

# Elusive settlement in Afghanistan

## Ten priorities for peaceful progress

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### ABSTRACT

**Agreeing a new social contract is key to peace in Afghanistan. What are the priority issues that need to be addressed and what are the prospects for renegotiating these as part of a peace settlement?**

Ten priority issues include: the preservation of national unity and Afghan identity; international military forces; security, respect and basic needs for combatants and people affected by conflict; state-citizen relations and the role and privileges of elites; inclusive security reform; property, economic rights and the illicit economy; structure of government and consolidation of electoral democracy; promoting Islam and religious freedom; judiciary and legal system; and ethnicity, social inclusion and equality of opportunity.

Fundamental challenges to renegotiating a renewed social contract in practice include a severe lack of trust in formal processes and agreements, a prevalent

perception that national institutions are corrupt and partisan, and the dual system of governance in Afghanistan – with the government running the main population centres and the Taliban much of the countryside. A single, comprehensive peace agreement to agree a new social contract is unlikely to be achievable in Afghanistan. A more viable alternative model would involve an incremental, phased approach that builds confidence over time.

A dialogue-driven programme of implemented reforms and carefully nurtured cooperative relations has potential to address the root causes of the conflict. The best way to shape the conditions conducive to such a sustained process of dialogue and reform would be to agree a pause in the fighting early on. Conflict parties wishing to participate in such a sustained peace process would need first to sign up to the suspension of violence.

## Introduction

One powerful way of explaining the persistence of violent conflict in Afghanistan is the break down in the social contract, which was precipitated by the two coups of the 1970s – led by Daud Khan in 1973 and the 1978 Saur Revolution. Ostensibly the forty years of war since 1978 have been driven by contested ideological transformations of the state, by Communists and Taliban, and by the resistance to foreign intervention.

But with the disappearance of the *ancien regime*, Afghans have also contested their place in society. Ethno-linguistic groups, rural and urban communities, and clerical networks have all aligned themselves in the conflict as a way of staking a claim to elevated status in the eventual new Afghanistan. Therefore, achieving a lasting peace may depend upon Afghans agreeing a renewed social contract which locates every citizen relative to the state and the rest of society. Such a renegotiated social contract would require addressing fundamental issues which have been ignored in previous attempted settlements.

There are formidable challenges inherent in attempting to resolve the core contested issues. First, there is a major trust challenge. Successive peace and power-sharing agreements in Afghanistan have been 'honoured in the breach'. The tradition of unwritten rules and informal agreements poses a challenge to the transparency of any settlement process. Parties to the agreement could reasonably ask whether there is some informal agreement which contradicts the terms they have just agreed.

National institutions are routinely criticised as partial, corrupt or ineffective and the prestige of the international community has been damaged by persistence of conflict and instability despite an intervention. This means that any proposal to establish new institutions as part of a settlement risks lacking credibility. Existing state institutions have been under permanent reform for a period of nearly twenty years, which means that further promises to reform deserve a degree of scepticism.

A dual system of governance is in effect operating in the country, with the Afghan government running the main population centres, while the Taliban operate their Islamic Emirate in much of the rural hinterland. Thinking about a settlement usually starts from the assumption that the Taliban will accept and be absorbed into the Kabul-based state. However, the Taliban have yet to be persuaded to go along with this. The parties take their positions informed by an idealised self-image and a vilified image of the other side.

Even the question of which parties should get a seat at the table for negotiating the settlement is complex. The Taliban

are the main armed opposition. But most of the grievances they articulate against the Kabul government are owned by others. A settlement of the big social and economic issues could not meaningfully be attempted among the fighting groups. Rather, it would require broader participation of political stakeholders, alongside the representatives of the combatants.

Thought about a settlement in Afghanistan has been shaped by exercises such as the Bonn Agreement, in which negotiating parties held time-limited talks and produced a compact written agreement. However, alternative models may be better suited to pursuit of agreement on the underlying conflict issues. An incremental approach in which agreement was phased would allow for confidence-building measures over time to increase the parties' willingness to consider ambitious measures or embrace compromise. Such an approach would recognise the importance of rebuilding relationships between the parties in expanding the possibility of agreement.

Ideally, the ending or reduction of violence, through some version of an interim ceasefire, would be agreed at an early stage. The pausing of violence would represent the single most important confidence-building measure to help launch dialogue on the core issues. Rather than involving a single text, such as the Bonn Agreement, an incremental peace in Afghanistan might consist of a series of agreements, sequenced from easy to hard, with agreed reforms and confidence-building running in parallel, over a period of years.

We can identify some of the substantive issues which would have to be addressed by any broad settlement which attempted a lasting end to the conflict. Some of these could be addressed early as confidence building-measures, while others would be more appropriately addressed in a final settlement. Significantly, the vast majority of issues which can be expected to be addressed in a settlement process are issues among Afghans. International interest is confined to a small subset of issues, such as counter-terrorism, and to the general concern that there should be a lasting agreement.

The observations below represent the issues which we can anticipate Afghans will bring to the peace agenda. Reaching a lasting settlement on a broad agenda would be challenging. However, a well-handled settlement process should generate benefits from the outset. The fact that the Taliban and other Afghan parties were engaged in a dialogue aimed at reaching a settlement should undermine the case for political violence long before that settlement is finalised. Significant to achieving progress towards peace is to identify potential areas for positive-

sum outcomes on respective issues as bases for dialogue and accommodation.

## 1. Preservation of national unity and Afghan identity

Reaffirmation of commitment to the Afghan national state and its territorial integrity could be an important part of a new social contract. Afghans often express concern that the conflict undermines sovereignty. Therefore, agreement to preserve Afghanistan as a single political entity, with Kabul as its capital, in which all citizens of the country's multiple ethnic groups have a stake and accept state authority, would be an appropriate way of symbolising the conclusion of the conflict and a starting point for building a broader settlement. Agreement on principles of national unity should be attainable because, in the Afghan political tradition, major players have to protect themselves from being anti-national.

Key practical measures which could give expression to an agreement on national unity concern the national army and police. These are the institutions, visible to all citizens, which most readily symbolise the state. From the perspective of preserving national unity, rather than the more narrowly-focused security sector reform it would be important to win the confidence of all parts of Afghan society in the army and police, to allow members of their communities to enlist. Another sovereignty-related issue which could be tackled incrementally is that of facilitation of the accelerated return of refugees, in particular from Pakistan.

More ambitious measures could be put on the agenda, such as reverting to the historic Afghan institution of a non-executive head of state, whose office is designed to symbolise and actively nurture national unity – a revered figure, above the fray of divisive power politics. Perhaps the most ambitious national unity issue is that of the Durand Line. The informal consensus has long been that it would be politically impossible for any Afghan government to confirm that Afghanistan recognises the Durand Line as the frontier with Pakistan. However, it is not inconceivable that Afghans could eventually build a consensus in favour of ending this irritant with Pakistan as part of the price for a lasting end to conflict.

## 2. International military forces

Ostensibly the Taliban's principal *cause de guerre* throughout their post-2001 insurgency has been withdrawal of international military forces and they have previously criticised peace offers from the Afghan government for the lack of reference to the fate of these forces. However, this Taliban claim to be fighting against foreign forces obscures the extent of consensus on the

future of such intervention. Basically, the international troop presence is a temporary phenomenon irrelevant to the eventual Afghan social contract.

Insofar as there are real differences about the international forces, these concern the timing and sequencing of eventual withdrawal. As long as the Taliban are determined to sustain the conflict, they can be expected to demand, but never obtain, a withdrawal timetable for international troops. But if the Taliban were to prioritise participation in a national dialogue process, backed up by a ceasefire, they could reasonably expect some form of statement of principles around conditions-based withdrawal.

The winding down of international combat operations and eventual withdrawal of combat forces would shift from being a precondition of talks (the original Taliban position) to being an outcome of the stability generated by peacemaking. International military forces have long posed a dilemma for the Afghan parties associated with the Kabul government. The international and specifically United States presence has been a *sine qua non* for survival. But within Afghan political culture, any association with such forces invites the accusation of compromising on Afghan sovereignty.

Therefore, Taliban and Kabul actors alike could be expected to appeal to their constituencies by agreeing symbolic clauses asserting that the presence of international forces was subject to sovereign Afghan decisions and calling for an early withdrawal of combat forces. But shared interest in self-preservation among all Afghan parties to a deal may make them flexible on timetable and even the possibility of residual presence and military assistance. The irony is that the US could end up being more eager to end its military presence than some of its erstwhile adversaries who have long demanded a pull-out.

## 3. Security, respect and basic needs for combatants and people affected by conflict

The Taliban leadership has generally taken the position that their combatants are selfless and that the issue of their welfare is not a central war objective. However, away from the rhetoric Taliban representatives have repeatedly explained the importance of ensuring that their cadres win credible guarantees of security and non-persecution, a respectable status and some hope of a livelihood if they are to be expected to back any settlement. Their ambitions go well beyond a simple reintegration package, with its focus on individual material well-being. Taliban basically hope that their living fighters will be honoured as having defended Islam and their fallen should be considered martyrs. Given the way that both sides have demonised

each other, a settlement would require a formula of mutual respect for the ex-combatants and fallen.

There is ample scope for incremental measures to assure ex-combatant status and rights in advance of a general settlement. The Kabul authorities have experience of materially-oriented reintegration schemes. Domestically, these have not been particularly controversial because they do not seem to threaten any vital interest. But they have typically been poorly targeted and subject to misappropriation. For reintegration measures to help keep the Taliban ranks in line during progress towards a general settlement, reintegration would have to be managed to benefit bona-fide ex-combatants, rather than those administering the programme. Who controls the patronage power inherent in a resource-intensive reintegration scheme should be addressed explicitly rather than left to default. Taliban can be expected to focus on the issue of prisoners. A phased and possibly conditional programme of releases would be an entirely appropriate early measure in a settlement process, with the advantage that the parties could agree to limit the facility to those militants whose groups were practically cooperating in the reduction of violence.

Reconciling the different parties' narrative around the conflict and protecting the ex-combatants from being dishonoured or harassed by security agencies would require more delicate compromise than material reintegration. The eventual compromise narrative might acknowledge the sacrifices of all Afghans who fought for an idea of the religion and the nation. Any such agreement, in addition to reconciling the adversarial portrayals of the combatants, would have to address the issues of victim rights. The Taliban's involvement in mass-casualty attacks renders it all the more challenging for any negotiating party to concede the kind of respectability which they crave. This underlines the importance of sequencing. A decisive Taliban role in ending political violence would be the most effective way in which the movement could strengthen its fighters' case for moral rehabilitation.

#### **4. State-citizen relations and the role and privileges of elites**

Although rarely acknowledged explicitly, Afghanistan has experienced its own version of the global anti-elite insurgent sentiment. One explanation of the willingness of the latest generation of fighters to sacrifice themselves is as a protest against the sense of powerlessness and alienation from the elites of Kabul and the armed opposition alike. In their origins, the Taliban tapped into this sentiment as their movement's base of support in the madrasas was socially marginalised. The Taliban consciously cultivated an austere, Spartan image, juxtaposed to the luxury and ostentation of Afghan

urban elite culture. Under US protection, since 2002, Afghanistan's political and economic elite has massively enriched itself. It has taken ostentatious consumption to unprecedented levels and competed over the trappings of power, such as aggressive security escorts.

If the elites were to get an opportunity to negotiate a settlement, it would be prudent for them to include on the agenda provisions to curtail some elite privileges, rebalance state-citizen relations and counter the inevitable criticisms that the settlement is just another elite deal. Drafters would be challenged to find measures to create an impression of an 'Afghanistan fit for heroes' – one offering a stake to the socially marginalised who have joined the successive armed groups. Relatively uncomplicated measures could include the development of codes of conduct for public representatives and, in parallel, a decentralised ombudsman system, holding public officials and representatives to account for their dealings with citizens. The latter could potentially capture and redirect some of the spirit of the old Taliban idea of moral police. This time they would encourage correct behaviour in the elites rather than the populace.

#### **5. Inclusive security reform**

Security sector reform (SSR) has been pursued in one form or another in Afghanistan since 2002. However, a new political settlement would require another round and would involve a significantly different political calculus from the SSR undertaken after the Bonn Agreement. In the first place, few parts of the Taliban military could be merged with the regular state forces. Despite the effective guerrilla and terrorist campaign which they have waged, most of the Taliban forces will be uninterested in integrating into regular units and would prefer either to operate as militia, if they can, or to disband. However, as security forces are perceived as both a source of patronage and a guarantor of political position, Taliban could be expected to seek ways of inserting some of their supporters into security forces' hierarchies.

Meanwhile, as the conflict winds down a radical downsizing of security forces is likely to accompany the settlement. Kabul-aligned parties would most likely try to resist this as a curtailment of their access to patronage. This impending loss of patronage would ensure that any mediator trying to broker an agreement on SSR would find the challenge of getting the Kabul-aligned parties on board as daunting as that of agreeing the Taliban's path to disbandment.

The Taliban could be expected to delay disbandment as long as possible as a way of hedging, but only as long as they are able to access resources to hold their forces together. Meanwhile, the most serious discussion would be over control of the security apparatus as Taliban would

start from the assumption that hostile, anti-Taliban elements were well-ensconced in the intelligence service and apt to use their institutions to target them, even after a settlement. The interests of a durable settlement would require some effective safeguard against such action.

## **6. Property, economic rights and the illicit economy**

All parties to the conflict have pursued economic objectives but have rarely declared them candidly. The conflict economy, especially the narcotics trade and illicit mining, has been fundamental to sustaining the fighting. The restricted access to the benefits of post-2002 economic growth has also contributed to popular grievances and sense of exclusion, and popular support for the insurgency. For the settlement to contribute to a lasting peace it should contain strong economic clauses which facilitate the transition from the conflict economy and create a sense of a popular peace dividend.

However, securing agreement on progressive economic causes will be complicated by the fact that key figures on both Taliban and pro-government sides, whose participation is important to the viability of any agreement, have a stake in the conflict economy. For easily attainable measures, there is ample scope for declarations of intent and principles around the transition from the war economy. For example, plans to keep roads open and free of illegal taxation and to re-centralise the revenue would be popular.

Land in both rural and urban areas has become a key factor in the conflict economy. Power-brokers exploit their position to conduct major land-grabs and cash in on the chaos in ownership rights resulting from four decades of conflict. The Islamic Emirate authorities are deeply involved in land ownership issues. In southern Afghanistan they have been embroiled in what amounts to a land reform to privatise state land, and have seemed heedless of the historical irony that the 1978 Communist land reform helped trigger the conflict.

A settlement could obtain some popular appeal by pledging to restore merit in land tenure. This could be operationalised by halting land grabs, restoring stolen land and ensuring that any new land grants went to the deserving. A settlement could usefully include another overhaul of the cadastre, updated property registration and a transparent way of adjudicating disputes.

The peace dividend would be most attainable from expanded public infrastructure investment and employment growth in fields such as minerals development. The Afghan government already has a vision for economic development but the violence has

limited opportunities to realise it. The challenge in building a settlement would be to accelerate projects in response to reduction in violence and thus create a sense of momentum.

Looted wealth could reasonably be put on the agenda because of the widely-held perception that since 2001 the Kabul elites have abused their power to grab contracts and accumulate assets. The elites of Kabul and Quetta alike can be expected to try and protect their gains as they have repeatedly done in the face of public scandals such as the failure of Kabul Bank. However, an astute mediator or even a Taliban delegation could push for some form of commitment to recover illegally acquired assets, perhaps complemented by a conditional amnesty.

The opium economy and trafficking present a classic dilemma, given that both the Taliban leadership and elements of the Kabul government are deeply involved. The Afghan parties could be expected to make some declarations of intent to wind down the narcotics economy while avoiding binding commitments. However, here too an ambitious mediator could canvass innovative options such as temporary amnesties for the proceeds of organised crime, or pledging to devote the proceeds from any clampdown on organised crime to fund popular welfare activities.

## **7. Structure of government and consolidation of electoral democracy**

The nature of the political system is a fundamental issue on which the Taliban and representatives of the Kabul government have adopted opposite public positions. The Taliban leadership have called for replacing electoral democracy with a '*shura* system'. The Afghan President's offer to the Taliban has been to let them become a political actor and participate in the existing Kabul-based system, implying acceptance of electoral democracy. Any compromise would require some major reverses of positions.

The implication of the Taliban position is that they would re-impose their old Islamic Emirate idea, perhaps granting other parties some right to participate in a consultative council as implied by their adoption of the term '*shura* system'. However, few in the Taliban movement seriously believe that they have any prospect of imposing such a settlement because no other political grouping would accept the authority of a Taliban Amir. On the other hand, Afghan democracy since the Bonn Agreement has been deeply flawed. Nevertheless, no viable alternative to electoral democracy is available to address Afghanistan's requirements for peaceful political succession, the allocation of shares of representation and power and conferring a popular mandate.

Interim measures which the parties could adopt could provide for non-elected presence for the Taliban in political structures, a move designed to give them a visible stake in the system. There are multiple options, including co-option into the Senate, establishment of purpose-built bodies, such as a *jihadi ulema* advisory council and incorporation into the higher judiciary and judicial administration. This co-option route for the Taliban is important because, with conditions normalising and violence falling, they are unlikely to have much success in electoral politics.

Confidence in the electoral system is important for all Afghan parties, probably more so for the Kabul-linked parties than for the Taliban. Implementing credible reforms has proved a lot more difficult than agreeing to do so. However, a reduction in the level of violence would remove one of the key barriers to implementing integrity measures and broadening participation in the elections. Thus, the first bargain around the political system would entail sufficient symbolic affirmation of the system's Islamic credentials to allow the Taliban to endorse the role of elections and unlock progress towards full implementation of electoral reforms. Parties with a popular base would be free to contest elections while the Taliban's stake in the state would be secure independent of the electoral contest.

On the basic structure of government, it remains unclear whether agreement will be attainable. The challenge is exemplified by the failure of the National Unity Government to introduce the constitutional reforms which it had pledged in order to formalise the position of Chief Executive. There is a credible case that Afghan pluralism would be best served by an empowered executive requiring a majority from the parliament. However, agreement on rebalancing power between the President and parliament has been elusive. This is because there is a strong political tradition (to which the Taliban probably subscribe also) of asserting the indivisibility of power and the need to concentrate power in the presidency.

## 8. Promoting Islam and religious freedom

The Taliban say that they are committed to imposing an Islamic system of governance. However, it is far from clear what substantive changes they envisage. The other Afghan parties point to the Movement's 1996 to 2001 track record to warn of authoritarianism under the guise of Islamisation. However, the Taliban commitment to Islamisation is organic rather than merely rhetorical. Fighters still believe that their role is to Islamise a system which is tainted by corruption and westernisation. The Afghan government's position, apparently shared by most Kabul-linked groupings, is that the political system is already appropriately Islamic and that any political agreement must safeguard the fundamental freedoms in the constitution.

The place of Islam in the state is one of those areas where the sides have asserted their differences. However, as in the case of national sovereignty, progress to a settlement can be achieved by refocusing on the areas of possible consensus. The parties could seek additional symbolic ways of signifying the Islamic character of the state, similar to the way in which the 2002 *Loya Jirga* adopted the name Islamic Republic.

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Not only the Taliban, but much of the population which identifies as religious has been alienated from the post-Bonn state by aggressively disrespectful security personnel and officials, and prejudice against cultural symbols such as the beards and turbans favoured by Pashtun men in the Taliban's heartland. At the most basic level the grievance is that if you are dressed like a rural Pashtun you are apt to be hassled at check posts and more likely to be singled out for arbitrary detention. The Taliban have successfully conflated such prejudice with un-Islamic behaviour and mobilised to defend Islam. Dialogue among the parties could seek concrete measures to combat prejudice and promote 'parity of esteem'.

A further way for the Taliban to maintain their commitment to Islamisation and contribute to a progressive settlement would be to redirect their critique of the current state of affairs from the constitutional order to actual practices in governance and judiciary. In this way, the Taliban could position themselves as reformers and update the narrative for their supporters – the supremacy of Islam requires the implementation of the constitution, which is already rooted in the *Shariat*, not the overhaul of that constitution. The Taliban could guide their cadre to focus on the pursuit of security, justice and prosperity as the essence of Islamic wellbeing. Likewise, drafters of a settlement could focus on measures to promote the 'Islamic good-life' where public positions already overlap, such as commitment to universal education access.

## 9. Judiciary and legal system

The judiciary is highly contested in Afghanistan and

exemplifies the problem of dualism. De facto, Afghanistan now hosts two judicial systems, one answerable to a Supreme Court in Kabul and the other answerable to a group of clerics based in a madrasa in Quetta. Both sides project idealised versions of their judiciary. The state judiciary is meant to be law-based, accountable and adapted to the modern economy, while the Taliban portray their judiciary as *Shariat*-based, incorruptible and capable of delivering 'speedy justice'. The reality of both systems departs from these ideals. Corruption has become endemic in both judiciaries and the Taliban stand accused of arbitrary judgments and lack of independence from their armed forces.

The Taliban approach to the judiciary in a settlement is likely to focus as much on the question of who controls the judicial and legal system as on the guiding principles used by the judges. To have popular legitimacy, the settlement would have to reunify the national judiciary and address chronic problems of integrity and timeliness. One approach to integrating the lower judiciary and coping with Taliban demands to accommodate their cadre would be to establish a *Shariat*-based small claims court which could adjudicate many of the cases that people already voluntarily take to the Taliban. However, some of the politically contentious issues around the judiciary in the settlement would be control over judicial appointments, the jurisdiction over land and property and overcoming barriers to entry for qualified Taliban jurists seeking to join the state judiciary.

## **10. Ethnicity, social inclusion and equality of opportunity**

Provisions to reinforce a sense of inclusion for all social groups will be a critical part of any enduring settlement. But they can also be anticipated to be one of the areas presenting formidable challenges in agreeing the settlement. There is a gulf between rhetoric and practice with regard to the role of ethnicity in public life. And contemporary Afghan political discourse consists of a range of contradictory narratives of exclusion and entitlement.

Pashtuns as a whole, western Pashtuns, eastern Pashtuns, Hazaras, Tajiks, Uzbeks and many others have portrayed themselves as suffering from exclusion from state power and subject to multiple forms of discrimination. Notably, there is a similarity in narratives of grievances against both the Kabul-based system of government and the Taliban's Islamic Emirate. This suggests that Afghans' sense that their group is excluded is rooted in well-established social practices rather than just some remediable flaw in the constitution.

A Lebanese-style explicit sectarian carve-up of key state positions between the ethnic groups would probably be neither agreeable (because of disputed ethnic percentages

and reluctance to acknowledge ethnicity as an issue) nor helpful (because fragmented politics in the ethnic groups means there is rarely agreement on who is qualified to represent them). Despite these limitations, some of the informal rules governing post-2001 Afghan political practice, such as the practice of presidential candidates choosing running mates of different ethnicities, have been reminiscent of the Lebanese confessional pattern.

A maximalist approach on promoting ethnic inclusion would include structural reforms to guarantee broad ethnic participation in national government, decentralisation measures to shift power and resources to the provinces (because the national ethnic minorities are concentrated in particular provinces) and equal opportunities measures to restrict the scope for ethnically based patronage. A more minimalist approach could include affirmation measures, such as establishment of councils to document and promote the social and economic inclusion of their respective ethnic group. A possible radical option would be to revert to a non-executive head of state to symbolise and maintain national unity, with an executive prime minister elected from the national parliament.

It is difficult to envisage any simple political or institutional formula which would be likely both to command enough support to be included in an agreement and to be efficacious enough to create a sense of progress towards inclusion. However, the national leadership in their handling of practical politics and key appointments have an opportunity to pursue an inclusive or exclusive approach, thus contributing the sense of whether or not all groups feel included in the state.

## **Conclusion**

The dilemma at the heart of peacemaking in Afghanistan is that there is a formidable agenda of potential core issues to be addressed but the lack confidence between the parties renders it difficult to reach agreement on even the most straightforward of issues. However, an Afghan settlement need not consist of a single comprehensive document, signed off by all parties. Rather, a settlement could consist of a series of interim and incremental agreements, reforms and joint actions, cumulatively contributing to confidence and improvement of conditions on the ground, probably over a period of years.

No single signed document of aspirations and commitments will suffice to end the Afghan conflict. However, a dialogue-driven programme of implemented reforms and carefully nurtured cooperative relations has potential to address the issues which have long driven the conflict. A progressive approach to settlement thus builds upon reforms rather than compromising on them,

as sometimes warned of in Afghan political discourse. But the optimal way to shape the conditions conducive to such a sustained process of dialogue and reform would be to agree a pause in the fighting in the early stage of the process. The entrance ticket for conflicting parties to participate in such a sustained peace process would require them to sign up to the suspension of violence.