

Chronicle Causes for the Failure of the Afghan Government: Past Imperfect and Future Tense of Afghanistan

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Abstract

This article examines the chronicle causes that fuelled the collapse of the Afghan government and the contention of this paper is to highlight what went wrong, that Afghanistan experienced with the failure of the Constitution 2004 and the republic also dissolved. The study employed doctrinal legal research in which normative approaches were to evaluate the literature to acquire the required legal propositions. The literature gathered and used in this study will include secondary, primary, and legal documents.

Keywords: Afghanistan Crisis, Afghan Government, Taliban regime, and US Withdrawal

Introduction

Since 1747, Afghanistan has been involved in tussles over state buildings.²¹⁰ The country had eight multiple forms of constitutions in the past ninety-eight years’ but has little experience. Violation of the constitutional provision and constitutional failure is common in

Afghanistan’s legal history.²¹¹ (see the figure-1) To state that it is not correct that Afghanistan did not have a constitution; she had multiple forms of the constitution without constitutionalism and the rule of law.²¹² The anachronistic super structure foisted on a despotic foundation of the government. In 2004, Afghanistan switched to a presidential system, where the president served as the head of state and the supreme commander of the armed forces. And the president was clothed with unchecked discretionary power, while the parliament had little actual power to impeach the president²¹³, and the court tended to be excessively executive-minded.²¹⁴ There was the concentration of power, on the one hand, without any principle of check and balance. The past cannot be changed, and there is cause to think that Afghan civilians, republican elites, and their international supporters would fight against a negotiated solution that jeopardizes the gains made in terms of human rights and political participation in the past twenty years.



Figure 1: Source: Author Interpretation

²¹⁰ "Ashraf Ghani, 'Islam and State-Building in a Tribal Society Afghanistan: 1880—1901' (1978) 12 Cambridge University Press <https://www.cambridge.org/core/product/identifier/S0026749X00006119/type/journal_article> accessed 4 December 2022.

²¹¹ "J Alexander Thier, 'The Making of a Constitution in Afghanistan' (2006) 51.

²¹² "Tom Ginsburg and Aziz Huq, 'What Can Constitutions Do?: The Afghan Case' (2014) 25 Journal of Democracy <http://muse.jhu.edu/content/crossref/journals/journal_of_democracy/v025/25.1.ginsburg.html> accessed 25 December 2022.

²¹³ "Rainer Grote, 'Separation of Powers in the New Afghan Constitution'.

²¹⁴ "Faiz Ahmed, 'Judicial Reform in Afghanistan: A Case Study in the New Criminal Procedure Code' (2005) 29 Hastings International and Comparative Law Review.

Contextual Background

On December 5, 2001, in Bonn, Germany, a few Afghan figures and international players agreed on a procedure to install a new government in Afghanistan. The Taliban were not included in the conference.²¹⁵ The Bonn Agreement led to Hamid Karzai's appointment as the president of the interim government in the country and, eventually, to the adoption of a constitution that established a highly centralized presidential system of government in a multi-ethnic nation with a significant divide between the urban and rural populations and no prior experience with a centralized democratic system. A democratic presidential election was held in Afghanistan for the first time in 2004, and Karzai won despite claims of fraud from his rivals.²¹⁶ Following the first stint, Karzai was re-elected for a second term, although the results were once more challenged. Claims of election fraud also weakened the government's credibility. Government corruption was a prominent concern throughout Karzai's tenure. The election of September 2014 did not boost popular trust in the electoral process and democracy because Mohammad Ashraf Ghani (the then-president) and Dr Abdullah Abdullah, the second-place winner, contested the results, and both plunged the administration into disarray. Therefore, on the personal intervention from Barack Obama and the dictum of John Kerry, who was then secretary of state (USA), a National Unity Government (NUG) was established in Afghanistan with a power-sharing understanding in which Abdullah served as the Chief Executive and Ghani as the president.²¹⁷ In fact, it was the demise of democracy in Afghanistan. Furthermore, it was the genesis of the destabilization of the Afghan government.

²¹⁵ "Mark Fields and Ramsha Ahmed, 'A Review of the 2001 Bonn Conference and Application to the Road Ahead in Afghanistan'.

²¹⁶ "Shaharзад Akbar and Zubaida Akbar, 'Elections and Conflict in Afghanistan'.

²¹⁷ "Afghanistan: Rival Leaders Ghani and Abdullah in Power-Sharing Deal' *BBC News* (17 May 2020) <<https://www.bbc.com/news/world-asia-52699158>> accessed 1 January 2023.

The study found ten factors that contributed to the collapse of the Afghan government in August 2021.²¹⁸

First, Granting Criminal Immunities for War Lords in Afghanistan.

The same warlords and leaders of bloody history from the past were still seated in the front row of Administration. Hamid Karzai granted a green light immunity for the warlords who were charged with *actus reus* of war crimes in Afghanistan. This type of statute with pith without substance protected warlords, heinous criminals, strong governors, local commanders, and political party leaders. In addition, warlords funding by the US (Jo Anne Allen), the US learned what went wrong in Afghanistan, and meticulously violated Art. 12 of the Rome Statute.²¹⁹ "No one has the right to forgive those responsible for human rights violations other than the victims themselves." Even though Afghanistan is a signatory to the Geneva Convention, which obligates her to prosecute the perpetrators of crimes against humanity. Henceforth, it was a *Subla Fundmento Cadit Opus* for the regime's failure.

Second, the Colourable Memorandum of Understanding (CMOU) of Ghani and Abdullah- The U.S. Twilight

In addition to the first tenure of political understanding over power-sharing (2014-2020), in March 2020, both Ghani and Abdullah claimed that they had won the election, blatantly declared themselves as the legitimate president, and once again signed an MoU for a power-sharing (that includes the division of power, distribution of public resources and appointment of Governors, Ministers, Judge of Supreme court) this cleavage of power has fuelled the collapse of the government. Sadly,

²¹⁸ "The Collapse of Afghanistan' (*Journal of Democracy*) <<https://www.journalofdemocracy.org/articles/the-collapse-of-afghanistan/>> accessed 1 January 2023.

²¹⁹ "Hurst Hannum, 'Did the US Commit Crimes in Afghanistan? International Prosecutors Want to Find Out' (*The Conversation*) <<http://theconversation.com/did-the-us-commit-crimes-in-afghanistan-international-prosecutors-want-to-find-out-133590>> accessed 1 January 2023.

neither Ghani nor Abdullah paid respect to the costly votes and democracy on the ballot (polling was at the cost of the life of a voter), and both did not think that Afghans were reeling from the unprecedented devastated war on mothers, fathers, sisters, brothers, and mourners. I call these types of political understanding the Naked MOU. This agreement welcomed a new shift of light to the darkness and served as a guided road map for the collapse of Afghanistan.

Third, Multi - Colourable Agreements

Afghanistan could be called a land of Agreements, for instance, the Durand Line was demarketed by Abdurahman through an Agreement.²²⁰ and always committed to the principle of Pacta Sunt Servanda. Political disputes are usually settled through the Loya Jirga mechanism (reconciliation agreement),²²¹. The Bonn Agreement was repealed precisely as it has brought into force. The Afghan government (2001- 2021) came into existence through the Bonn Agreement 2001 and wined up with the Doha Agreement. Similarly, Ghani and Abdullah could easily reach an agreement for power-deal over the Afghan government, which was finalized through decisive intervention by the US but later fell apart. Likewise, The Afghan government and Gulbuddin Hikmatyar signed a peace deal with no clear understanding of its goals or outcomes. Highlighting the matter, the agreement between the United States and the Taliban was struck in February 2020 and called for the removal of all American personnel and forces from Afghanistan within 14 months. In return, the Taliban agreed to engage in talks with the Afghan government to declare a ceasefire and forgo using Afghan territory "not to harm the security of the United States or its allies," Since Afghanistan was in the mid of intensified armed conflict, a lethal virus, and

²²⁰ Moeed Yusuf, 'Afghanistan-Pakistan Relations' (2015) 198 US Institute of Peace 5.

²²¹ "Scott S. Smith, 'Loya Jirgas and Political Crisis Management in Afghanistan: Drawing on the Bank of Tradition' (US Institute of Peace 2019) Special <www.jstor.org/stable/resrep20254>.

sheer hunger. Afghans believed that to overcome many obstacles that lie ahead; this agreement offered a political framework for developing a peace settlement, then it was not. I call it a colorable agreement and remark that it was a mere" understanding regarding the future political roadmap of Afghanistan.

Fourth: Privity of the U.S.-Taliban Deal - Exclusion of Afghan Government

Before the fall of the Afghan government in August 2021, the Afghan government was expecting a permanent political settlement that would bring about long-term peace and stability in the country.²²² That objective was hampered by the Taliban's refusal to deal with the Afghan government without first engaging in negotiations with the US. By dealing with the Taliban first, the United States attempted to avoid this and lay the way for an intra-Afghan peace process and conceivably an Afghan political settlement. The U.S.A undermined the Afghan government by isolating it from US-Taliban negotiations. Indirectly weakened the Kabul administration.²²³

Fifth, the US's Abrupt Withdrawal

The Kabul administration doubted that the US would indeed withdraw within timelines.²²⁴ The United States had wavered on military withdrawal for over 20 years. Afghan officials, optimistically, thought that alternative scenarios were possible, even as the United States officially expressed its desire to withdraw from Afghanistan in the years before its

²²² "ksarkar, 'Afghans' Views on the Doha Peace Process and the Biden Administration's Review of the US-Taliban Peace Agreement' (*Atlantic Council*, 25 February 2021) <<https://www.atlanticcouncil.org/blogs/southasiasource/what-do-afghans-think-of-the-ongoing-doha-peace-process-as-well-as-the-us-taliban-peace-deal-and-what-do-they-expect-from-the-biden-administrations-review/>> accessed 1 January 2023.

²²³ "John R Allen Afzal Bruce Riedel, Michael E O'Hanlon, Vanda Felbab-Brown, and Madiha, 'Around the Halls: Brookings Experts Discuss the Implications of the US-Taliban Agreement' (*Brookings*, 5 March 2020) <<https://www.brookings.edu/blog/order-from-chaos/2020/03/05/around-the-halls-brookings-experts-discuss-the-implications-of-the-us-taliban-agreement/>> accessed 1 January 2023.

²²⁴ "'Timeline: U.S. War in Afghanistan' (*Council on Foreign Relations*) <<https://www.cfr.org/timeline/us-war-afghanistan>> accessed 28 November 2022.

withdrawal. Because of this, when the US troops and their contractors left, the Afghan armed forces, unlike President Biden's remark, were incapable of leading the war against the Taliban. Peace talks were hampered by the Afghan government's insistence that the Taliban be fully assimilated into the Republic despite its precarious position. Despite these advances, during intra-Afghan negotiations, the Afghan government requested that the Taliban be incorporated into the republic rather than exploring an entirely new constitutional structure.²²⁵ This made it more challenging to reach a political agreement.

Sixth: Release of 5000 Taliban

Following their negotiations, the US agreed on the terms of the Taliban officials and released 5,000 Taliban prisoners. The group drive accelerated over the following two months as the group quickly took control of half of Afghanistan's 419 districts. Kabul fell on August 15, 2021.²²⁶

Seventh: Ghani's location within the circle of Power brokers

The Kabul administration was unstable at a crucial time because Ashraf Ghani operated through a very selective, small circle of a colleague. On the other hand, Ghani adopted uncompromising water diplomacy²²⁷ toward potential competitors like Iran and Pakistan.²²⁸ It was challenging for Ghani to come out of the political and social isolation with a micromanagement approach. Hence, it also

contributed to the downfall of his government in a complicated political context.

Eight: Concentration of power on One Hand and Excessive Corruption

The extensive centralization, pervasive corruption, wide practice of nepotism, lack of patriotism, non-existence of a stable economy, misappropriation of public resources, the appointment of amateurish bureaucrats, and chanting voice in the name of a republic without people; all accelerated the death of Kabul government.²²⁹ The Afghan state was fundamentally damaged by widespread corruption, which included ongoing electoral fraud and official predatory conduct. Afghanistan still ranks third in the world. Tackling corruption required the participation of Afghan elites, nevertheless, the Afghan elite could not get the chance of engaging in administration.

Ninth: Political Rivalry

The Afghan political system increased the stakes for political rivalry. It re-ignited long-standing tensions between the Ghani team and the Abdullah team. For instance, the Afghan tussle over the issuance of E- Tazkira, in fact, language is the key to understanding the culture and appreciating one another feelings, however, recently a minor political group was engaged to wage a war over Pashto and Dari.²³⁰ In the end, the degree of personal conflict and political gain compounded its legitimacy issue and led to its downfall.

Tenth: US Failed in Afghanistan

The United States attempted to establish gender equality, and democratic and stable governing structures in Afghanistan but failed to do so. Despite over \$145.0 billion in U.S. funding,

²²⁵ Anelise Borges, 'Afghanistan's Former Deputy Chief of Staff Speaks to Euronews' (*euronews*, 17 August 2022) <<https://www.euronews.com/2022/08/17/afghanistan-fall-of-the-republic-a-collective-failure-says-ghanis-former-deputy-chief-of-s>> accessed 1 January 2023.

²²⁶ 'Idrees Ali and others, 'Half of All Afghan District Centers under Taliban Control - U.S. General' *Reuters* (21 July 2021) <<https://www.reuters.com/world/asia-pacific/half-all-afghan-district-centers-under-taliban-control-us-general-2021-07-21/>> accessed 1 January 2023.

²²⁷ Anoulak Kittikhoun and Susanne Schmeier, *River Basin Organizations in Water Diplomacy* (Global Institutions 2021).

²²⁸ 'Ambika Vishwanath, 'Afghanistan and the Region's Future Is Tied to Hydro-Diplomacy' (*ORF*) <<https://www.orfonline.org/expert-speak/afghanistan-and-the-regions-future-is-tied-to-hydro-diplomacy/>> accessed 1 January 2023.

²²⁹ 'The Collapse of Afghanistan' (n 10).

²³⁰ 'Harold Schiffman, Harold F Schiffman and Harold F Schiffman (eds), *Language Policy and Language Conflict in Afghanistan and Its Neighbors: The Changing Politics of Language Choice* (Brill 2011) <<https://brill.com/edcollbook/title/17296>> accessed 1 January 2023.

including more than \$36.2 billion to assist governance and economic growth ²³¹, the Taliban's resounding political defeat of the Afghan government provides unmistakable proof of this failure. ²³². Furthermore, the United States failed to assist the legitimacy and transparent election through democratic elections, routinely tainted by fraud. Nevertheless, the US contributed to creating three government heads in Afghanistan, Ghani, Abdullah, and Taliban, in Doha. These flaws led to its overall failure.

Political transition creates both great opportunity and disarray in the system. Despite having exceptional natural resources and geographical location Afghanistan still faces poverty, unemployment, low GDP, low health indicator, (high birth rate and high death rate) and less export and high imports. Afghanistan could be the exporter of the best Geographical Indicated goods, establishing industries for producing medicine. For instance, Afghanistan could have attracted Foreign Direct Investment (FDI) in agricultural products for food processing, and finally generated fund mechanisms through tourist places like Bamyan and many more.

Reference

- 'Afghanistan: Rival Leaders Ghani and Abdullah in Power-Sharing Deal' BBC News (17 May 2020) <<https://www.bbc.com/news/world-asia-52699158>> accessed 1 January 2023
- Afzal JRA Bruce Riedel, Michael E O'Hanlon, Vanda Felbab-Brown, and Madiha, 'Around the Halls: Brookings Experts Discuss the Implications of the US-Taliban Agreement' (Brookings, 5 March 2020)

<<https://www.brookings.edu/blog/order-from-chaos/2020/03/05/around-the-halls-brookings-experts-discuss-the-implications-of-the-us-taliban-agreement/>> accessed 1 January 2023

- Ahmed F, 'Judicial Reform in Afghanistan: A Case Study in the New Criminal Procedure Code' (2005) 29 Hastings International and Comparative Law Review
- Akbar S and Akbar Z, 'Elections and Conflict in Afghanistan'
- Ali I and others, 'Half of All Afghan District Centers under Taliban Control - U.S. General' Reuters (21 July 2021) <<https://www.reuters.com/world/asia-pacific/half-all-afghan-district-centers-under-taliban-control-us-general-2021-07-21/>> accessed 1 January 2023
- Anoulak Kittikhoun and Susanne Schmeier, River Basin Organizations in Water Diplomacy (Global Institutions 2021)
- Borges A, 'Afghanistan's Former Deputy Chief of Staff Speaks to Euronews' (euronews, 17 August 2022) <<https://www.euronews.com/2022/08/17/afghanistan-fall-of-the-republic-a-collective-failure-says-ghanis-former-deputy-chief-of-s>> accessed 1 January 2023
- Fields M and Ahmed R, 'A Review of the 2001 Bonn Conference and Application to the Road Ahead in Afghanistan'
- Ghani A, 'Islam and State-Building in a Tribal Society Afghanistan: 1880-1901' (1978) 12 Cambridge University Press <https://www.cambridge.org/core/product/identifier/S0026749X00006119/type/journal_article> accessed 4 December 2022

²³¹ "SIGAR, 'WHY THE AFGHAN GOVERNMENT COLLAPSED' (Special Inspector General for Afghanistan Reconstruction 2022) Special.

²³² "Rachel Pannett, 'U.S. to Probe Allegations Former Afghan President Ghani Flew Taliban with Millions in Cash' *Washington Post* (7 October 2021) <<https://www.washingtonpost.com/world/2021/10/07/ghani-afghanistan-fled-millions-stolen/>> accessed 1 January 2023.

- Ginsburg T and Huq A, 'What Can Constitutions Do?: The Afghan Case' (2014) 25 Journal of Democracy <http://muse.jhu.edu/content/crossref/journals/journal_of_democracy/v025/25.1.ginsburg.html> accessed 25 December 2022
- Grote R, 'Separation of Powers in the New Afghan Constitution'
- Hannum H, 'Did the US Commit Crimes in Afghanistan? International Prosecutors Want to Find Out' (The Conversation) <<http://theconversation.com/did-the-us-commit-crimes-in-afghanistan-international-prosecutors-want-to-find-out-133590>> accessed 1 January 2023
- ksarkar, 'Afghans' Views on the Doha Peace Process and the Biden Administration's Review of the US-Taliban Peace Agreement' (Atlantic Council, 25 February 2021) <<https://www.atlanticcouncil.org/blogs/southasiasource/what-do-afghans-think-of-the-ongoing-doha-peace-process-as-well-as-the-us-taliban-peace-deal-and-what-do-they-expect-from-the-biden-administrations-review/>> accessed 1 January 2023
- Moeed Yusuf, 'Afghanistan-Pakistan Relations' (2015) 198 US Institute of Peace 5
- Pannett R, 'U.S. to Probe Allegations Former Afghan President Ghani Fled Taliban with Millions in Cash' Washington Post (7 October 2021) <<https://www.washingtonpost.com/world/2021/10/07/ghani-afghanistan-fled-millions-stolen/>> accessed 1 January 2023
- Schiffman H, Schiffman HF and Schiffman HF (eds), Language Policy and Language Conflict in Afghanistan and Its Neighbors: The Changing Politics of Language Choice (Brill 2011) <<https://brill.com/edcollbook/title/17296>> accessed 1 January 2023
- Scott S. Smith, 'Loya Jirgas and Political Crisis Management in Afghanistan: Drawing on the Bank of Tradition' (US Institute of Peace 2019) Special <www.jstor.org/stable/resrep20254>
- SIGAR, 'WHY THE AFGHAN GOVERNMENT COLLAPSED' (Special Inspector General for Afghanistan Reconstruction 2022) Special
- 'The Collapse of Afghanistan' (Journal of Democracy) <<https://www.journalofdemocracy.org/articles/the-collapse-of-afghanistan/>> accessed 1 January 2023
- Thier JA, 'The Making of a Constitution in Afghanistan' (2006) 51
- 'Timeline: U.S. War in Afghanistan' (Council on Foreign Relations) <<https://www.cfr.org/timeline/us-war-afghanistan>> accessed 28 November 2022
- Vishwanath A, 'Afghanistan and the Region's Future Is Tied to Hydro-Diplomacy' (ORF) <<https://www.orfonline.org/expert-speak/afghanistan-and-the-regions-future-is-tied-to-hydro-diplomacy/>> accessed 1 January 2023