

Study of Afghanistan's Organization and Structure of Public Administration under the 2004 Constitution

Introduction

In Afghanistan, since the inception of modern organizations of public administration, towards the end of nineteenth century, states have utilized different models of public administration ranging from centralization, to deconcentrated centralization, to decentralization. However, due to multiple and concomitant reasons, such as tribal and traditional structures, political instability, rapid regime change, constant historical raptures, top-down and imported nature of attempted administrative reforms, and xenophobic and centrifugal forces within Afghan society, none of these models have ever been successfully institutionalized. The current Constitution, adopted in 2004, seeks to establish a deconcentrated form of centralized administration, albeit with some conditions.

The experience of the last decade and half suggests that the current public administration system has proven ineffective at performing its functions and achieving its stated goals; it could even be argued that it has been a failure. Ambiguity and excessive deferral by the Constitution in areas of public administration, shortcomings of the administrative institutions prescribed by the Constitution, failure in implementation of the Constitution in the areas of public administration, and the failure to establish constitutionally-mandated administrative institutions are stated as some of the reasons for the weakness of public administration in Afghanistan.

By drawing on extensive interviews with key informants within and outside the government, this policy note offers a brief analysis and a set of recommendations for reforming the legal and structural framework of public administration in Afghanistan.

Methodology

The authors have employed a qualitative multi-method research design; the research design consists of analysis of secondary and primary sources as well as semi-structured interviews with experts and discussions with policymakers. They have chosen to include individuals in the sample who possess both theoretical knowledge as well as practical experience. Therefore, among others, members of the Independent Commission for Overseeing the Implementation of Constitution (ICOIC), high-ranking administrative officials, and legal and administration scholars were interviewed. The interviews were conducted in-person based on the prepared questions but interviewees were also encouraged to raise issues that they considered relevant and important. Interviewers also probed further and asked follow-up questions when necessary. In this study of primary and secondary sources, the authors have carefully studied Afghanistan's constitutions, laws and regulations, legislative decrees, administrative guidelines, official reports, as well as academic publications. At the end, this paper draws upon a theoretical study of public administration, a study of its historical evolution in Afghanistan, and a critical assessment of its current state, functions, and goals. The paper concludes by offering a number of recommendations on the way forward for public administration in Afghanistan.

Key findings

- The lessons learned from past reforms in Afghanistan suggest that rushed and radical reforms that are perpetrated by instable regimes in a top-down fashion, without due consideration of context and structural constraints of Afghanistan, are doomed to fail.
- While a majority of those interviewed for this study indicated that the system of public administration adopted by the 2004 Constitution is a deconcentrated centralized system, a significant minority among them propose that the constitutional creation of a number of locally-elected councils and the adaptation of principle of participatory governance renders the constitutional system of administration in Afghanistan as either a decentralized or a deconcentrated decentralized system.
- The 2004 Constitution delegated a number of important authorities to the local councils. In practice, however, the authorities are not properly delegated to the local institutions.
- The 2004 Constitution is ambiguous as to where the proper authority and procedure of creating and dissolving new administrative organizations lies.
- The 2004 Constitution seemingly prescribes that central administration consists of ministries, which are individually accountable to the national assembly; the government, as a whole, is not accountable to national assembly. Thus, non-ministerial central administrative organizations face the challenge of accountability. This challenge arises because of a paradox that lies at the heart of the 2004 Constitution: The Constitution seeks to create an administrative system fashioned after parliamentary systems while having unwavering loyalty to a presidential political system.
- The Constitution seems to divide the administrative system into central and local administration and defines the former as ministries. However, in practice, the line departments of ministries are under direct administrative control from the centre.
- Despite an explicit, often time-bound, constitutional mandate and urgent need for administrative reform, a number of key legislations have not yet been adopted or updated. These legislations include Law of Basic Structure of the State, Law of Local Governance, and Law of Local Councils.
- A number of existing administrative institutions have dubious legal standing, including the office of Chief Executive of the Government, and councils and commissions that are created within the presidential palace. Additionally, a number of constitutionally-mandated administrative institutions have yet to be established, for example, village and district councils, elected city council and elected mayorship.
- The current consulting and advising authorities of the local councils do not seem to realize the participatory governance goals of the Constitution. In addition, the delegation of more real authorities to the local administration is a precondition for the local councils to exercise real oversight authority. Currently, the provincial councils—the only elected local council that is established—primarily performs a political function.
- The 2004 Constitution lacks sufficient guidance on the position of state companies.
- Afghanistan lacks a legal framework that would justify and elucidate the legal personality of administrative institutions. For example, it is not clear whether the Cabinet, Council of Ministers, or councils and commissions established within the presidential palace possess distinct legal authority or not. If they do, then, a number of legal questions regarding their varying legal authorities need to be answered; if they do not possess such authority, their formal relation with the national assembly needs to be resolved.

Recommendations

While there is still no consensus on the need and the content of fundamental reforms of public administration in Afghanistan, the following recommendations can be offered based on the findings of the present research.

In the short-run, the Afghan government should

- Enact or update organic laws of public administration, including Law of Basic Structure of the State, Law of Local Councils, Law of Local Governance, and Law of Municipalities;
- In order to close the gap between the de facto structure of public administration and its de jure constitutional model, extra-ministerial institutions should be integrated into the ministry-based model, so that they can act as technical policy advisors under the leadership of ministers;
- Necessary authorities in the areas of participation in policymaking, budgeting, planning, hiring, and procurements should be gradually delegated to the local administration;
- Constitutionally-mandated local councils must be established not only with the purpose of creating the necessary conditions for convening of the Loya Jirga but also to attain the ethical goals of the Constitution.
- Create effective mechanisms that would allow for a better implementation of consultative and supervisory role of local councils;
- Provincial and district governors must be empowered so they can lead, coordinate, and oversee the local administration in an integrated manner.

In the long-run, the constitution should be incrementally amended to:

- While the constitutionally-prescribed Afghan government has most of the features of a presidential system, the public administration is designed based on parliamentary system. This contradiction needs to be addressed;
- Create a real decentralized administrative system with all its political and institutional prerequisites;
- Currently, the de facto organization of public administration diverges from the basic structure outlined in the 2004 Constitution. This divergence has emerged due to a number of reasons: (1) persistence of institutional debris from the past regimes; (2) political expediency or desire to achieve quick results have been preferred over fundamental administrative reforms, which are neither politically convenient nor produce quick results; and (3) there is low level of capacity throughout administrative apparatus of the government. In order to ensure long-term stability and create a responsive and democratic public administration system, the Afghan government needs to bring the organization of central administration under the constitutional order, which would require fundamental administrative reform starting from central ministries;
- Promote an integrated approach to local administration by merging local councils—namely provincial and district councils—and city councils or clarify their relationships in a manner that elected local institutions can take charge of local administrative decision-making;
- At present, there is no unanimity on the model of public administration prescribed in the 2004 Constitution. This issue can be addressed through the passing of legislation that envisages the model of public administration for the Afghan state.

The information and views set out in this publication are those of the author and do not necessarily reflect the official opinion of AREU.

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