report, 11 March 2020, [url](#)

<sup>258</sup> OFPRA, *la National Directorate of Security* (NDS), organisation centrale et présence à Kandahar [informal translation : 'The National Directorate of Security, central organisation and presence in Kandahar'], 1 November 2018, [url](#)

<sup>259</sup> NDS 01 unit uses a Twitter account and constantly post their operations in the field, n.d., [url](#)

<sup>260</sup> Watson Institute, The CIA's 'army': a threat to human rights and an obstacle to peace in Afghanistan, 21 August 2019, [url](#), p. 5; HRW, 'They have shot many like this', abusive night raids by CIA-backed Afghan strike forces, 31 October 2019, [url](#), p. 19

<sup>261</sup> USDOS, Afghanistan 2019 Human Rights report, 11 March 2020, [url](#), p. 1

<sup>262</sup> OFPRA, *la National Directorate of Security* (NDS), organisation centrale et présence à Kandahar [informal translation : 'The National Directorate of Security, central organisation and presence in Kandahar'], 1 November 2018, [url](#)

<sup>263</sup> The Jamestown Foundation, The Sangorian: weakening the Taliban from within, 11 January 2019, [url](#)

<sup>264</sup> Khaama Press, ISIS Khurasan leader and many other top ISIS commanders arrested in Afghanistan, 4 April 2020, [url](#)

<sup>265</sup> CBSNews, CBS News gets rare access to Afghanistan's forces hunting ISIS suspects, 11 September 2019, [url](#)

<sup>266</sup> TRT World, Clandestine operations and CIA-backed forces endangered peace in Afghanistan, 8 May 2019, [url](#)

<sup>267</sup> SIGAR, Quarterly report to the United States Congress, 30 January 2020, [url](#), p. 65

the deployment of under-trained and inexperienced intelligence officers, the Afghan intelligence agencies failed to collect high-valuable information to help improve the Afghan state security.<sup>268</sup>

### Integrity

During the reporting period, no recent information could be found regarding the integrity of the NDS among public sources consulted. Between 2016 and 2017, sources believed that, although the NDS has a reputation for being less corruptible than other security institutions, it has reportedly been involved in abuses and using torture.<sup>269</sup> See the below section on [Violations](#).

### Violations

For the year 2019, UNAMA has documented high levels of civilian harm from the use of force during search operations ('night raids') by NDS Special Forces, including the intentional killing of civilians, some of which amount to summary executions, in the context of these search operations.<sup>270</sup> Special forces units belonging to the NDS were also reportedly accused of summary execution of civilians during night raids.<sup>271</sup> During the same period, NDS (including Special Forces) have caused 179 civilian deaths and 52 injured.<sup>272</sup>

UNAMA reported that in 2019, there was intentional killing of civilians by Afghan national security forces including NDS, particularly during 'search operations when civilians suspected of involvement with AGEs could have been safely detained by or handed over to law enforcement authorities'.<sup>273</sup> The source indicated that:

'For example, in the night of 4 September in Jalalabad city, Nangarhar province, NDS Special Forces (NDS02) conducted a search operation against suspected ISIL-KP supporters in a residential compound that contained 39 people at the time (11 men, 10 women and 18 children). NDS02 relocated the women and children to a neighbouring compound and detained the men, handcuffing them and interrogating them separately in various locations in the compound. Another man who was passing through the area was arrested by NDS02. Four men, who were brothers, were summarily executed. They were brought inside the house and were shot at close range in three separate rooms.'<sup>274</sup>

Several other sources reported on the same aforementioned incident.<sup>275</sup> In a separate incident, UNAMA reported that on the night of 8 to 9 July 2019, NDS Special Forces shot and killed an adult male caregiver in Daimardan District of Wardak province during an operation on a health clinic supported by the Swedish Committee for Afghanistan. During this operation, two other men, a guard and a lab technician, were found dead outside the building following their earlier arrest by the latter forces.<sup>276</sup>

<sup>268</sup> SWJ, Strengthening Afghanistan's National Directorate of Security: is it equipped to counter "emerging" threats?, 2 March 2018, [url](#)

<sup>269</sup> Western official, Skype interview, 7 February 2017, in EASO COI report Afghanistan Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City, August 2017, [url](#), pp. 75-76; AIHRC, Torture in detention in Afghanistan 1394, 8 May 2016, [url](#), pp. 29-30

<sup>270</sup> UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), pp. 54, 92

<sup>271</sup> Freedom House, Freedom in the world 2020, Afghanistan, 6 March 2020, [url](#); AIHRC, در باره قربانی شدن افراد ملکی در عملیات [unofficial translation: 'concerning civilian casualties in joint national and international forces' operation in Kapisa province'], 29 December 2019, [url](#); The Heart of Asia Post, Six civilians killed in Kapisa operations: AIHRC, 30 December 2019, [url](#)

<sup>272</sup> UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), pp. 54, 92

<sup>273</sup> UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), p. 37

<sup>274</sup> UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), p. 66

<sup>275</sup> Tolonews, Four members of one family killed in Nangarhar operation, 5 September 2019, [url](#); NYT, Afghan War Casualty Report: September 2019, 26 September 2019, [url](#); Khaama Press, Four brothers lost their lives in security forces operation in Jalalabad City, 5 September 2019, [url](#); Al Jazeera, Afghans seek justice for men killed 'in cold blood' by spy agency, 6 September 2019, [url](#)

<sup>276</sup> UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), p. 30

On 11 August 2019, Human Rights Watch released a report exposing ‘grave abuses’ committed by these CIA-backed units, including ‘extrajudicial executions and enforced disappearances, indiscriminate airstrikes, attacks on medical facilities, and other violations of international humanitarian law, or the laws of war’. For instance, NDS strike forces backed by the US forces carried out night raids in Kulalga village. In the first house that they have raided, according to a witness, the group shot four men in front of their family members. In a separate attack on a house, NDS strike force shot and killed three shopkeepers and one of their customer. Additionally, the group killed a religious teacher and two construction workers.<sup>277</sup> On 29 December 2019, the Afghanistan Independent Human Rights Commission (AIHRC) indicated that [unofficial translation] ‘Afghan special forces backed by the International troops killed six civilians and wounded four others on 23 December 2019 in ground and air operations in Afghania, Bahramkhel, Ahangaran, Pashai, Hesar, Suratkhel, Mahtano, Lokakhel and Sahibzadah villages of Nijrab district of Kapisa Province to target AGEs’. The same source noted that their findings are based on the confirmation by the local security authorities of Kapisa province.<sup>278</sup> On 30 December 2019, another source reported on the same incident by quoting the AIHRC.<sup>279</sup>

According to Human Rights Watch, Afghan paramilitary forces, which belong to the NDS but do not fall under its chain of command, were largely recruited, trained, equipped and overseen by the CIA and carried out ‘kill or capture’ operations in Afghan villages alongside the US special forces against insurgents. There was a significant surge in these operations, which often caused civilian casualties.<sup>280</sup> Human Rights Watch reported on summary execution and forced disappearance in Kandahar Province by NDS. For instance, on 21 March 2019, alleged NDS03 strike force raided a village in Panjwai in Kandahar, taking two men with them, from which only one returned.<sup>281</sup>

UNAMA reported on unlawful and arbitrary detention by NDS Special Forces during search operations.<sup>282</sup> In April 2019, UNAMA indicated that 128 detainees, including 22 minors, have reportedly been tortured or ill-treated in NDS custody. The detainees have reportedly been severely beaten. These incidents took place in NDS provincial facilities in Faryab, Helmand, Herat, Kabul (including NDS 241 and 501), Khost, Kunar, Kunduz, Laghman, Nangarhar, Parwan, Samangan and Sar-e Pul. Similarly, amongst the detainees that UNAMA interviewed within the NDS custody at DFIP (The Afghan National Detention Facility in Parwan), it found out, based on credible and reliable information, that one detainee has experienced torture or ill treatment by NDS 241, and two other detainees have reportedly been threatened by NDS 501 to admit alleged guilt.<sup>283</sup>

<sup>277</sup> HRW, ‘They have shot many like this’, abusive night raids by CIA-backed Afghan strike forces, 31 October 2019, [url](#)

<sup>278</sup> AIHRC, *در باره قربانی شدن افراد ملکی در عملیات مشترک نیروهای داخلی و خارجی در ولایت کاپیسا*, [unofficial translation: ‘concerning civilian casualties in joint national and international forces’ operation in Kapisa province’], 29 December 2019, [url](#)

<sup>279</sup> The Heart of Asia Post, Six civilians killed in Kapisa operations: AIHRC, 30 December 2019, [url](#)

<sup>280</sup> HRW, ‘They have shot many like this’, abusive night raids by CIA-backed Afghan strike forces, 31 October 2019, [url](#)

<sup>281</sup> HRW, ‘The have shot many like this’, Abusive night raids by CIA-backed Afghan strike forces, 31 October 2019, [url](#)

<sup>282</sup> UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), pp. 64-65

<sup>283</sup> UNAMA, Treatment of conflict related detainees in Afghanistan: preventing torture and ill-treatment under the Anti-Torture Law, 17 April 2019, [url](#), p. 20



### 3. State judiciary

In Afghanistan, there are two dominant systems used to obtain justice: through the state, and through non-state mechanisms.<sup>284</sup> Afghanistan has a pluralistic legal system whereby multiple sources of law interact with one another;<sup>285</sup> justice is administered on the basis of a mixture of overlapping and sometimes contradictory legal codes.<sup>286</sup> Many disputes, ranging from disagreements over land to criminal acts, are settled outside of the formal court system, in informal institution such as local *jirgas* and *shuras*.<sup>287</sup> The USDOS noted that, throughout 2019, traditional justice mechanisms remained the main recourse for many, especially in rural areas.<sup>288</sup> According to the 2019 Survey by the Asia Foundation<sup>289</sup>, more than 46 % of Afghans have applied to *shuras* or *jirgas* to solve their disputes, 41.5 % to state courts, and around 25 % to the *Huqooq* department. The preference revealed urban-rural divide: rural inhabitants appealed more to *shuras/jirgas* (48 %), while urban residents preferred appealing to state courts and the *Huquq* department (around 52 % and 30 % respectively).<sup>290</sup> The survey further found that the vast majority of Afghans believed that local *shuras* and *jirgas* are fair and trusted (81.2 %), that they follow local norms and values (74.4 %), that such institutions are effective at delivering justice (74.2 %), and that they resolve cases quickly and efficiently (73.2 %).<sup>291</sup>

Information on non-state justice systems, including Taliban's parallel justice systems, informal customary blood feud resolution and prosecution by the state; as well as on the pluralistic socio-legal framework for punishment of crime, including Islamic principles and the Penal Code can be found in [EASO COI report Afghanistan Criminal law, customary justice and informal dispute resolution, July 2020](#).

#### 3.1 Structure

According to the Constitution of Afghanistan, the Judiciary is independent and is comprised of primary courts, appeal courts and a supreme court as the highest judicial organ.<sup>292</sup> See also Section [1.5 Judicial Branch](#). Article 120 of the Constitution stipulates that:

‘The authority of the judicial organ shall include consideration of all cases filed by real or incorporeal persons, including the state, as plaintiffs or defendants, before the court in accordance with the provisions of the law.’<sup>293</sup>

<sup>284</sup> Nojumi, N., The merits of non-state justice: An effective mechanism for a stable Afghanistan, 5 November 2014, [url](#); Singh D., The management of legal pluralism and human rights in decentralized Afghanistan, in: The Journal of Legal Pluralism and Unofficial Law, 3 September 2019, Vol. 51, Issue 3, pp. 350-380, Full article available under request at [url](#)

<sup>285</sup> ALEP, Stanford Law School, An introduction to the Law of Afghanistan, 2017, [url](#), p. 43

<sup>286</sup> Rahbari S., From Normative Pluralism to a Unified Legal System in Afghanistan? Cambridge University Press, 2 October 2018, [url](#); ALEP, Stanford Law School, An introduction to the Law of Afghanistan, 2017, [url](#), p. 43

<sup>287</sup> ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), p. 3

<sup>288</sup> USDOS, Country Report on Human Rights Practices 2019 – Afghanistan, 11 March 2020, [url](#), pp. 9-11

<sup>289</sup> Asia Foundation (The), Afghanistan in 2019: A Survey of the Afghan People is The Asia Foundation's fifteenth annual public opinion survey in Afghanistan. The Asia Foundation describes the Survey as ‘the longest-running barometer of public opinion in Afghanistan’. Since 2004, the Survey has gathered the views of more than 129,800 Afghans on topics such as security, elections, governance, the economy, essential services, corruption, youth issues, reconciliation with the Taliban, access to media, migration, the role of women, and political participation. For the purpose of the 2019 Survey, the Asia Foundation conducted face-to-face interviews with a national sample of 17,812 Afghan respondents aged 18 years and above, across all 34 provinces from July 11 to 7 August 2019. For more information on the methodology used for the Survey, please see Asia Foundation (The), Afghanistan in 2019: A Survey of the Afghan People, 2 December 2019, Appendix 1: Methodology, [url](#), p. 257

<sup>290</sup> Asia Foundation (The), Afghanistan in 2019: A Survey of the Afghan People, [url](#), pp. 23, 144

<sup>291</sup> Asia Foundation (The), Afghanistan in 2019: A Survey of the Afghan People, 2 December 2019, [url](#), p. 23

<sup>292</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#), Article 116

<sup>293</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#), Article 120

Experts on the Afghan Legal System, Omar Sial and Ahmadullah Masoud, explained in a paper updated in 2018 that:

‘Cases are resolved in courts taking into consideration the quality and nature of the case in two stages: primary and appeal. The Supreme Court deals with the referred cases of Courts of Appeal only in terms of accurate application of law (to see if any provision of law is breached or accurately applied).

Cases in court are handled as follows:

At the primary stage, with participation of three judges, except less than three judges may decide a case when they are not available.

At the appeal stage, three judges shall decide any case.

At the cessation stage, shall take place by two or more persons.

The courts are required to resolve cases in accordance with the Constitution and other laws of the Islamic Republic of Afghanistan. If there is no clear legal provision for the case, the court shall, in pursuance of the Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner (Article 133, Afghan Constitution, 2004).

Trials in the Afghanistan courts happen in open procedure in which everybody may attend, subject to law. The court may convene the trials in a close procedure only if they are legally required or that it is deemed necessary. Making notice of the final decision shall always be open to public (Article 128, Afghan Constitution, 2004).<sup>294</sup>

The *Huquq* department attempts to resolve family issues through mediation. If this fails, the case will be referred to court.<sup>295</sup> According to the Asia Foundation 2019 survey, amongst those Afghans who used ‘dispute resolution services’, 25.2 % of them used *Huquq* department.<sup>296</sup>

Other primary institutions of the justice sector are the Ministry of Justice, which drafts and reviews proposed laws in line with the Constitution, and provides legal counsel; as well as the Attorney General’s Office (AGO), which investigates and prosecutes crime, including corruption.<sup>297</sup> The AGO has offices in Kabul, in all 34 provinces, and in 365 prosecutorial districts.<sup>298</sup>

## 3.2 Capacity

In 2005, the US established the Justice Sector Support Program (JSSP), the largest rule-of-law programme in Afghanistan to provide the Afghan judiciary with technical assistance including:

‘Building the capacity of justice institutions to be professional, transparent, and accountable; (2) assisting the development of statutes that are clearly drafted, Constitutional, and the product of effective, consultative drafting processes; and (3) supporting the CMS [Case Management System] so that Afghan justice institutions work in a harmonized and interlinked manner and resolve cases in a transparent and legally sufficient manner’.<sup>299</sup>

<sup>294</sup> Sial O., Masoud A., Update: Islamic Republic of Afghanistan Legal System and Research, Hauser Global Law School Program, New York University School of Law, last updated November/December 2018, [url](#)

<sup>295</sup> APPRO, Afghanistan Rights Monitor: Baseline Report, April 2016 [url](#), p. 52; Afghanistan, MoJ, General directorate of huqoq, *n.d.*, [url](#)

<sup>296</sup> The Asia Foundation, A survey of the Afghan people, Afghanistan in 2019, 2 December 2019, [url](#), p 23

<sup>297</sup> SIGAR, Rule of Law in Afghanistan: US Agencies Lack a Strategy and Cannot Fully Determine the Effectiveness of Programs Costing more than \$1Billion, July 2015 [url](#), p. 3

<sup>298</sup> IDLO, Women’s Professional Participation in Afghanistan’s Justice Sector, 6 June 2014, [url](#), p. 23

<sup>299</sup> SIGAR, Afghanistan’s justice sector case management system: seized or forfeited assets were not tracked and nationwide implementation is not complete, 13 January 2020, [url](#), p. 1

According to SIGAR, as of 31 March 2020, the JSSP contract currently in place began has an estimated cost of USD 34 million, while the previous JSSP contract started in 2010 and costed USD 280 million.<sup>300</sup>

Ali Wardak, professor of Criminology at the University of South Wales, explained that, following the fall of the Taliban regime in Afghanistan, the US spent more than a billion dollars to restore and reform the judiciary. However, he noted, ‘the failure to engage with the Afghanistan’s own tradition of restorative justice and to understand its multiplicity of justice providers has undermined true reform.’ This failure resulted in deficiency in the capacity of the justice system ‘to address the complex needs of all Afghan people and allowed others, including the Taliban judiciary – who have a select and narrow interpretation of Sharia – to step into the vacuum. This can lead to situations where people’s rights – especially women – are unprotected or infringed.’<sup>301</sup>

According to the Supreme Court of Afghanistan, there are appeal courts in each provincial capital and primary courts in each provincial and district capital.<sup>302</sup> UNAMA noted that, as of May 2019, in Afghanistan, there were a total of 2 083 judges working across the country. Courts are functioning only in 232 districts out of the overall 378 Afghan districts. For 24 districts, the primary courts operate in the neighbouring districts and 116 primary courts operate in the provincial capitals. In the remaining 146 districts there are no courts due to insecurity and logistical facilities.<sup>303</sup>

This information is confirmed in several media reports. For example, the Head of the Provincial Council of Balkh declared in January 2019 that there were ‘no judges or prosecutors in a number of Balkh districts’;<sup>304</sup> a prominent tribal chief stated in 2020 that there were ‘no judges, prosecutors, district chiefs in almost all of Uruzgan’;<sup>305</sup> in Andar district, Ghazni province, there were only Taliban judges and the prosecutors office was not functional,<sup>306</sup> and according to Obaid Ali from AAN, in February 2019, the justice system in Kunduz province was paralysed and only operated remotely from Kunduz city.<sup>307</sup>

### 3.3 Access and effectiveness

Based on the 2004 Afghanistan Constitution, the judiciary is an independent body<sup>308</sup>, however, USDOS observed that the judiciary in Afghanistan continued to be ‘underfunded, understaffed, inadequately trained, largely ineffective, and subject to threats, bias, political influence, and pervasive corruption’.<sup>309</sup> Freedom House reported that ‘prosecutions and trials suffer from a number of weaknesses, including lack of proper representation, excessive reliance on uncorroborated witness testimony, lack of reliable forensic evidence, arbitrary decision-making, and failure to publish court decisions.’<sup>310</sup> In its report released in June 2020, the USDOS stated that Afghanistan was downgraded to Tier 3 since it does not fully meet the minimum standards for the elimination of trafficking and it is also not making significant efforts to do so.<sup>311</sup>

<sup>300</sup> SIGAR, Quarterly report to the United States Congress, 30 April 2020, [url](#), p. 106

<sup>301</sup> Wardak A., Afghanistan: how to widen access to justice, The Conversation, 15 July 2019, [url](#)

<sup>302</sup> Afghanistan, The Supreme Court, History of Supreme Court, n.d., [url](#)

<sup>303</sup> UNAMA, Afghanistan’s fight against corruption, ground work for peace and prosperity, 20 May 2019, [url](#), p. 37; The Asia Foundation, A survey of the Afghan people, Afghanistan in 2019, 2 December 2019, [url](#), p. 147

<sup>304</sup> Pajhwok, Key govt positions sold in Balkh, claims Hadid, 13 January 2019, [url](#)

<sup>305</sup> Arab News, Afghans turn to Taliban in forgotten province, 9 February 2020, [url](#)

<sup>306</sup> Muzhary, F. R., One Land, Two Rules (7): Delivering public services in insurgency-affected Andar district in Ghazni province, AAN, 13 June 2019, [url](#)

<sup>307</sup> Obaid A. One Land, Two Rules (3): Delivering public services in insurgency-affected Dasht-e Archi district in Kunduz province, AAN, 26 February 2019, last updated 9 March 2020, [url](#)

<sup>308</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#), Article 116

<sup>309</sup> USDOS, Afghanistan 2019 Human Rights report, 11 March 2020, [url](#), p. 9

<sup>310</sup> Freedom House, Freedom in the world 2020, Afghanistan, 6 March 2020, [url](#)

<sup>311</sup> USDOS, Trafficking in Persons Report - Afghanistan, 25 June 2020, [url](#), p. 64

As of May 2019, general insecurity, threats and targeted attacks, protection of judges, prosecutors, judicial staff and premises across the country were the main challenges to provide justice services. Between March 2018 and April 2019, five judges, seven prosecutors and nine judicial staff were killed across the country. For instance, insecurity and direct threats to judges have dissuaded female judges to work in remote areas.<sup>312</sup> Judges and lawyers frequently receive threats and bribes from local leaders or armed groups.<sup>313</sup> Some reported cases of targeted attacks against judges in 2019 and 2020 include: on 7 November 2019, the Taliban killed in an ambush four judges when they were traveling from Paktia to Kabul, in Mohammad Agha District of Logar Province.<sup>314</sup> Another source reported that three judges were killed in the incident;<sup>315</sup> on February 2020, Taliban militants were believed responsible for shooting to death of Abdul Rahim, a primary court judge in Herat's Injil district in a recent trend of targeted killings of judges by the group;<sup>316</sup> Abdul Rahim, the only court judge in Injil District, was shot and killed by unknown gunmen on motorcycles while he was returning home from prayer;<sup>317</sup> five employees of a state-owned bank were abducted and shot by Taliban militants in Herat on 10 April 2020.<sup>318</sup> (For more information on targeting attacks by AGEs against judges and other government officials, see EASO COI report Afghanistan Anti-Government Elements (AGEs), August 2020).

Throughout 2019, traditional justice mechanisms remained the main recourse for many, especially in rural areas. In major cities, criminal cases were decided by state courts, most of which administered justice unevenly, adopting a mixture of codified law, *sharia*, and local customary norms. To resolve civil cases, authorities frequently resorted to the informal system, the government mediation mechanism through the Ministry of Justice *Huquq* (civil rights) office, or, in some cases, through negotiations between the parties facilitated by judicial personnel or private lawyers.<sup>319</sup>

In addition, in territories under their control, in 2020 the Taliban continued to operate a parallel judicial system based on a strict interpretation of *sharia*.<sup>320</sup> The Taliban courts have become significantly widespread and they are also reported to reach far beyond Taliban-held areas.<sup>321</sup> An increasing number of Afghans across the country were reported to seek justice in Taliban courts due to feeling frustrated<sup>322</sup> with the state's bureaucracy, corruption, and lengthy processing times.<sup>323</sup> Various sources reported that Taliban courts were a preferable alternative<sup>324</sup>, and that they were perceived as accessible, fast, and less corrupt<sup>325</sup> than the government-established courts.<sup>326</sup>

<sup>312</sup> UNAMA, Afghanistan's fight against corruption, ground work for peace and prosperity, 20 May 2019, [url](#), pp. 36-37

<sup>313</sup> Freedom House, Freedom in the world 2020, Afghanistan, 6 March 2020, [url](#)

<sup>314</sup> Tolonews, Four judges killed in an ambush in Logar: Police, 7 November 2019, [url](#)

<sup>315</sup> Reuters, Three judges killed at the Taliban checkpoint in Afghanistan, official say, 7 November 2019, [url](#)

<sup>316</sup> Kazemi, R., Herat City's Reported Spike in Insecurity: What a sober reading of events reveals, 21 April 2020, [url](#); Xinhua, Militants kill judge in E. Afghanistan, 18 February 2020, [url](#); New York Times (The), Afghan War Casualty Report: February 2020, 27 February 2020, [url](#)

<sup>317</sup> New York Times (The), Afghan War Casualty Report: February 2020, 27 February 2020, [url](#)

<sup>318</sup> RFE/RL/Gandhara, Taliban Kills Five Bank Employees in Western Afghan Province, 10 April 2020, [url](#)

<sup>319</sup> USDOS, Country Report on Human Rights Practices 2019 – Afghanistan, 11 March 2020, [url](#), pp. 9-11

<sup>320</sup> USDOS, Country Report on Human Rights Practices 2019 – Afghanistan, 11 March 2020, [url](#), pp. 10-11; Bleuer C., Sadat S. A., Ali O., One Land, Two Rules (8): Delivering public services in insurgency-affected insurgent-controlled Zurmat district, AAN, 4 September 2019, last updated 9 March 2020, [url](#)

<sup>321</sup> Jackson, A., Weigand, F., Rebel rule of law - Taliban courts in the west and north-west of Afghanistan, ODI/HPG/NRC, May 2020, [url](#), p. 1; Jackson, A., Amiri R., Insurgent Bureaucracy: How the Taliban Makes Policy, USIP, Peaceworks No. 153, November 2019, [url](#), p. 10; Baqakhil A. Q., Rahimi W., et al., Assessment Report- Health and Integrated Protection Needs in Ghazni Province, Agency for Assistance and Development of Afghanistan (AADA); The Johanniter International Assistance, December 2019, [url](#), p. 53

<sup>322</sup> Arab News, Afghans turn to Taliban in forgotten province, 9 February 2020, [url](#)

<sup>323</sup> National (The), Afghans flock to Taliban courts seeking swift justice, 20 May 2019, [url](#)

<sup>324</sup> Smith S.S., Service Delivery in Taliban Influenced Areas of Afghanistan, USIP, April 2020 [url](#), p. 6

<sup>325</sup> Semple, M., Afghanistan's Islamic Emirate Returns: Life under a Resurgent Taliban, WPR, 18 September 2018, [url](#); Jackson, A., Weigand, F., Rebel rule of law - Taliban courts in the west and north-west of Afghanistan, ODI/HPG/NRC, May 2020, [url](#), p. 1; Obaid A. One Land, Two Rules (3): Delivering public services in insurgency-affected Dasht-e Archi district in Kunduz province, AAN, 26 February 2019, last updated 9 March 2020, [url](#)

<sup>326</sup> Jackson, A., Weigand, F., The Taliban's war for legitimacy in Afghanistan, Current History 118 (807), 2019, [url](#), p. 145

Freedom House stated that ‘informal justice systems, employing variants of both customary law and Sharia (Islamic law), are widely used to arbitrate disputes, especially in rural areas.’<sup>327</sup> In May 2020, it was reported that half of the 37 million Afghans sought informal justice and referred either to Taliban’s ‘desert courts’ or *jirgas* (traditional conflict resolution meetings), in particular in rural areas. For instance, in Herat Province, Gulran District, a victim of kidnapping had to seek Taliban’s justice to recover his money from the kidnappers and have them arrested after being allegedly refused by the competent ANSF authorities.<sup>328</sup> Similarly, in Uruzgan Province, people reportedly used Taliban’s court as a lack of state courts within the entire Uruzgan Districts.<sup>329</sup> Transparency International also noted that in rural areas of Afghanistan, people use customary justice to resolve community-based disputes due to corruption within the state courts.<sup>330</sup>

Despite capacity, security and other issues (see sections 3.2, 3.3 and 3.4), courts in Afghanistan also effectively delivered decisions and sentences in a variety of cases or crimes<sup>331</sup> for, e.g.: clashing with or violence against ANSF;<sup>332</sup> killings or murder;<sup>333</sup> abduction;<sup>334</sup> sexual crimes;<sup>335</sup> robbery;<sup>336</sup> drug trade or smuggling;<sup>337</sup> blowing up pylons;<sup>338</sup> election fraud,<sup>339</sup> and misuse of authority.<sup>340</sup>

The above-mentioned cases included sentences issued by the following courts: Kabul primary and appeal courts;<sup>341</sup> Nimroz appeal court;<sup>342</sup> Herat court;<sup>343</sup> Kandahar court;<sup>344</sup> Gardez appeal court (Paktya);<sup>345</sup> Nangarhar appeal court;<sup>346</sup> Mazar-e Sharif appeal court (Balkh);<sup>347</sup> Maimana primary court

<sup>327</sup> Freedom House, Freedom in the world 2020, Afghanistan, 6 March 2020, [url](#)

<sup>328</sup> The National, Afghans flock to Taliban courts seeking swift justice, 20 May 2019, [url](#)

<sup>329</sup> Arabnews, Afghans turn to Taliban in forgotten province, 24 April 2020, [url](#)

<sup>330</sup> Transparency International, Anti-Corruption Resource Center, Corruption in Afghanistan and the role of development assistance, 29 April 2019, [url](#), pp. 6-8; AI, Afghanistan 2019, 30 January 2020, [url](#)

<sup>331</sup> Pajhwok, Nangarhar appellant court, 16 May 2019, [url](#)

<sup>332</sup> Pajhwok, Ex-defence minister’s son sentenced to 22 years in jail, 3 February 2020, [url](#);

<sup>333</sup> Pajhwok, 3 child killers sentenced to death by appellant court, 19 January 2020, [url](#); Pajhwok, Nimroz court sentences 2 security men to death, 19 March 2020, [url](#); Pajhwok, court session, 8 March 2020, [url](#); Pajhwok, AGO says Arghand’s killers sentenced to death, 16 April 2019, [url](#); Pajhwok, Balkh appellate court, 25 June 2019, [url](#); Pajhwok, Baghlan Appellant court, 27 August 2019, [url](#); Pajhwok, Policeman gets 25 years in jail over killing 2 colleagues, 12 December 2019, [url](#); Pajhwok, Sari-Pul death row prisoner seeks right to re-appeal, 23 December 2019, [url](#)

<sup>334</sup> Pajhwok, Herat court punishes 9 kidnappers: AGO, 14 February 2020, [url](#); Pajhwok, Woman among 3 jailed for up-to 18 years in Balkh, 28 December 2019, [url](#)

<sup>335</sup> Pajhwok, Woman among 3 jailed for up-to 18 years in Balkh, 28 December 2019, [url](#)

<sup>336</sup> Pajhwok, 3 men sentenced in bank vehicle robbery case, 10 March 2019, [url](#); Pajhwok, Balkh appellate court, 25 June 2019, [url](#)

<sup>337</sup> Pajhwok, Prison official sentenced to 20 years in jail on drug charges, 28 January 2020, [url](#); Pajhwok, Notorious drug smuggler, 3 cops sentenced, 17 November 2019, [url](#); Pajhwok, 30 drug smugglers sentenced up to 16 years in jail, 18 June 2019, [url](#)

<sup>338</sup> Pajhwok, Mamati sentenced to 16-year in jail over blowing up pylons, 28 April 2020, [url](#)

<sup>339</sup> Pajhwok, Several ex-election commissioners jailed for 2.5 years each, 15 January 2020, [url](#); Pajhwok, 3 IEC workers sentenced to jail in Paktia trial, 24 April 2019, [url](#)

<sup>340</sup> Pajhwok, Kohistan education observer gets 18 months in jail, 26 November 2019, [url](#)

<sup>341</sup> Pajhwok, Ex-defence minister’s son sentenced to 22 years in jail, 3 February 2020, [url](#); Pajhwok, 3 child killers sentenced to death by appellant court, 19 January 2020, [url](#); Pajhwok, Prison official sentenced to 20 years in jail on drug charges, 28 January 2020, [url](#); Pajhwok, Mamati sentenced to 16-year in jail over blowing up pylons, 28 April 2020, [url](#); Pajhwok, Several ex-election commissioners jailed for 2.5 years each, 15 January 2020, [url](#); Pajhwok, AGO says Arghand’s killers sentenced to death, 16 April 2019, [url](#); Pajhwok, Notorious drug smuggler, 3 cops sentenced, 17 November 2019, [url](#); Pajhwok, 30 drug smugglers sentenced up to 16 years in jail, 18 June 2019, [url](#)

<sup>342</sup> Pajhwok, Nimroz court sentences 2 security men to death, 19 March 2020, [url](#)

<sup>343</sup> Pajhwok, Herat court punishes 9 kidnappers: AGO, 14 February 2020, [url](#); Pajhwok, 3 men sentenced in bank vehicle robbery case, 10 March 2019, [url](#)

<sup>344</sup> Pajhwok, court session, 8 March 2020, [url](#)

<sup>345</sup> Pajhwok, 3 IEC workers sentenced to jail in Paktia trial, 24 April 2019, [url](#)

<sup>346</sup> Pajhwok, Nangarhar appellant court, 16 May 2019, [url](#)

<sup>347</sup> Pajhwok, Balkh appellate court, 25 June 2019, [url](#); Pajhwok, Woman among 3 jailed for up-to 18 years in Balkh, 28 December 2019, [url](#)

(Faryab);<sup>348</sup> Tirinkot primary court (Uruzgan);<sup>349</sup> Sar-e Pul primary and appeal court;<sup>350</sup> and Pul-e Khumri appeal court (Baghlan).<sup>351</sup>

On 5 March 2020, the International Criminal Court (ICC) authorised the Prosecutor to start an investigation for crimes against humanity and war crimes allegedly committed in Afghanistan during the ongoing conflict, since 2003, by the Taliban, ANSF and US forces.<sup>352</sup>

### 3.3.1 Women

Due to corruption and limited capacity in the justice system, citizens have restrictive access to report cases of human rights abuses. Some female victims were demanded for sexual favours by the government officials in exchange of service, when they tried to report their cases to the government institutions. Additionally, the justice system did not sufficiently address domestic violence partly due to corruption. Female victims of domestic violence and sexual abuse did not seek legal assistance either due to lack of awareness about their rights or due to the fear of being returned to their families or perpetrators.<sup>353</sup>

Delbar Nazari, the Afghan Minister for Women Affairs, stated:

‘The prevailing war in the country, the lack of rule of law, and our inability to prevent strongmen from interfering in criminal cases are some of the contributing factor to the high levels of violence against women, the lack of women’s access to justice, particularly in the regions controlled by the insurgents, and the injustice meted to them by irregular courts [and jirgas] also contributes to the violence against women.’<sup>354</sup>

In 2019, ‘UNAMA documented four cases of human rights violations in which the Taliban exacted punishments against women according to their own justice system for committing adultery or having an “immoral relationship”. In three of these cases the women were lashed and, in one case, the woman was executed, accused of eloping.’ The same source also indicated that from 1 January to 31 December 2019, 345 women were killed and 857 others were injured by different actors in the conflict, marking a 4 % increase compared the same period in 2018.<sup>355</sup> According to Amnesty International, women and girls continue to suffer from gender-based violence across Afghanistan particularly in the areas under Taliban control, where women and girls are stoned to death or shot dead. Additionally, there has been a significant number of unreported cases of violent incidents against women, and the few reported ones were not investigated, or women had to withdraw their complaints due to pressure. Often mediation was used instead of a legal framework to resolve the complaints. Offenders of attacks against women including ‘beatings and killings, torture or other ill-treatment, corporal punishments against women for having sex outside marriage, continued to enjoy impunity’. The source also stated that the government is failing to establish Elimination of Violence Against Women courts and prosecution units in all 34 provinces.<sup>356</sup>

<sup>348</sup> Pajhwok, Kohistan education observer gets 18 months in jail, 26 November 2019, [url](#)

<sup>349</sup> Pajhwok, Policeman gets 25 years in jail over killing 2 colleagues, 12 December 2019, [url](#)

<sup>350</sup> Pajhwok, Sar-i-Pul death row prisoner seeks right to re-appeal, 23 December 2019, [url](#)

<sup>351</sup> Pajhwok, Baghlan Appellant court, 27 August 2019, [url](#)

<sup>352</sup> ICC, The Prosecutor of the International Criminal Court, Fatou Bensouda, requests judicial authorisation to commence an investigation into the situation in the Islamic Republic of Afghanistan, 20 November 2017, [url](#); ICC, Situation in the Islamic Republic of Afghanistan, 5 March 2020, [url](#)

<sup>353</sup> USDOS, Afghanistan 2019 Human Rights report, 11 March 2020, [url](#), pp. 12 and 32

<sup>354</sup> RFERL, Afghanistan: Nearly 6,500 Incidents Of violence against women recorded in past year, 25 November 2019, [url](#)

<sup>355</sup> UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), pp. 18 and 19

<sup>356</sup> AI, Human Rights in Asia-Pacific: review of 2019, 29 January 2020, [url](#), p. 8

### 3.4 Integrity

There is widespread corruption across the justice system in Afghanistan.<sup>357</sup> According to a survey conducted by the Asia Foundation in 2019, 45.2 % of respondents indicated that they have encountered corruption within the judiciary/courts.<sup>358</sup> According to Transparency International, the judiciary in Afghanistan is perceived to be the most corrupt institution.<sup>359</sup>

According to USDOS, in 2019, there were multiple reports that prisoners were not released although they had served their sentences unless the judges received payment from family members. Prisoners and NGOs reported that judges receive bribes to arrange the release of prisoners prosecuted for criminal cases. In addition, officials reportedly received unlawful payments in order to reduce prison sentences, to halt investigations, or outright dismissing charges.<sup>360</sup>

### 3.5 Military justice

The 2004 Constitution removes the military courts from the Afghan civil judicial system,<sup>361</sup> stating that ‘The organization and authority of these courts shall be regulated by law.’<sup>362</sup> The ANA military justice codes are not contained in one document but in several codes, which include Afghan National Army Law of Military Courts, Military Criminal Procedure Code and Military Crimes Code.<sup>363</sup> The Military Appeal Court considers cases which were first adjudicated by primary military courts, and it is comprised of two divisions: the division for the crimes of officers, sergeants and *saatenmans* (‘non-commissioned police officer’<sup>364</sup>); and the division for the crimes of soldiers.<sup>365</sup>

A 2010 papers by the National Defence University (NDU) of Washington DC reported that military judicial system in Afghanistan comprised of ‘functioning courts, judges, prosecutors, defense counsel, and appellate review’. According to this source:

‘The ANA military justice system has many of the advantages that the civilian justice system lacks—chiefly, the leadership and strategic planning support provided by the Combined Security Transition Command–Afghanistan (CSTC–A). In addition to the ANA prosecutors, defense attorneys, and judges who exist in every ANA corps headquarters compound, courthouses built on secure ANA installations provide justice officials with a level of protection from attack that is lacking in most civilian courts. This security allows prosecutors and military judges to function with less concern for acts of retribution. Most important, the military legal system benefits from focused, well-resourced international advisors under an organized and unified command and control scheme. [...] In addition to the Afghan army courts, others aligned with the security sector are more or less functioning under a heavy cloak of

<sup>357</sup> USDOS, Afghanistan 2019 Human Rights report, 11 March 2020, [url](#), p. 28; Freedom House, Freedom in the world 2020, Afghanistan, 6 March 2020, [url](#)

<sup>358</sup> The Asia Foundation, A survey of the Afghan people, Afghanistan in 2019, 2 December 2019, [url](#), p. 22

<sup>359</sup> Transparency International, Anti-Corruption Resource Center, Corruption in Afghanistan and the role of development assistance, 29 April 2019, [url](#), pp. 6-8

<sup>360</sup> USDOS, Afghanistan 2019 Human Rights report, 11 March 2020, [url](#), p. 28; Tolonews, Prison situation “terrible”: MP report, 22 April 2020, [url](#)

<sup>361</sup> Bogar T. J., Rule of Law Operations in the Combat Environment: A Judge Advocate's Perspective as a Legal Mentor, in Brooklyn Journal of International Law, Vol. 38 Issue 1, 2012, [url](#), p. 247

<sup>362</sup> Afghanistan, MoJ, Enforced Constitution of Afghanistan, 30 July 2004, [url](#), Article 122

<sup>363</sup> Bogar T. J., Rule of Law Operations in the Combat Environment: A Judge Advocate's Perspective as a Legal Mentor, in Brooklyn Journal of International Law, Vol. 38 Issue 1, 2012, [url](#), p. 247

<sup>364</sup> Afghanistan, MoJ, Police Law, 22 September 2005, [url](#), Art. 2

<sup>365</sup> Sjal O., Masoud A., Update: Islamic Republic of Afghanistan Legal System and Research, Hauser Global Law School Program, New York University School of Law, last updated November/December 2018, [url](#)

mentorship. They include courts such as the Counter Narcotics Court and the Anti-Corruption Tribunal.<sup>366</sup>

In March 2019, Haseebullah Qureshi, a former Public Order Police commander, was sentenced by a primary military court to 10 years' imprisonment and fined with 8.6 million afghanis over corruption charges.<sup>367</sup> On 5 January 2020, two ANP officers involved in the shooting and killing of a truck driver who had refused to pay bribes (see [2.1.2 Afghan National Police](#)) in Qalat district of Zabul province, were sentenced to 25 years imprisonment by the primary military court of Zabul province.<sup>368</sup>

### 3.6 Prison conditions

The Afghanistan Law on prisons and detention centres provides safeguards for the rights of prisoners and detainees.<sup>369</sup> Based on Article 2(1) of the Afghan law on prisons and detention centres, 'the freedom of an accused in a detention center can only be taken away in accordance with the concerned attorney's arrest warrant and the court order in conformity with the provisions of the law.'<sup>370</sup>

Prisons and detention centres fall under the authority of the MoI, MoD, MoJ, and NDS, and according to a new presidential decree, the mentioned authority will be transferred to an independent civilian institution.<sup>371</sup>

According to AIHRC, in Afghanistan in 1398 (2019), the number of individuals imprisoned and detained increased by 9.23 % compared to 1397 (2018). The new figures indicated that there were 37 529 individuals imprisoned and detained. It included 28 885 imprisoned (28 310 men and 575 women) and a total of 8 644 individuals detained (including 8 456 men and 188 women).<sup>372</sup> While another source believes that the total number of prisoners and detainees across Afghanistan is 40 000.<sup>373</sup> The Afghan government reportedly held 10 000 Taliban prisoners<sup>374</sup>, amongst whom 300 were released between 8 and 12 April 2020.<sup>375</sup>

AIHRC reported on a confrontation between detainees and guards in Parwan prison on 28 March 2020, which caused two deaths and 60 injured amongst the prisoners and 12 injured amongst the guards.<sup>376</sup> On 28 March 2020, the Taliban published a statement indicating two alleged attacks by the guards against the prisoners in Bagram prison.<sup>377</sup> The group previously published another statement accusing the Afghan soldiers of using corporal punishment against the prisoners in Bagram prison. The group posted alleged photos of the victims.<sup>378</sup> However, no other sources could be found to corroborate such claims.

<sup>366</sup> Hagerott, Mark R., et al., A Patchwork Strategy of Consensus: Establishing Rule of Law in Afghanistan, NDU, Washington DC, 2010, [url](#), p. 143

<sup>367</sup> Pajhwok, Ex-police commander gets 10 years in jail for graft, 17 March 2019, [url](#)

<sup>368</sup> UNAMA, Protection of civilians in armed conflict, 2019, 22 February 2020, [url](#), pp. 67, 117

<sup>369</sup> AIHRC, *مجموعه قوانین، محابس و توقیف خانه ها* [informal translation: 'Compilation of laws, law on prisons and detention centres'], 9 March 2020, [url](#), pp. 110-129; UNODC, Unofficial translation, Law on prisons and detention centres, n.d., [url](#)

<sup>370</sup> AIHRC, *مجموعه قوانین، محابس و توقیف خانه ها* [informal translation: 'Compilation of laws, law on prisons and detention centres'], 9 March 2020, [url](#), pp. 110-129; UNODC, Unofficial translation, Law on prisons and detention centres, n.d., [url](#), p. 1

<sup>371</sup> BBC, *مدیریت تمام زندانهای افغانستان به یک اداره مستقل غیرنظامی سپرده می شود*, 24 January 2020, [url](#)

<sup>372</sup> AIHRC, Summary report on human rights situation in detention centres, 2018 – 2019, 24 March 2020, [url](#)

<sup>373</sup> Khaama Press, Corona virus threatening 40,000 prisoners in Afghanistan, warns Taliban, 16 March 2020, [url](#)

<sup>374</sup> RFERL, Stumbling block or bargaining chip? The faith of 5,000 prisoners in Afghanistan, 27 February 2020, [url](#)

<sup>375</sup> RFERL, Afghan Government releases 100 more Taliban prisoners, 12 April 2020, [url](#)

<sup>376</sup> AIHRC, Statement on Parwan detention facility, 3 April 2020, [url](#)

<sup>377</sup> Voice of Jihad, Statement by prisoners commission affair regarding brutal treatment of inmates in Bagram, 28 March 2020, [url](#)

<sup>378</sup> Voice of Jihad, *په بگرام کې د بنديانو په وړاندې د تاوتریخوالي په اړه د اسلامي امارت د بنديانو چارو کمیسیون اعلامیه*, 3 February 2020, [url](#)



In March 2020, Human Rights Watch indicated that many people were imprisoned by the Afghan Government based on terrorism laws, and individuals were detained with no definite detention period. The detainees included fighters (captured during the battle), alleged recruiters of suicide bombers, arbitrarily arrested individuals during night raids, and others allegedly having links with the Taliban. Detainees have been reportedly tortured to confess.<sup>379</sup> In a separate report, UNAMA stated that 36 juveniles out of 82 held in ANDSF custody reported on torture or ill-treatment practices they suffered in custody.<sup>380</sup> The source also reported on the 'poor' living conditions in the Parwan Detention Facility, which is run by ANA.<sup>381</sup>

Another source stated that in April 2020, three Afghan parliamentarians conducted a visit to Pul-e Charkhi prison in Kabul and found the prisons in a 'terrible' condition, where drug trafficking was also present. The conditions of the prison primarily affected women and children prisoners.<sup>382</sup> In April 2020, local media website Etilaatroz reported that female personnel within the Afghan prisons are victim of sexual harassment by male personnel.<sup>383</sup>

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<sup>379</sup> HRW, Afghanistan's prisoner's dilemma, 20 March 2020, [url](#)

<sup>380</sup> UNAMA, Treatment of conflict related detainees in Afghanistan: preventing torture and ill-treatment under the Anti-Torture Law, 17 April 2019, [url](#), p. 20

<sup>381</sup> UNAMA, Treatment of conflict related detainees in Afghanistan: preventing torture and ill-treatment under the Anti-Torture Law, 17 April 2019, [url](#), p. iv

<sup>382</sup> Tolonews, Prison situation "terrible" : MP report, 22 April 2020, [url](#)

<sup>383</sup> Etilaatroz, کارمندان زن در زندان‌های افغانستان از سوی کارمندان مرد مورد آزار جنسی قرار می‌گیرند [informal translation: 'Female prison personnel suffer from sexual harassment by male personnel in Afghanistan's prisons'], 21 April 2020, [url](#)

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## Annex II: Terms of Reference

1. State structure and governance
  - Executive branch
  - Legislative branch
  - Judicial branch
  - Elections and political developments following the result
  - Corruption: anti-corruption efforts and mechanisms; reporting corruption and misconduct by officials and police
  
2. Security institutions
  - Afghan National Security Forces (ANSF)
  - Afghan National Army (ANA): mandate and structure, capacity and effectiveness; integrity, violations (including torture and illegal detention; extrajudicial killings; practices of corporal and capital punishment)
  - Afghan National Police (ANP): mandate and structure, capacity and effectiveness; integrity, violations (including torture and illegal detention; extrajudicial killings; practices of corporal and capital punishment)
  - National Directorate of Security (NDS): mandate and structure, capacity and effectiveness; integrity, violations (including torture and illegal detention; extrajudicial killings; practices of corporal and capital punishment)
  - Afghan Local Police (ALP): mandate and structure, capacity and effectiveness; integrity, violations (including torture and illegal detention; extrajudicial killings; practices of corporal and capital punishment)
  
3. State judiciary: general overview on structure, capacity, access and effectiveness, integrity, prison conditions, including information on access to justice for women and LGBTBI





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