

***The CIA's "Army":
A Threat to Human Rights and an Obstacle to Peace in Afghanistan***

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Introduction

Afghan paramilitary forces working with the United States Central Intelligence Agency (CIA) have long been a staple in the US war on terrorism in Afghanistan and the border region with Pakistan. The problems associated with these militias take on new significance given the recent momentum in talks between the US government and the Taliban about the withdrawal of US forces from Afghanistan. Whose interests do the militias represent? How can they be integrated into a peace agreement – if at all? Will their use value for the US in future counterterrorist operations outweigh the case for closing them down in the service of human rights and a sustainable peace? The militias are at least nominally controlled by their CIA paymaster, but to what extent will the operations of the CIA be monitored and streamlined with overall US policy towards Afghanistan?

The CIA-supported militias are a particularly troublesome version of the regionally based militias in Afghanistan that have developed over the years around local strongmen with external support. The present units originate in the 2001 invasion, when US military forces and the CIA organized Afghan militias to fight Islamist militants. Almost two decades later, the CIA is still running local militias in operations against the Taliban and other Islamist militants. Throughout, the militias reportedly have committed serious human rights abuses, including numerous extrajudicial killings of civilians. CIA sponsorship ensures that their operations are clouded in secrecy. There is virtually no public oversight of their activities or accountability for grave human rights abuses.

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This paper pulls together publicly available information about the CIA's "Afghan army," charts the problems it represents for creating a sustainable peace settlement in Afghanistan, and examines possible measures for addressing these problems.

The Development of Afghan Militias and the CIA's Army

During the Soviet-Afghan war in the 1980s, the CIA played an important role in American efforts to assist various Afghan rebels, who invoked the duty of holy warriors (*mujahedin*) to fight against the Soviet forces and the Afghan communist government. The rapid collapse of the government forces following Soviet military withdrawal in 1989 brought the *mujahedin* to power in 1992. Soon, however, the *mujahedin* began to fight among themselves, leading to the rise of the faction calling itself *taliban* (students). At this point, the CIA, which had scaled down its presence in the country when the *mujahedin* took power, reengaged. Claiming that the Taliban in the 1990s was supporting international terrorism by allowing the militant Islamist movement al-Qaeda (the Cell) to operate from Afghanistan, the agency clandestinely supported rival Afghan *mujahedin* factions that were fighting the Taliban. When al-Qaeda attacked the US mainland in 2001, the CIA thus already had a long history and well-established infrastructure in Afghanistan. This enabled the Agency to rapidly spring into action after September 11. Operatives equipped with cell phones and large bundles of dollar bills entered the country on a mission to mobilize Afghan militias.

In accounts by US military historians, the use of Afghan militias in 2001 to rapidly defeat the Taliban regime and scatter Osama bin Laden's al-Qaeda fighters is a major success story.³ Although bin Laden himself evaded capture, US Special Forces and CIA operatives paid local Afghans to form militias to work with the US-led coalition. They found ready recruits among ex-militia leaders and other strongmen who had opposed the Taliban, switched sides, or returned from exile in Pakistan and Iran. Many had latent networks of supporters that were easily mobilized. The militias also enabled the US to run search and destroy operations in the eastern and southeastern part of the country in 2002-2003 with only few American boots on the ground.

Yet in the next phase of the US-led international operation – the move from invasion to stabilization and so-called "nation-building" – the well-paid and well-equipped militias formed a complex, de-centralized structure of military power that posed serious problems. By 2003, the militias were slated for demobilization as part of the "nation-building" transformation, its members to be disarmed and either returned to civilian life or reintegrated in a new, regular Afghan national army. The large United Nations (UN) program launched for this purpose had limited success, however. One reason was the unwieldy structure of the international operation. The leadership was divided among the UN mission in Afghanistan (UNAMA), NATO (itself running a many-headed operation in the country), the US military command (CentCom), and the numerous governments represented in Kabul that participated in the international

³ Wright, Donald P. et al. (2009, June). "A Different Kind of War". Kansas: Combat Studies Institute Press. Retrieved from:

<https://www.nytimes.com/interactive/projects/documents/a-different-kind-of-war#p=1>.

operation by contributing soldiers, money or technical assistance. As a result, getting consensus on most policies was time-consuming and difficult. In this case, the US military did not fully support the demobilization program, claiming the militias were necessary in the continuing war against the Taliban. Another main hurdle was the opposition of many militia leaders themselves, who in a worst-case scenario could turn their forces against the international operation. This nightmare scenario haunted Western diplomats and UN officials who had a mandate to promote peace and stability in the war-torn country and made them reluctant to pressure the militia leaders. Finally, as in any disarmament program of this kind, the opportunities for cheating by falsifying numbers and hiding the best weapons were numerous.⁴ The program's very modest results demonstrated that once established, militias are very hard to build down. In Afghanistan, they barely got a chance (like old soldiers) to "fade away" during the mid-decade stabilization years before the international operation once again changed direction.

After 2006, when the Taliban clearly was reviving and the insurgency against the foreign military presence intensified, the US government formally reversed its policy towards militias: local militias should no longer be disbanded, but supported as a key component in a new counterinsurgency strategy. US Special Forces initially organized these militias at the local level, presenting them in public as village defense units. Some central government figures, including President Hamid Karzai, were at first reluctant to endorse this practice as policy, fearing an erosion of centralized control and sovereignty by the Afghan government. Yet the government's heavy military and economic dependence on the US gave it limited room for opposing US initiatives, particularly those advanced by the US military command in Afghanistan. Many Afghans also stood to gain economically and politically from the build-up of new military units. Placing the units under the Ministry of Interior gained the support of officials in that ministry. Appearing under various names, the program was eventually called the Afghan Local Police (ALP) with units in many parts of the country.⁵

Some militias were not placed under the Ministry of Interior, however, but were run separately by US Special Forces and CIA operatives. While the Special Forces command (later the Joint Special Operations Command, JSOC) and the CIA apparently developed a rivalry in controlling the Afghan militias, the competition was muted by the Pentagon's practice of lending active duty members of the Special Forces to the CIA through its so-called Omega Program.⁶ The CIA itself has few paramilitary officers. The Agency's Special Activities Division was reported in 2017 to number only in the

⁴ Sedra, Mark. (2006). "Security sector reform in Afghanistan: The slide towards expediency." *International Peacekeeping*, 13:1, 94 - 110.

⁵ Lefèvre, Mathieu. (2010, May 27). "Local Defence in Afghanistan. A Review of Government-Backed Initiatives." Kabul: Afghan Analysts Network. Retrieved from: <https://www.afghanistan-analysts.org/publication/aan-papers/local-defence-in-afghanistan-a-review-of-government-backed-initiatives/>; Goodhand, Jonathan and Hakimi, Aziz. (2013, December 13). *Counterinsurgency, Local Militias, and Statebuilding in Afghanistan*. U.S. Institute of Peace, Peaceworks.

⁶ Clark, Kate. (2017, October 26). "CIA-proxy militias, CIA-drones in Afghanistan: 'Hunt and kill' déjà vu". Retrieved from: <https://www.afghanistan-analysts.org/cia-proxy-militias-cia-drones-in-afghanistan-hunt-and-kill-deja-vu/>

hundreds, and it has a global field of mission.⁷ Rostering Special Forces from the military as its own enabled the CIA to vastly expand its covert missions. By 2010, Bob Woodward claimed in a much-cited passage from his book on the Obama administration that the CIA had an army of 3,000 Afghans, called Counterterrorist Pursuit Teams, institutionalized with the acronym CTPT.⁸ As discussed in more depth below, they were paid and trained by the CIA and the Special Forces and protected by the ring of secrecy surrounding their sponsoring agents. As such, they were distinct from the militias established under the formal Afghan Local Police program. Yet the formal, public program to employ militias as a fighting force also served to facilitate and legitimize the proliferation of militias that formed the CIA's army.

The CIA's army was not designed for classic counterinsurgency operations and definitely not for "winning-hearts-and-minds." Their mission was to hunt and kill "terrorists." This became clearer after the major withdrawal of US and Coalition forces in 2014. Initial speculation that withdrawal would spell reduced support for the Afghan militias proved wrong. The CIA and its Afghan army instead became more important as a means to pursue the war covertly, with attendant low political visibility in the US.

In 2015, the CIA helped its Afghan counterpart, the National Directorate of Security (NDS), to establish new Afghan paramilitary units to fight militants allegedly aligned with the Islamic State who reportedly were active in the northeastern part of the country.⁹ The new NDS unit added significantly to the total number of irregular forces supported by the CIA.¹⁰ Two years later, in 2017, then-CIA Director Mike Pompeo publicly announced that a policy change to use the militias more intensely was under way. The CIA would expand its operations in Afghanistan, targeting Taliban as well as al-Qaeda. Small teams of CIA-rostered officers would spread out alongside Afghan units

⁷ Mazzetti, Mark; Kulish, Nicholas; Drew, Christopher; Kovalski, Serge F.; Naylor, Sean D.; and Ismay, John. (2015, June 6). "Seal Team 6: A Secret History of Quiet Killings and Blurred Lines." *The New York Times*. Retrieved from: <https://www.nytimes.com/2015/06/07/world/asia/the-secret-history-of-seal-team-6.html?r=0>.

⁸ Woodward, Bob. (2010). "Obama's Wars: *The Inside Story*." New York: Simon and Schuster, p. 8. The information was separately confirmed by the US National Public Radio, <https://www.npr.org/sections/thetwo-way/2010/09/22/130041571/3-000-man-cia-army-conducts-operations-in-pakistan>. At the time, their main operations appeared to be against targets across the border in Pakistan.

⁹ "NDS forms a unit of special forces to counter expansion of Islamic State in Afghanistan," by a Zariza correspondent, 2 July 2015. <http://www.afghanzariza.com/2015/07/02/nds-forms-a-unit-of-special-forces-to-counter-expansion-of-islamic-state-in-afghanistan>

¹⁰ Raghavan, Sudarsan. (2015, December 3). "CIA runs shadow war with Afghan militia implicated in civilian killings." *The Washington Post*. Retrieved from: https://www.washingtonpost.com/world/cia-backed-afghan-militias-fight-a-shadow-war/2015/12/02/fe5a0526-913f-11e5-befa-99ceebcbb272_story.html?utm_term=.188155a8ec70

in a campaign the Director promised would be “aggressive,” “unforgiving,” and “relentless.”¹¹

The CIA’s Army: Who Are They and How Do They Operate?

Little is publicly known about the CIA’s Afghan army. Nevertheless, investigative journalists, concerned analysts and human rights activists have pieced together the covert program’s basic outlines. The “army” has two types of components. One is a set of older units whose relations with the CIA go back to the offensive operations carried out during and immediately after the 2001 invasion. They work closely with the agency. The most well-known and powerful of these is the Khost Protection Force (KPF), which operates out of the CIA’s Camp Chapman in the northeastern province of Khost.¹² Importantly, the KPF is an illegal armed group in the sense that its existence has no basis in Afghan law and no formal place in the state security apparatus or its budget, as the UN has emphasized.¹³

A second type of unit is the formally designated Special Forces of the Afghan intelligence agency, the National Directorate of Security (NDS). It has four main units, numbered from 01, and each has a regional area of operation: NDS-01 operates in the Central Region, NDS-02 in the Eastern Region, NDS-03 in the Southern Region, and NDS-04 in the North.¹⁴ This is the only transparent and publicly known part of their organization. The NDS Special Forces exist in a regulative twilight zone. The NDS is heavily funded by the CIA, and its Special Forces have a close working relationship with CIA operatives – according to most reports, they are trained and paid directly by the CIA. As a result, information about their size, operations, funding and command structure is not publicly disclosed.¹⁵ In the temperate language of the UN mission in Afghanistan (UNAMA), the operations of NDS Special Forces, like those of the Khost Protection Force, “appear to be coordinated with international military actors, that is, outside the normal Governmental chain of command.”¹⁶ In UNAMA reports, the term “military *actors*” commonly refers to the CIA, as distinct from the term “US military *forces*.” Afghan institutional control over the NDS Special Forces also appears to be tenuous. The UN mission concluded in 2018 that “these forces appear to operate outside

¹¹ Gibbons-Neff, Thomas; Schmitt, Eric; and Goldman, Adam. (2017, October 22). “A Newly Assertive C.I.A. Expands Its Taliban Hunt in Afghanistan.” *The New York Times*. Retrieved from: <https://www.nytimes.com/2017/10/22/world/asia/cia-expanding-taliban-fight-afghanistan.html>

¹² Its equivalent in the south is the Kandahar Strike Force, which appears to have been less active in recent years. Another “first generation” unit in the CIA’s army, called “Afghan Security Guards,” is based in Paktika in the northeast and seems to have folded into the local ALP. See Clark 2017.

¹³ UNAMA 2019, p. 37.

¹⁴ UNAMA 2019, p. 41 (note 158).

¹⁵ Clark 2017, and <https://www.theguardian.com/world/2013/apr/19/hamid-karzai-curb-cia-afghanistan-operations>

¹⁶ UNAMA, Afghanistan. (2019, February). “Protection of Civilians in Armed Conflict. Annual Report 2018.” p. 42. Kabul, Afghanistan. Retrieved from: https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_annual_report_2018_final_24_feb_2019_1.pdf.

of the regular NDS chain of command, resulting in a lack of clear oversight and accountability.”¹⁷

There is no public disclosure of the size of the CIA-supported units, but they probably have more than doubled since the 3,000 estimate used by Woodward in 2010. One well-informed analyst maintained in 2017 that NDS-02 alone had 1,200 men.¹⁸ Among the older units, the Khost Protection Force was said to have 4,000 members in 2015.¹⁹ Three years later, in 2018, estimates of the KPF size were “anywhere from 3,000 to over 10,000.”²⁰ Other than that, all we know is that the CIA-sponsored forces are uniformed and well-equipped, sometimes work with American English-speaking men during raids, use English phrases, and have also been able to call in air strikes, likely by the American military, which executes most of these strikes.²¹ The paramilitary forces are also very well paid, which may be a principal reason why highly skilled and capable Afghans would want to join the units.²²

The secrecy of the CIA program greatly compounds the difficulties of ascertaining facts about civilian casualties and related violence involving pro-government forces in Afghanistan. These problems notwithstanding, the UN, human rights organizations and investigative analysts have documented a pattern of abuse and possible war crimes of the kind that are emblematic of paramilitary forces operating with impunity, unconstrained by political or judicial accountability.

The paramilitary units are mainly used in night operations against residential areas harboring suspected militants, so-called “search operations.” The operations typically lead to high civilian casualties (see Figure 1). UNAMA, which has reported on civilian casualties in Afghanistan annually since 2009, now singles out the operations of paramilitaries associated with CIA as a matter of grave concern. The UN mission report in 2019 cited “continuing reports of the Khost Protection Force carrying out human rights abuses, intentionally killing civilians, illegally detaining individuals, and intentionally damaging and burning civilian property during search operations and

¹⁷ UNAMA, Afghanistan. (2018, February). “Protection of Civilians in Armed Conflict. Annual Report 2017.” p. 53. Kabul, Afghanistan. Retrieved from: https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_annual_report_2017_final_150218.pdf.

¹⁸ Clark 2017.

¹⁹ Raghavan, 2015.

²⁰ Mashal, Mujib. (2018, December 31). “CIA’s Afghan Forces Leave a Trail of Abuse and Anger.” *The New York Times*. Retrieved from: <https://www.nytimes.com/2018/12/31/world/asia/cia-afghanistan-strike-force.html>

²¹ The Bureau of Investigative Journalism. (2019, February 8). “CIA-backed Afghan unit accused of atrocities is able to call in air strikes.” Retrieved from: <https://www.thebureauinvestigates.com/stories/2019-02-08/cia-backed-afghan-unit-atrocities>

²² CIA reportedly pays KPF members a monthly salary equivalent to that received by an Afghan general.

night raids.”²³ The UN used similar language to describe the CIA-supported Special Forces of the Afghan intelligence agency, the NDS, in both its 2017 and 2018 reports.²⁴

FIGURE 1: Examples of abuses by KPF or NDS Special Forces in some documented incidents in 2018

During a joint NDS and US (air support) operation, at least 20 men reportedly were dragged from their homes at night by NDS forces and summarily executed (Band-e Timor, Maiwand, Kandahar, 31 January).²⁵

Night raid on a family compound. One adult taken outside for questioning, inside his 2 brothers and sister in law were shot and killed and the house was torched. A 3 year-old girl was inside, she was later found burnt to death (Nader Shah Koht, Khost, in March).²⁶

Night raid on family compound. The family patriarch witnessed two of his sons being hooded, taken into an adjoining room and executed (Khogyani district, Nangarhar).²⁷

Night raid on family compound. Four male members of a family taken aside and executed (Bati Kot district, Nangarhar).²⁸

Night raid on residential compound. Firefight erupted, 15 civilians killed, including 5 boys aged 10-14 (Sheerzad district, Nangarhar).²⁹

“First, they attacked us with bombs. Then they entered the living room and started to shoot around,” said Jamal Khan. “They didn’t care about who they were killing. They killed my uncle and his 9-year-old son. His wife and his other child were injured.” (Testimony by villagers on raid in Nangarhar, 23 October).³⁰

Night raid on family compound of a prominent local family. The patriarch, a member of the provincial peace council, and 5 younger men in his family were shot and killed one by one (Zurmat district, Paktya, 30 December).³¹

²³ UNAMA, 2019, p. 36.

²⁴ UNAMA, 2018, pp. 53-54; UNAMA, 2019, pp.41-44.

²⁵ Human Rights Watch. (2018, February 21). “Afghanistan: Alleged Summary Executions by Special Forces”. Retrieved from: <https://www.hrw.org/news/2018/02/21/afghanistan-alleged-summary-executions-special-forces>

²⁶ Mashal, 2018.

²⁷ Mashal, 2018.

²⁸ Mashal, 2018.

²⁹ UNAMA, 2019, p.41.

³⁰ The Bureau of Investigative Journalism, 2019.

³¹ Clark, Kate. (2019, January 21). “Khost Protection Force Accused of Fresh Killings: Six men shot dead in Zurmat”. Afghan Analysts Network. Retrieved from: <https://www.afghanistan-analysts.org/khost-protection-force-accused-of-fresh-killings-six-men-shot-dead-in-zurmat/>

Relative to the total number of civilian casualties recorded – around 11,000 killed and injured in 2018 – those caused by the CIA’s army are small. Even so, the UN singles out the rise in casualties from covert pro-government forces as a matter of “deep concern.”³² In 2018, the civilian toll from what the UN categorizes as “search operations” was 353 (dead and injured); this was a stunning 185 percent increase over the previous year. These numbers are likely even higher, as the UN mission includes only data on incidents that it can document with reasonable certainty and thus tends to err on the conservative side in the number of civilian deaths. Most of the search operations are executed by the CIA-sponsored militias and paramilitaries. According to UN figures for 2018, the NDS Special Forces and the Khost Protection Force caused almost as many civilian deaths as the total number attributed to all Afghan national security forces in that year, that is, the Afghan Local Police, the Afghan National Police, the Army and the Air Force.³³ Moreover, the paramilitaries were much more likely than the regular Afghan forces to kill civilians rather than to injure them. The high ratio of deaths to injuries, the UN report concludes, suggests a pattern of intentional killing and excessive use of force.

The sharp increase in civilian deaths from search operations reflects Mike Pompeo’s promise in 2017 that the agency would launch an “aggressive,” “unforgiving,” and “relentless” campaign. The increase was also in line with the general escalation of violence in 2018, as all parties appeared to intensify their efforts to gain advantages on the ground that could translate into political bargaining power during negotiations over a peace settlement.

Lack of Accountability

As the UN mission reports repeatedly note, the CIA-sponsored program and activities of its Afghan army are shielded from public oversight and accountability. Afghan authorities appear to be uninformed or unwilling to divulge anything about the program’s structure, funding or operations. It is telling that UN officials investigating reports of abuse and intentional killings of civilians by NDS Special Forces were unable to obtain any information from Afghan officials, including in the NDS itself.³⁴

In legal terms, the CIA has long enjoyed a privileged position in Afghanistan by being outside the jurisdiction of Afghan laws and decrees that regulate the operations of international military forces. For instance, prior to 2014, Afghan restrictions on some Coalition practices that disproportionately harmed Afghan civilians, notably night raids, did not apply to the CIA and its operatives because these do not constitute a *military force*. The 2014 Bilateral Security Agreement that governs military relations between the US and Afghanistan maintains this distinction. The Agreement explicitly forbids US *forces* from entering Afghan homes except when necessary for immediate self-defense, forbids US forces to arrest or detain Afghans, and to operate detention facilities in Afghanistan. Again, the restrictions do not apply to the CIA because, in formal terms, the

³² UNAMA, 2019.

³³ UNAMA, 2019.

³⁴ The NDS has a Human Rights Chief, who met repeatedly with UNAMA in 2017, but was unable to provide any information about NDS Special Forces-related incidents for investigation and accountability purposes. UNAMA, 2018, p. 53.

agency does not have military *forces*. Extending the provision to the Agency would signal that it was carrying out such activities in Afghanistan and thus conflict with its principal function of undertaking covert missions.

The Afghan government, being heavily dependent on US support, has accepted the US position. At the time, President Karzai faced critics at home who favored an expansive CIA role in the country, including the Afghan intelligence community and local beneficiaries of CIA largesse. There was also a broader consideration. From a short-term tactical perspective it could be argued that exempting the CIA from the constraint that applied to the regular forces was an advantage; its “army” could wage a truly “aggressive,” “unforgiving,” and “relentless” campaign against the Taliban and other militants. For both the Afghan and US governments these considerations came to outweigh the recognized costs - grave human rights violations, potential breaches of international law and alienation of the Afghan people whose support in fact was necessary to stabilize the government.

In the US, only the House and Senate Intelligence Committees have an oversight function relative to the CIA. Their ability to gain information from the agency is limited, as the Senate Select Committee on Intelligence experienced when investigating alleged CIA use of torture in 2001-06 worldwide, including its “rendition program” with allies in the Middle East and Europe. Congressional willingness to release findings to the public is also constrained. For example, the Senate Select Committee on Intelligence released in 2014 only a summary report of the CIA use of torture, and even this was heavily redacted.

In Afghanistan, the UN, human rights organizations, journalists, or families of victims of abuse or killings have no access to CIA representatives. Unlike in the US military, there is no spokesperson or liaison office to contact when missions go astray, when individuals are executed, innocent civilians are killed and property destroyed. Identifying alleged perpetrators can be difficult. When US military Special Forces participate in an operation and are rostered as CIA officers, US military spokesmen can plausibly deny involvement by the military. To the casual observer these Americans are indistinguishable in the field. To local Afghans they are all “foreigners with beards on motorcycles.” The identity of their Afghan teams is not always clear to the villagers either; a principal piece of evidence is a unit’s usual territorial operational space.

Despite numerous reports that CIA-sponsored paramilitaries have committed serious human rights abuses and possible war crimes, very few cases have been investigated and even fewer prosecuted. The exceptional cases reflect a system of politicized justice based on proximity to centers of political power rather than the rule of law.

Two cases that have been reported illustrate the system. One occurred in 2009, when a Kandahar-based strike force linked to the CIA killed a local police chief for having had the temerity to arrest one of its members. The killing of a highly placed official in what appeared as a semi-public execution was difficult for the Afghan government to ignore, and 38 members of the strike force were convicted of murder. The second reported case took place in 2015, when a Khost Protection Force unit killed a young boy who was related to a local leader and former *mujahedin* commander. The

family was able to use its political connections to secure an investigation, and a court convicted two of the KPF soldiers involved to 10 years in prison.

Compensation for civilian deaths caused by the KPF can also be obtained if villages complain to local authorities who have lines of communication to the force or if they stage protests, for example by blocking roads.³⁵ More commonly, it seems, villagers lodge protests with the local authorities that are most accessible to them at the district or provincial level. Sometimes investigations are promised, but usually nothing further happens. A member of the Afghan Independent Human Rights Commission said in 2018 that in 13 years of working in the eastern region, she could recall no case of being able to access the paramilitary forces operating in the region to question them about reports of abuse.³⁶

The CIA's Army and Peace Talks

Recent progress in efforts to negotiate a peace agreement in Afghanistan brings the future of the militias into policy focus. The direct talks between the US government and Taliban on US troop withdrawals that started in Qatar in July 2018 had raised some hope that this time a negotiated end to the war might be in sight. After six rounds, the two sides by May 2019 had hammered out a “draft framework” that promised reduction and eventual withdrawal of US forces and a commitment by the Taliban not to permit international “terrorist” groups to operate from Afghanistan. Renewed talks in Doha in July, and another round in early August, confirmed progress on these basic points as well as a cease-fire, although a consistent and inclusive intra-Afghan negotiation has still not taken place.

The current momentum in the talks reflects the US government’s concerns over reducing its military presence in Afghanistan as the presidential election campaign in the US is heating up.³⁷ President Donald Trump has made no secret of his desire to withdraw militarily from a conflict where no victory is in sight. November 2020 is a key deadline in this calculus. Another deadline is more immediate and driven by politics in Afghanistan.

Since direct talks between the US and Taliban started, the government in Kabul has been consumed by fears that the US would negotiate a separate peace with the Taliban, withdraw its remaining 14,000 forces, and leave the government to its fate. Possibly worse, in the eyes of President Ashraf Ghani, the US might replace his government (with which the Taliban refuses to negotiate) with an interim Afghan administration. The caretaker government would then negotiate a comprehensive peace agreement covering the political and social order in Afghanistan with the Taliban.

³⁵ Raghavan, 2015.

³⁶ Masal, 2018.

³⁷ Lamothe, Dan, et al. (2019, August 1). “U.S. Preparing to withdraw thousands of troops from Afghanistan in initial deal with Taliban.” *Washington Post*. Retrieved from: https://www.washingtonpost.com/world/national-security/us-preparing-to-withdraw-thousands-of-troops-from-afghanistan-in-initial-deal-with-taliban/2019/08/01/01e97126-b3ac-11e9-8f6c-7828e68cb15f_story.html?utm_term=.4e96537ec09d...

Against this background, the upcoming presidential elections in Afghanistan scheduled for September 28, 2019 have acquired much significance. Ghani's domestic opponents call for a delay of elections and the formation of a caretaker government; this would give time and flexibility for talks on a comprehensive peace agreement, and possibly include themselves. Most of the 18 candidates running for president take this position, including the principal contenders.³⁸ Ghani, for his part, maintains that elections must be held on time to give the new government legitimacy to negotiate a peace agreement, and is campaigning vigorously for a reelection that at least would strengthen his bargaining power vis-à-vis the US. Washington so far has chosen an intermediate position on the election-peace-talks sequencing issue, holding out September 1, 2019 as the target for reaching a bilateral framework agreement with the Taliban.

While the political maneuverings around the peace process intensify, formal talks on the substantive issues of a comprehensive peace agreement have yet to start. This might include the legal framework for political, social, economic and other human rights, possible constitutional revisions, provisions for accessing political power, possible power-sharing formulas, the structure of the post-war armed forces, and the future role of foreign military forces.

If an Afghan agreement were modeled on the peace accords promoted by the UN since the early 1990s, the CIA's army would have to be disbanded. Almost all internal war settlements during the past three decades have provided for partial demobilization and restructuring of the armed forces of the belligerents – including paramilitary forces and militias. The 2001 Bonn Agreement for Afghanistan likewise opened for security sector reform. The 2003 UN program for disarmament, demobilization and reintegration (DDR) discussed above covered some 80,000 armed fighters in military organizations that mostly were structured like militias.

The case for including a similar program in a forthcoming peace agreement is compelling. Militias that operate outside the control of the central state and the chain of command of its armed forces will undermine the process of state formation and the prospects for a sustainable peace, as the experience of the massive international operation during the past 18 years demonstrates. The continued de facto fragmentation of military power was a main reason for the modest progress after 2001 to rebuild and strengthen the central Afghan state. Foreign-financed militias have been the scourge of Afghan history in the modern era as well as earlier centuries. Shielded from accountability by powerful foreign protectors and freed from the need to secure local support, they can run a prolonged, under-the-radar, dirty war, as the record of the CIA's army shows.

While the case is compelling, a realistic policy must recognize the difficulties if they are to be managed. For a start, the parties concerned must agree on a basic legal framework for dealing with all the Afghan military forces. Achieving such agreement will be more difficult now than it was in 2001; the Bonn peace agreement was

³⁸ Ghubar, Gulabuddin. (2019, June 29). "Presidential Candidates Suggested Election Delay to UN: Hakimi". *Tolo News*. Retrieved from: <https://www.tolonews.com/elections-2019/presidential-candidates-suggested-election-delay-un-hakimi>

essentially a victory statement by the forces fighting the Taliban. This time around, hard trade-offs and compromises between deeply antagonistic adversaries will likely be necessary. Implementation poses a separate set of issues. Efforts to disarm and integrate militias after 2001 were short-lived, as noted, reflecting the pressures of renewed war and vested interests in a fragmented military power, as well as the demanding and long-term task of building a regular national army. This time around, two decades of CIA support for local militias and paramilitaries has left a deeply problematic legacy.

Even if the US agrees to withdraw its regular forces from Afghanistan, Washington may well be interested in keeping “intelligence assets” for counter-terrorist purposes.³⁹ Such presence would require some local infrastructure of support. To this end, the Agency could easily maintain some of its local units, and – given Afghanistan’s forbidding geography and complex social environment – probably mount operations on a fairly significant scale. The chief US negotiator with the Taliban, Zalmay Khalilzad, has recently mentioned the militias as one of several items to be included in a general peace agreement.⁴⁰ Pompeo, the previous CIA-director and present Secretary of State, has not.

If violence continues at some level after the agreement is signed, militias will be in much demand in the political market place. The well-trained and well-equipped CIA militias would be particularly valuable. Whatever their allegiance to the CIA in the past, Afghan history is famously replete with tales of rapidly shifting allegiances and a pragmatic approach to alliances.

The CIA paramilitaries constitute a formidable set of actors in their own right. Given their highly paid and somewhat privileged status, they are unlikely to welcome a drastic reduction in pay that would accompany integration into the regular armed forces or demobilization. If cut loose by the CIA, they may be reborn as private armies or “security guards” in the service of powerful individuals, or operate autonomously to prey on civilians and commercial sources.⁴¹ Either possibility is in line with patterns of collective violence in modern Afghan history.

Given the nature of the CIA’s army, a DDR program should be a priority item in a comprehensive peace agreement and be vigorously implemented. The army’s continued existence would call into question the sustainability of an eventual peace settlement forged by the Afghans and their international supporters.

³⁹ See comments by General/Ambassador Karl W. Eikenberry, in Landler, Mark; Cooper, Helene; and Schmitt, Eric. (2019, January 28). “Taliban Talks Raise Question of What U.S. Withdrawal From Afghanistan Could Mean,” *The New York Times*. <https://www.nytimes.com/2019/01/28/us/politics/us-withdrawal-afghanistan-taliban.html>

⁴⁰ Gannon, Kathy. (2019, July 6). “U.S. Envoy Hails Latest Talks with Taliban as the Best Ever.” *AP*. Cited in <https://time.com/5621469/us-envoy-talks-taliban-afghanistan/>

⁴¹ Some NDS Special Forces are already reported to “provide security” for particular politicians. Tolo News. <http://prod.tolonews.com/afghanistan/experts-criticize-use-nds-special-forces-guards-elite>

While Waiting for a Peace Agreement

Efforts to end impunity for serious human rights violations and possible war crimes allegedly committed by the militias and paramilitaries are important in themselves. They are also likely to strengthen rather than weaken the prospects for a peace settlement acceptable to the US and the Afghan governments. As military experts on counterinsurgency have long recognized, tactical victories gained by unrestrained and unaccountable use of force against civilians will undermine the overall strategic objective of winning the support of the population.

Ending impunity means addressing the accountability issue in both its legal and moral dimensions. Legal accountability requires US and Afghan authorities to urgently investigate and prosecute alleged human rights abuse and war crimes involving the militias. Reports by the UN and the Afghan and international human rights communities have documented compelling evidence of such abuse and possible war crimes. The Afghan government can investigate and take further legal action under Afghan laws against members of the illegal armed groups, notably the CIA-sponsored Khost Protection Force. Afghan military authorities or special commissions can investigate and take further action against the paramilitaries with formal institutional links to the Afghan government, notably the NDS Special Forces. To strengthen institutional oversight and accountability, UNAMA reports recommend that the CIA-supported NDS Special Forces be integrated into the regular Afghan army and made subject to its regulations. UNAMA also routinely recommends that the illegal armed groups be disbanded.

Absent a political agreement for a durable cease-fire or peace, structural reforms of the CIA's army, including disbanding the illegal armed groups, are not likely to find much support in US or Afghan government circles. A consistent judicial offensive against impunity would be a shade easier.

Steps to end impunity conform to broadly accepted norms and could invoke precedents. As discussed above, even CIA-supported illegal armed groups were not always protected from the legal consequences of their actions. Egregious attacks on a high-profile civilian (a Kandahar police chief) and a victim whose family was politically well-connected (the family of young Khost boy) brought prosecutions and convictions. In addition, at least one widely reported case of grave abuse committed by US Special Forces (or CIA operatives) and their Afghan partners against civilians has been investigated by ad hoc Afghan commissions and a mixed US-Afghan commission.⁴² Nevertheless, a more vigorous campaign against impunity would require a great deal of active US engagement – certainly much more than US civilian and military authorities have demonstrated to date.⁴³

⁴² Up to 17 male villagers in Wardak province were detained at a US camp in Wardak in the period October 2012-February 2013 and disappeared. Only two bodies were found.

⁴³ Suhrke, Astri. (2015, January 29). "From Principle to Practice: US Military Strategy and Protection of Civilians in Afghanistan." *International Peacekeeping*, vol. 21 no. 5 pp. 1-19.

More fundamentally, efforts to end the impunity of the CIA's army require a focus on the CIA itself. As the enabling agent of the militias and the paramilitaries, the Agency ultimately bears responsibility for their actions – at least in a moral-political sense if not in strictly legal terms.⁴⁴ That responsibility, in short, is to ensure that its Afghan Army acts in line with Afghan law and relevant international humanitarian and human rights laws. Responsibility also rests with the US government and wider American public, which permit the CIA to operate armed groups that have no legal standing in the country where they operate, to support the paramilitary forces of its local intelligence partner, and to run operations shielded from transparency and public accountability.

Recommendations

The above analysis suggests some central policy steps that would help address the problematic nature of the CIA's Afghan army:

- Include a comprehensive DDR as a priority item for peace negotiations. DDR provisions in a final agreement should disband the CIA-supported militias, disband or regularize the paramilitaries connected to the NDS, and have enabling clauses for strict monitoring of implementation.
- Re-invest in efforts to end impunity for human rights violations attributed to the militias and paramilitaries supported by the CIA. Such steps are obligated by international law and are in line with the elemental rule that short-term tactical victories by aggressive use of force against civilians will undermine the overall strategic objective of winning the support of the population.
- Increase political pressure on the US Congress to hold the CIA and its Afghan army accountable under relevant bodies of law. This means closer Congressional oversight over CIA-supported operations in Afghanistan, improved flow of information to the public, and preparations for eventual legal action.
- Increase political pressure on the Afghan government to investigate and hold the militias and the paramilitaries accountable under relevant bodies of law.

⁴⁴ Neta Crawford has persuasively argued the case in relation to civilian casualties from air strikes. When the institutional structure of an armed unit and methods of warfare carry a high risk of “collateral damage” – e.g. air strikes against enemy soldiers operating in populated areas – causing civilian casualties carries a moral responsibility even if the killings were unintentional and cannot be prosecuted under existing laws allowing for “military necessity” and related norms. Crawford, Neta C. (2013). *Accountability for Killing: Moral Responsibility for Collateral Damage in America's Post-9/11 Wars*. Oxford: Oxford University Press.