

EWA SUWARA

PUBLIC PROCUREMENT
AS A TOOL OF STATE-BUILDING
IN POST-CONFLICT SITUATIONS:
THE CASE OF AFGHANISTAN



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WARSAW 2016

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The information provided in this publication represents the opinions of the author and does not necessarily reflect the official position of the institution with which the author is professionally associated.

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I hope that reading of this publication may acquaint the reader with the diverse emotions that I encountered while researching its subject and subsequently completing its pages.

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INITIALISMS and OTHER ABBREVIATIONS

Initialism/ Abbreviation	Explanation
AAA	Accra Agenda for Action
AACA	Afghanistan Assistance Coordination Authority
ABP	Afghan Border Police
ACBAR	Agency Coordination Body for Afghan Relief
ACP	Afghan Customs Police
ACSI	Afghanistan Civil Service Institute
ACT	Accountability and Transparency (Project)
ADB	Asian Development Bank
AIA	Afghan Interim Administration
AIAF	Afghanistan Interim Authority Fund
AIMS	Afghanistan Information Management System
AKDN	Aga Khan Development Network
ANA	Afghan National Army
ANCB	Afghan NGO Coordination Bureau
ANCOP	Afghan National Civil Order Police
ANDS	Afghan National Development Strategy
ANP	Afghan National Police
ANSF	Afghan National Security Forces
ANSO	Afghan NGO Security Office
APEC	Asian-Pacific Economic Cooperation
APRTF	Afghanistan Peace and Reintegration Trust Fund
ARDS	Afghanistan Reconstruction Development Services
AREU	Afghanistan Research and Evaluation Unit
ARTF	Afghan Reconstruction Trust Fund
ASEAN	Association of Southeast Asian Nations
ASFF	Afghanistan Security Forces Fund

Initialism/ Abbreviation	Explanation
ATA	Afghan Transitional Administration
AUP	Afghan Uniform Police
BAAG	British (and Irish) Agencies Afghan Group
CAO	Control and Audit Office
CID	Criminal Investigation Division
CIDA	Canadian International Development Agency
CIPS	Chartered Institute of Purchasing and Supply
CKP	Charles Kendall Partners
CMO	Contract Management Office
CNPA	Counter Narcotics Police for Afghanistan
CNTF	Counter Narcotics Trust Fund
COIN	Counterinsurgency
COMESA	Common Market for Eastern and Southern Africa
COMISAF	Commander of International Security Assistance Force
CPA	Country Programming Aid
CPI	compliance and performance indicators
CSO	Central Statistics Office
CSTC-A	Combined Security Transition Command Afghanistan
CTP	Counter Terrorism Police
DAB	Da Afghanistan Bank
DAC	Development Assistance Committee
DAD	Development Assistance Database
DAG	Development Assistance Group
DDR	demobilisation, disarmament, reintegration
DFID	Department for International Development
EC	European Community
EIDHR	European Instrument for Democracy and Human Rights
ENNA	European Network of NGOs in Afghanistan
EPAP	Emergency Public Administration Project
EU	European Union
EUPOL	European Union Police Mission
EURATOM	European Atomic Energy Community

Initialism/ Abbreviation	Explanation
EURODAD	European Network on Debt and Development
FAO	Food Agriculture Organization
FfP	Fund for Peace
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GNI	gross national income
GPA	Government Procurement Agreement
GPEG	Government Procurement Experts' Group
GPPO	German Police Project Office
GPPT	German Police Project Team
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
HIIK	Heidelberger Institut für Internationale Konfliktforschung
HIPC	heavily indebted poor countries
HOOAC	High Office of Oversight and Anti-corruption
HQ	Headquarters
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
IDA	International Development Association
IDP	internally displaced persons
ICAO	International Civil Aviation Organisation
ICC	Islamic Coordination Council
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of the Red Cross
IDB	Islamic Development Bank
IDLG	Independent Directorate for Local Governance
IFC	International Financial Cooperation
IFS	Instrument for Stability
IG	implementing group
IMF	International Monetary Fund
IOM	International Organization for Migration
ILO	International Labour Organization
IPCB	International Police Coordination Board

Initialism/ Abbreviation	Explanation
IPSAS	International Public Sector Accounting Standards
ISAF	International Security Assistance Force
IDB	Islamic Development Bank
JCMB	Joint Coordination Monitoring Board
JEMBS	Joint Electoral Management Body Secretariat
JICA	Japan International Cooperation Agency
KBR	Kellogg Brown & Root
LDC	least developed countries
LICUS	low-income countries under stress
LLA	Law on Local Administration of 2000
LLDC	landlocked least-developed countries
LOTFA	Law and Order Trust Fund for Afghanistan
MAPS	methodology for assessment of national procurement systems
MDG	Millennium Development Goals
MDRI	Multilateral Debt Relief Initiative
MFA	Ministry of Foreign Affairs
MIC	middle-income countries
MIGA	Multilateral Investment Guarantee Agency
MISFA	Microfinance Investment Support Facility for Afghanistan
MoF	Ministry of Finance
NAFTA	North American Free Trade Area
NATO	North Atlantic Treaty Organization
NBP	Non-Binding Principles
NCB	NGO Coordinating Body
NDS	National Directorate for Security
NGO	non-governmental organisation
NPP	National Priority Programs
NTM-A	NATO Training Mission-Afghanistan
OAS	Organization of American States
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
OEF	Operation Enduring Freedom

Initialism/ Abbreviation	Explanation
OIC	Organisation of the Islamic Cooperation
PA	procurement agent
PAA	Provincial Administrative Assembly
PACBP	Public Administration Capacity Building Project
para.	paragraph (in laws and other legal documents)
PID	Project Information Document
POERF	Post-Operations Emergency Relief Fund
PPU	Procurement Policy Unit
PRT	Provincial Reconstruction Team
PSIB	World Bank Programmatic Support for Institution Building
RFP	request for proposals
RFQ	request for quotations
RoL	rule of law
SAARC	South Asian Association for Regional Cooperation
SBD	Standard Bidding Documents
SG	Steering Group
SIDA	Swedish International Development Cooperation Agency
SIGAR	Special Inspector General for Afghanistan Reconstruction
SPC	Special Procurement Commission
SWABAC	Southwest Afghanistan and Baluchistan Agency for Coordination
TMAF	Tokyo Mutual Accountability Framework
TTP	Tehrik-i Taliban Pakistan
UCDP	Uppsala Conflict Data Program
UN(O)	United Nations (Organization)
UNAMA	United Nations Assistance Mission to Afghanistan
UNCHS	United Nations Centre for Human Settlements (HABITAT)
UNCITRAL	United Nations Commission for International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund

Initialism/ Abbreviation	Explanation
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNIDO	United Nations Industrial Development Organization
UNIDROIT	International Institute for the Unification of Private Law
UNIFEM	United Nations Development Fund for Women
UNOCA	UN Office of the Coordinator for Afghanistan; also United Nations Office for the Coordination of Humanitarian and Economic Assistance Programmes relating to Afghanistan Coordination of Assistance
UNOCHA	United Nations Office of Coordination of Humanitarian Assistance
UNODC	United Nations Office on Drugs and Crime
UNOPS	United Nations Office for Project Services
UN/PD	United Nations Procurement Division
UNSMA	United Nations Special Mission for Afghanistan
UNWomen	United Nations Development Fund for Women
USA	United States of America
USAID	United States Agency for International Development
WB	World Bank
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization
\$	US dollars

Introduction

1. The significance of public procurement as a tool of state-building

An effective, efficient and transparent system of public procurement plays an important role in the functioning of a state. As stated by the Organisation for Economic Cooperation and Development, public procurement accounts for 12–20% of total expenditure globally.¹ For non-OECD countries, including those classified as developing and post-conflict, public procurement is valued at approximately 4.5% of total Gross Domestic Product.² Consequently, spending public resources through procurement impacts both the economic and social functioning of any state.

Public procurement is relevant to economic sectors managed through public finance and, in the case of developing states, is used to distribute development assistance. The moment that a given state accepts a certain legal model for the system of public procurement, the entities of public finance are bound by the legal provisions therein if they purchase supplies, construction³, and services using public resources. This obligation is relevant both to developed and developing states, regardless of their level of development. In developing states, ‘international actors’ (a term discussed in depth in point 10 of the introduction) apply their own regulations to the process of procurement and in this way disburse development aid, while the recipient has its own domestic regulatory system at its disposal.

The complexity of the world today, characterised by interconnectivity of political, economic, and social interests, as well as security priorities, demands analysis of the situation of a given state within a web of interdependence which becomes ever more challenging and requires the inclusion of various elements. Prioritising the interests of international actors may lead to conflicts of an inter-

¹ OECD, Why is procurement important?, *Factsheet*, Paris: OECD 2006, p. 2.

² *Ibid.*

³ It shall be noted that in this publication the word ‘construction’ is used interchangeably with the word ‘work’ in the discussion about public procurement in Afghanistan. The original version of the unofficial and official translation of the Afghan documents on procurement includes the word ‘works’ (in place of ‘construction’). In order to preserve originality of the documents, the word has not been modified.

or intrastate character. This may result in the weakening or disintegration of state institutions.

The concept of a security-development nexus has its supporters and opponents. The supporters, led by the World Bank, argue that a threat to personal and institutional security constitutes a challenge to economic development and may become the source of an intrastate conflict.⁴ In order to prevent cycles of instability and violence, it is important to strengthen institutions and good governance, ultimately leading to security, justice, and employment.⁵ As pointed by the World Bank, there is a need for a new social contract based on institutions and good governance with the participation of citizens.⁶ The supporters of this approach underline that, so far, none of the conflict or post-conflict states has achieved the Millennium Development Goals drafted by the United Nations.⁷ At the same time, opponents argue that focussing on such concepts contributes to the postponement of further work on adequate development policies corresponding to the needs of recipients. Furthermore, it results in redirecting all attention to the political interests of those providing the assistance.⁸ Mixing security and development may cause more harm than good.⁹ In their opinion, promoting such an approach contributes to a sudden burst of development industry as a way of remodelling the mandate of the international actors in the name of innovative policies.¹⁰ Moreover, the concept of a security-development nexus is not derived from any lessons learnt in the area of international intervention, nor does it originate from an academic consensus or from proof that it constitutes an effective tool of international engagement in building security and peace in the world.¹¹

Considering the arguments of either side, it is worth pointing out that hitherto there have been no indicators to measure the effectiveness of the actions of international actors with regard to state-building. On one hand, this

⁴ World Bank, *World Development Report 2011. Conflict, Security and Development*, Washington DC: World Bank http://siteresources.worldbank.org/INTWDRS/Resources/WDR2011_Full_Text.pdf [accessed: 2 February 2014].

⁵ R.B. Zoellick, *The Middle East and North Africa: A new social contract for development*, speech presented in Peterson Institute, USA, 6 April 2011, <http://www.worldbank.org/en/news/speech/2011/04/06/middle-east-north-africa-new-social-contract-development> [accessed: 12 October 2013].

⁶ *Ibid.*

⁷ *Ibid.*

⁸ D. Chandler, *The security-development nexus and the rise of 'anti-foreign policy'*, "Journal of International Relations and Development", no. 10, 2007, p. 364, <http://www.palgrave-journals.com/jird/journal/v10/n4/abs/1800135a.html> [accessed: 17 October 2013].

⁹ *Ibid.*

¹⁰ M. Duffield, *The liberal way of development and the development-security impasse: Exploring the global life-chance divide*, "Security Dialogue", vol. 41, no. 1, 2010, pp. 53–76, <http://sdi.sagepub.com/content/41/1/53.abstract> [accessed: 17 October 2013].

¹¹ D. Chandler, *The security-development...*, *op. cit.*

defect impedes or even prevents gradual improvement in the methods applied. On the other, it enables an adjustment in approaching the individual interests of the international actors. An indication of the effectiveness of some aspects of this process is produced by the achievement of results expected by the donors, without reliable evaluation of the effectiveness of overall international support.

2. Afghanistan

Fig. 1. Administrative map of Afghanistan



Source: <http://www.mapsofworld.com> [accessed: 13 March 2014].

2.1. The political and socio-economic situation

Trade as an economic process derived from the bilateral exchange of goods and services is one of the oldest elements of the functioning of societies. This kind of exchange may occur among members of the same community, or among

diverse groups, or between nations.¹² For a considerable amount of time cultural diversification dominated and numerous trade transactions took place involving foreigners who came from many regions of the world to the mountainous areas of Afghanistan.¹³ A trade route, connecting China with Europe and the Middle East, passed through Afghanistan. Due to its geopolitical location, connecting three cultural and political regions – the Indian subcontinent to the south-east, Central Asia to the north and Iran to the west – the Afghan tribes have participated in transactions and negotiated among themselves and with foreign traders for a very long time.

When the modern state of Afghanistan was created in the 18th century,¹⁴ economic exchange was upgraded to the dimension of an affair of state. However, a lack of sources of information about this leads one to the conclusion that the governing rules were of an informal character and depended primarily upon the negotiation skills of individuals. These skills are used nowadays by Afghan society, both in politics and in trade relations.

In many international analytical indexes Afghanistan is labelled as ‘developing’, ‘failed’, ‘weak’, ‘conflict-affected’, and ‘post-conflict’. For geopolitical, social and economic reasons, Afghanistan belongs to the group of least-developed countries without access to the sea.¹⁵ All of these factors have influenced the functioning of Afghan state institutions as well as its public sector.

2.2. Geography

Afghanistan is a landlocked state situated in Central Asia. Three-quarters of its territory is covered by mountains which divide it into north and south (whereas the west is covered by desert). Its economy is based on agriculture, but only 12% of the land can be cultivated.¹⁶

¹² E. Suwara, *Prawo handlowe jako narzędzie międzynarodowej współpracy rozwojowej na przykładzie Malawi*, in: K. Czaplicka (ed.), *Wyzwania międzynarodowej współpracy na rzecz rozwoju*. Warsaw: Oficyna Wydawnicza Aspra-JR 2008.

¹³ T. Barfield, *Afghanistan. A Cultural and Political History*. Princeton: Princeton University Press, 2010, p. 45.

¹⁴ R. Moschtaghi, *Max Planck Manual on Constitutional Law (vol. I): Structure and Principles of the State*. Heidelberg: Max Planck Institute for Comparative Public Law and International Law, 2009, p. 13.

¹⁵ See annex 1.

¹⁶ J. Modrzejewska-Leśniewska, *Afghanistan*. Warsaw: Wydawnictwo TRIO, 2009, p. 16; G.D. Bakshi, Afghanistan as a rentier state model: Lessons from the collapse, *Strategic Analysis*, vol. 22, no. 5, 1998, <http://www.idsa-india.org/an-aug8-8.html> [accessed: 20 February 2014].

The country's geographical location has always influenced the development of Afghanistan.¹⁷ The state possesses extensive natural resources, especially copper, iron, and precious and semi-precious gems. It remains a considerable supplier of water to neighbouring countries, although it uses only 10% of its supplies to irrigate its land and as a source of renewable energy.¹⁸

2.3. Population

The first and, to this point in time (considering period of research), last public population census took place in 1979.¹⁹ In line with the data available at the time, there were 14.1 million people living in Afghanistan.²⁰ Up to the year 2001, as a result of conflict, over 1.5 million Afghans were killed and over 8 million displaced.²¹ The Afghan Central Statistical Office (CSO) estimated that annual population growth was 2.03%,²² which could lead one to the assumption that in 2001 there were 20.4 million people living in Afghanistan,²³ of which a considerable majority were illiterate.²⁴ In 2012, only 5.8% of women and 34% of men had acquired even basic education.²⁵ In 2011, only 4.2% of the population used the Internet.²⁶ According to the World Bank and the Afghan

¹⁷ M.M. Stanekzai, *Building a viable state*, in: *Challenges and Dilemmas of State-Building in Afghanistan*. Development Outreach. World Bank Institute, 2008, p. 34, <http://siteresources.worldbank.org/WBI/Resources/Afghanistan-All-Articles-Oc09.pdf> [accessed: 13 December 2013].

¹⁸ A. Ghani, *A Ten-Year Framework for Afghanistan. Executing the Obama Plan... and Beyond*. A report by the Atlantic Council. Washington: Atlantic Council of the United States, 2009, p. 8.

¹⁹ Afghan Central Statistics Office, <http://cso.gov.af/Content/files/Population.pdf> [accessed: 14 January 2014], <http://databank.worldbank.org/data/views/variableselection/selectvariables.aspx?source=world-development-indicators> [accessed: 14 January 2014].

²⁰ Afghan Central Statistics Office, <http://cso.gov.af/Content/files/Population.pdf> [accessed: 14 January 2014].

²¹ *Ibid.*

²² *Ibid.*

²³ According to IMF data, in 2002 there were 21.8 million people living in Afghanistan. See: IMF, *Islamic State of Afghanistan. Rebuilding a Macroeconomic Framework for Reconstruction and Growth*. Country Report, Washington, DC: International Monetary Fund 2003, no. 03/299, p. 15, <https://www.imf.org/external/pubs/ft/scr/2003/cr03299.pdf> [accessed: 10 April 2013].

²⁴ CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html> [accessed: 14 January 2014]. According to the IMF, in 2001 64% of the Afghan population was illiterate (49% of men and 79% of women). See: IMF, *Islamic State of Afghanistan...*, *op. cit.*

²⁵ UNDP, *Human Development Report*, 2013, <http://hdr.undp.org/sites/default/files/Country-Profiles/AFG.pdf> [accessed: 10 March 2014].

²⁶ Internet World Statistics: <http://www.internetworldstats.com/asia/af.htm> [accessed: 23 December 2014].

Ministry of Economy, approximately 36% of the people live in extreme poverty.²⁷ Furthermore, in 1979, 77% of the population lived in rural areas.²⁸

For centuries, Afghanistan has been inhabited by approximately 60 ethnic groups that differ with regard to their appearance, language, style of life, customs, and position in the social hierarchy. They consist of tribes and clans that communicate using nearly 50 languages and dialects.²⁹ They have never perceived themselves as being distinct nationalities, and thus do not feel the necessity to strive for their own separate states. They have common economic and political interests,³⁰ and a multi-ethnic state has been acceptable to them.³¹ 'If insurgencies topple established Afghan governments, their stable replacements emerge from the crucible of civil war'.³²

Local rebels have united in order to remove the government in Kabul from power, but tend to lack the requisite internal coherence which would constitute grounds for creating their own regime.³³ 'When faced with a common threat or united in a common goal, such groups readily set aside the disputes that ordinarily divide them, only to rediscover them once the goal has been achieved'.³⁴ Afghanistan is a weak state, but has a strong tribal society.³⁵

²⁷ World Bank, Ministry of Economy of the Islamic Republic of Afghanistan, *Poverty Status in Afghanistan. A profile based on the National Risk and Vulnerability Assessment (NRVA) 2007/08*, 2010, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/07/12/000333037_20110712011847/Rendered/PDF/631800WP0Pover00Box0361508B0PUBLIC0.pdf [accessed: 23 December 2014].

²⁸ Afghan Central Office of Statistics, <http://cso.gov.af/Content/files/Population.pdf> [accessed: 14 January 2014].

²⁹ Pashtuns, Tajiks, Hazaras, Uzbeks, Aimaq, Turkmen, Baloch, Nuristani and others, *inter alia*: Taymen, Kyrgyz, Mongols, Pashai, Arabs, Qizilbash, Jews, Sikhs, Pamiri, Gujur, Farsiwan, Kurds, Brahui. As Modrzejewska-Leśniewska underlines: 'nowadays the *de facto* existence of these smaller groups remains unclear'. See: J. Modrzejewska-Leśniewska, *Afghanistan...*, *op. cit.*, p. 21.

³⁰ T. Barfield, *Afghanistan's ethnic puzzle*, "Foreign Affairs", vol. 90, no. 5, 2011, p. 55.

³¹ *Ibid.*, p. 56.

³² *Ibid.*, p. 57.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ M. Fischer, B. Schmelzle, *Building Peace in the Absence of States: Challenging the Discourse on State failure. Berghof Handbook Dialogue Series*. Berlin: Berghof Research Centre for Constructive Conflict Management, 2009, p. 68; A. Ghani, *Islam and State-building in a Tribal Society, Afghanistan: 1880–1901*, "Modern Asian Studies", vol. 12, no. 2, 1978. In tribal society 'most of the customary sources of legitimacy are based on norms of trust and reciprocity. The core constitutive values that lie at the heart of traditional legitimacy are the values that enable kin groups, tribes and communities to exist, satisfy basic human needs and survive through time. Traditional legitimacy rests on complex patterns of power, responsibility and obligation, which enable social groups to exist and co-exist'. (Noted by Dupree in 1973, then Kevin Clements in 2009. See: L.M. Edwards, *State-building in Afghanistan: A case showing the limits?*, "International Review of the Red Cross", vol. 92, no. 880, 2010, p. 14).

2.4. Centralisation of the state

Afghanistan has been a uniform state for over 250 years.³⁶ Acclaimed as the founder of the modern state and legal system,³⁷ Abdur Rahman Khan came to power in 1880.³⁸ He was known as the 'Iron Emir',³⁹ and his rule, unlike that of his predecessors, was characterised by centralisation, with regard to methods both of governance and of law-making without intermediaries. Kabul became the main centre of power, with Pashtuns as the most privileged political group. Abdur Rahman Khan put down 40 different uprisings, killed over 100,000 people,⁴⁰ and negotiated the present shape of the borders of Afghanistan with the Durand Line, artificially dividing the Afghan tribes as a consequence.⁴¹ This centralised rule proved an enormous challenge for his successors. In the following decades, up to 2002, all Afghan rulers were forcibly removed from their positions,⁴² exiled, or killed, and the state experienced monarchy and republicanism.⁴³

At present, Afghanistan is a republic.⁴⁴ Articles 136 to 142 of the Constitution of 2004 provide for a central administration, including 34 provinces⁴⁵ divided

³⁶ Afghanistan is a member of the following international organisations: ADB, FAO, G-77, IAEA, IBRD, ICAO, IDA, IDB, ILO, IMF, Interpol, IOM, MIGA, OIC, OSCE (partner), SAARC, Shanghai Cooperation Organisation (as an observer), UN, UNCTAD, UNESCO, UNIDO, WHO, WIPO, WTO. Source: *CLA World Factbook*. Through most of the time between the 6th century BC and 18th century AD this state was divided among diverse empires of Central Asia, India, and Iran. Ruling Persian and Turkish dynasties taxed and governed cities, trade routes, and most fertile grounds through cooperation with local landlords. Their influence did not encompass the mountainous terrain inhabited by Pashtuns, which enabled this group to grow steadily in power. Following the death of the Persian ruler Nadir Shah, it was the Pashtuns who took power. In 1747 the independence of Afghanistan was proclaimed, with Ahmad Shah Durrani as a ruler. The mode of state governing was not altered substantively, with the exception of the establishment of a group of governors (family members) to rule, with significant autonomy, each city. The model of rule was modified only with the rise to power of Abdur Rahman Khan in 1880. (See: T. Barfield, *Afghanistan's ethnic puzzle...*, *op. cit.*, p. 56 as well as J. Modrzejewska-Leśniewska, *Afghanistan...*, *op. cit.*, p. 28).

³⁷ The history of the development of justice and law systems in Afghanistan is described in detail in: ALEP, *An Introduction to the Law of Afghanistan* (2nd edition). Afghanistan Legal Education Project. Stanford: Stanford Law School, 2009, pp. 1–252.

³⁸ *Ibid.*, p. 1.

³⁹ T. Barfield, *Afghanistan's ethnic...*, *op. cit.*, p. 56.

⁴⁰ *Ibid.*

⁴¹ See annex 1.

⁴² See annex 2.

⁴³ J. Modrzejewska-Leśniewska, *Afghanistan...*, *op. cit.*

⁴⁴ The Islamic Republic of Afghanistan.

⁴⁵ Badakhshan, Badghis, Baghlan, Balkh, Bamyan, Daykundi, Farah, Faryab, Ghazni, Ghor, Helmand, Herat, Jowzjan, Kabul, Kandahar, Kapisa, Khost, Kunar, Kunduz, Laghman, Logar, Nangarhar, Nimroz, Nuristan, Paktika, Paktiya, Panjshir, Parwan, Samangan, Sar-e Pul, Takhar, Uruzgan, Wardak, and Zabul (see: CIA World factbook <https://www.cia.gov/library/publications/the-world-factbook/fields/2051.html> [accessed: 15 March 2014]).

into 153 municipalities (responsible for village affairs), with the municipalities covering 398 districts. The Constitution underlines that Islam is the state religion. It permits the establishment of government and separation of powers with executive, legislative (two chambers), and judicial branches. The political system in Afghanistan is described as presidential, whereby the president also acts as the head of the government, which consists of 25 ministers.⁴⁶

2.5. The legal system

The character of a legal system and the conditions for its application depend, *inter alia*, upon a precise understanding of the word ‘justice’. A constitutional system is supposed to reflect the vision of a society based on what is and is not considered just.⁴⁷ Its definition depends, firstly, on culture and its integral elements such as religion and the values belonging to a certain community, and, secondly, on the government drafting laws.⁴⁸ Law is a part of a given culture.⁴⁹

In the case of Afghanistan, religious belief, which has played an important role in defining justice, still constitutes a central element of the system of law. Its principle goal was and continues to be the achievement of a state whose drafted and implemented laws derive from God. Thus, the law of the nation and of the state is Sharia.⁵⁰ This is a legal system which includes religious rules and constitutes the basis for all codes as provided in all past and current constitutions of Afghanistan.⁵¹

⁴⁶ See: <http://president.gov.af/en/links> [accessed: 15 March 2014].

⁴⁷ ALEP, *An Introduction...*, *op. cit.*, p. 2.

⁴⁸ *Ibid.*

⁴⁹ More about the relationship between culture and law in, e.g.: W. Barbasiewicz (ed.), *Główne kultury prawne współczesnego świata*. Warsaw: Wydawnictwo Naukowe PWN 1995.

⁵⁰ Sharia [Arabic: the road to be followed] is a law regulating the life of Islam for both the Sunni and Shia branches. It does not approve the separation of secular from religious life and for that reason regulates religious customs and the organisation of religious authority as well as the daily life of Muslims. According to Sharia, law must provide everything that is needed for the spiritual and physical development of the individual. More in: J. Bielawski, *Prawo muzułmańskie*, in: W. Barbasiewicz (ed.), *Główne kultury...*, *op. cit.*, pp. 100–128; P.H. Glenn, *Legal Traditions of the World*. Oxford: Oxford University Press 2004, pp. 170–221.

⁵¹ Article 3 of the Constitution provides that none of the laws shall contravene the religion of Islam. see: ALEP, *An Introduction...*, *op. cit.*, p. 2.

The Afghan legal system is therefore of a mixed nature,⁵² which means that it is a result of the influences of Western statute law,⁵³ Muslim law,⁵⁴ and customs established over a very long period of time.⁵⁵ From the 19th century onwards, the Afghan system of justice has been characterised by pluralism,⁵⁶ since apart from formal written law, the life of the individual has been influenced by informal tribal rules,⁵⁷ which often substitute for the official system of justice in practice.

2.6. Political and administrative control

The state structures of Afghanistan, established during the period beginning in 1880, share a series of characteristics that have developed over the years since. First of all, from a historical perspective, Afghanistan was a dynastic state.⁵⁸ A monarchical system remained in place for over two centuries, during which local landlords collected taxes and depended upon the patronage of the monarch.⁵⁹ This manner of dynastic rule did not come to an end until the 1970s.

⁵² More on the Afghan system of law between 1964 and 1979 and on the Afghan legal tradition in: B. Etling, *Legal authorities in the Afghan legal system (1964–1979)*, (no publication date), <http://www.law.harvard.edu/programs/ilsp/research/etling.pdf> [accessed: 23 February 2014].

⁵³ French thought, German and Italian laws, and radical Marxist legislation have all had a specific impact on Afghan law. See: A. Wardak, *Building a post-war justice system in Afghanistan*, “Crime, Law and Social Change”, vol. 41, no. 4, 2004, pp. 319–341, http://www.usip.org/sites/default/files/file/wardak_article.pdf [accessed: 23 February 2014].

⁵⁴ Both moderate and radical interpretations of Islam; A. Wardak, *Building...*, *op. cit.*, http://www.usip.org/sites/default/files/file/wardak_article.pdf [accessed: 23 February 2014].

⁵⁵ CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.htm> [accessed: 23 February 2014].

⁵⁶ B. Etling, *Legal authorities...*, *op. cit.*

⁵⁷ The formal system of law in Afghanistan was elitist, corrupt, and slow. Therefore there was not much support for its application among common Afghans. Especially in rural areas, institutions of informal justice systems, such as *Jirga*, *Maraka*, and *Shura*, have been traditionally used to solve problems. *Jirga* is an assembly of elders (or heads of given community) providing rulings on affairs that are important to the community or in the case of serious conflict occurring within or between tribes (e.g. land disputes, murder). It is characterised by a well-established social structure. *Maraka* corresponds to an assembly called to resolve civil and criminal affairs of lesser weight in the country or between villages. Its rules of procedure are less formalised in comparison to *Jirga*. *Shura* is a group which meets only for a defined purpose in order to agree on further steps to take. Most frequently, it is used to resolve disputes between individuals, family groups, and tribes. It is a council of local, religious or secular nature, and may consist of Ulemas (i.e. Islamic scholars) or of Elders. *Jirga*, *Maraka* and *Shura* apply Sharia, Islamic tribal, or common law, as well as the ‘collective wisdom of Elders’. ALEP, *An Introduction...*, *op. cit.*, p. 4 and A. Wardak, *Building...*, *op. cit.*, p. 320, http://www.usip.org/sites/default/files/file/wardak_article.pdf [accessed: 23 February 2014].

⁵⁸ W. Maley, *Afghanistan: An historical and geographical appraisal*, “International Review of the Red Cross”, vol. 2, no. 880, 2010, p. 861.

⁵⁹ *Ibid.*

Secondly, for many years Afghanistan has been a rentier state, with a national budget formed by international assistance.⁶⁰ In 1964, 49% of expenditure was made possible through this source of income.⁶¹ Steadily, the Afghan state has become dependent upon an unstable income, which has either decreased⁶² or increased as determined by the priorities of its donors.

Another specific feature with regard to Afghanistan was, as previously mentioned, the centralisation of state structures in Kabul and their disappearance from the provinces. State officials did not want to leave the capital to work in the provinces, while inhabitants of rural regions believed that state employees were not interested in the well-being of the common man and had no respect for informal, traditional structures.⁶³ In literature, such a division between communities of rural and urban areas has been called the ‘mud curtain’.⁶⁴

In Afghanistan the family, countryman, tribe, clan, and ethnic group are interlinked through language and social-economic circumstances, creating a web of connections of a political and social nature.⁶⁵ In addition, there is legal pluralism, dominated by traditional, informal structures, the predominant role of Islam, and the significant number of illiterate Afghans. The mountainous landscape, the deserts, and the geopolitical situation of this state may be responsible for making effective development of its institutions throughout its territory considerably more difficult.

During the last decade Afghanistan has been considered to be one of the most corrupt states in the world,⁶⁶ and this phenomenon has reached each sector. In such an environment, considering the historical conditions, state-building remains a true challenge for international actors.

⁶⁰ B. Rubin, *Fragmentation of Afghanistan. State Formation & Collapse in the International System*. Lahore: Vanguard Books 1996, p. 81. See also Chapter 3 on international assistance to Afghanistan before 1990.

⁶¹ *Ibid*, p. 296.

⁶² For example: the cessation of the Soviet Union’s support for president Najibullah in December 1991 contributed to the fall of the government of that time; S.M. Rais, L. Dupree (eds.), *Afghanistan: Big Gamble*. Kabul: Shah M Book Co 2003, p. 472.

⁶³ W. Maley, *Afghanistan...*, *op. cit.*, p. 862.

⁶⁴ The Afghan landscape is dominated by *qalas*, which are clay buildings protecting families. The ‘mud curtain’ refers to walls separating a family from outsiders. ‘...the village builds a “mud curtain” around itself for protection against the outside world, which has often come to the village in the past’. L. Dupree, *Afghanistan*. Princeton: Princeton University Press, 2002, pp. 248–251.

⁶⁵ A. Grissom, *Making it up as we go along: state-building, critical theory and military adaptation in Afghanistan*, “Conflict, Security & Development”, vol. 10, no. 4, 2010, p. 497.

⁶⁶ Transparency International: http://www.transparency.org/research/cpi/cpi_2006 [accessed: 10 March 2014].

3. Motives for choosing Afghanistan as a research subject

The choice of Afghanistan and the system of public procurement therein by the author as subjects of analysis is not random. Between 2008 and 2011, while working for the Common Security and Defence Policy (CSDP) mission, the author participated in work undertaken by the Afghan public administration, the objective of which was reform of the system of public procurement. Previously, while working for the United Nations Development Programme (UNDP) as a legal expert, the author was responsible for technical support for reform of the system of public procurement in Malawi. During this period she was able, for the first time, to observe international engagement in the distribution of public funds and in the coordination of international assistance. In all of these cases, the author had direct access to the persons, documents, and institutions involved in reforming the system of public procurement. Without such experience, the preparation of this publication would not have been possible.

4. The aim of the research, its thesis, and the specific issues identified

Principal aim of the research: analysis of a system of public procurement as a means of state-building in a post-conflict situation requires the determination of the manner in which regulation of public procurement in post-conflict states functions in practice and how it impacts the effectiveness of the execution of international assistance. Specific attention is paid to Afghanistan, which, in recent years, has become a priority aid recipient and where, following the fall of the Taliban regime,⁶⁷ reform of public procurement has taken place based on the UNCITRAL model law (1994).

In order to conduct an analysis of the implementation of legal norms in the area of public procurement in post-conflict states, it is necessary to discuss their content, to specify the source of their origin and the actors applying them, and to explain, based on international law, the factors that influence their implementation. All of these elements are integral parts of the analysis of the application of law in practice. Their complex presentation may impact the preparation of new international model solutions and contribute to an increase in the effectiveness of the said assistance.

Thesis of the research: the following research theses have been put forward:

- (1) **Afghanistan is a post-conflict state.** Conflict constitutes an element of context in which public procurement occurs. To thus label a state requires

⁶⁷ Taliban: a member of a fundamental Islamist movement. *Słownik Języka Polskiego*, PWN, <http://sjp.pwn.pl/slownik/2528651/talib> [accessed: 14 March 2014].

an explanation as to how conflict is defined in terms of international law, as well as a method of identification with regard to measuring its occurrence and the level of its intensity. Since geopolitical factors impact the practical implementation of regulations, such a thesis requires a discussion of the specificity of this phenomenon from intrastate and regional perspectives.

- (2) **State-building in Afghanistan is a process which has been driven by international actors since 2001. For them, such external assistance constitutes an instrument for the achievement of their objectives and, as such, is conditioned by them.** Recognising a state as being post-conflict enables the specification of types of external assistance and the international actors helping in state-building. As a result, it permits the identification of the regulations in the area of public procurement which are applied to the transference of aid.
- (3) **Model laws in the area of public procurement constitute a form of international assistance.** The application of model laws constitutes an element of reform of the system of public finance within state-building. The opening of the public procurement market bears economic significance. From the perspective of international actors, the adjustment of national regulations to international standards enables foreign entities to access the domestic market of the state being rebuilt. The drafting and subsequent transfer of model laws constitute a form of international assistance with the aim of accessing the market, and, as a consequence, increasing its competitiveness.
- (4) **The model procurement laws proposed by international actors are not always suitable instruments for post-conflict states.** The specifics of such states require that legal regulations in the area of public procurement should be adjusted to the context in which they are to be applied. ‘One-size-fits-all’ solutions, although consistent with international standards, are not effective because they do not correspond to the needs of the post-conflict state and do not allow for sustainable fulfilment of its functions.
- (5) **The transfer of model laws in the area of public procurement occurs at a stage which is premature in regard to state-building.** The post-conflict state is at the beginning of the process of being rebuilt and requires the adjustment of instruments of international assistance to the prevailing conditions, including the existing capacity of state institutions. Prematurely transferring model laws in the area of public procurement does not allow the state being rebuilt to take full advantage of international assistance, and thus may weaken its effectiveness.

Specific research issues: in the course of analysis several issues have been identified. The most essential are the following:

- defining the notion of state-building in a post-conflict situation;

- determining the functions of public procurement in the process of state-building;
- determining the relationship between international assistance and public procurement in the context of state-building;
- specifying the means of international assistance in this context;
- identifying model laws in the area of public procurement and their role in state-building;
- identifying public procurement procedures used in practice in the course of the expenditure of resources originating in international assistance;
- identifying trends in the development of regulations in the area of public procurement in Afghanistan.

The above-mentioned specific issues have been analysed while considering the regulations and practices of state-building in Afghanistan.

5. Structure of the publication

In this publication, the system of public procurement is understood not only as a set of rules regulating the spending of public resources, but also as a system of procedures and state institutions established based on those rules. They are described from two perspectives: the process of drafting and implementation. Each has two dimensions: international and national.

While analysing the drafting of regulations in the area of public procurement, specific attention is paid in the case of both dimensions to the attempt to identify the source of origin and the subject generating them, and to discussion of the method of drafting.

Analysis of their implementation focusses on the method by which they are implemented and by whom. In addition, based on a specific case study of the Afghan Ministry of the Interior – the entity responsible for safety in Afghanistan – an analysis of the regulations used in practice is presented. The system of procedures is analysed through the prism of their practical application, while state institutions are discussed through consideration of the scope of their competences and analysis of the structures involved in public procurement.

This issue is presented in two contexts, the post-conflict situation and the process of state-building, which, due to their impact on the application of regulations in practice, are carefully analysed. It is assumed that Afghanistan is subject to international public law and that it has experienced varying levels of development in recent decades.

The reasons for international engagement and for the use of the system of public procurement of the donors play an important role in the process of state-building. Such reasons are as diverse as the form and extent of support and rules used for providing assistance. International participation in the building and development of Afghanistan is multi-trajectory and multi-layered. The gradual

development of a system of public procurement is a part of this process, as it aims to enable the state to fulfil its functions (as described in this publication). However, in the course of this development, no one speaks of the sustainability of the system, its self-reliance, or its independence from international actors. For this reason, an attempt is made to analyse the effectiveness of international assistance and hence of public procurement.

In order to discuss the above-mentioned issues lucidly, the publication is divided into nine chapters. In **Chapter One**, the concept of state-building is discussed, including the functions that the state should fulfil, as well as the ability of international actors to take up this challenge. In **Chapter Two**, terminology relevant to the conditions for rebuilding, such as ‘conflict’ and ‘post-conflict situation’, is discussed. Moreover, an attempt is made to analyse Afghanistan as a post-conflict state in which a building process has occurred. **Chapter Three** refers to the scope, types, and means of support provided to post-conflict states, using Afghanistan as a case study. The aim of this segment is to analyse the phenomenon of international assistance and its distribution through public procurement. In **Chapter Four**, consideration of external assistance continues, but from the perspective of the role it plays in state development and its significance with regard to the effectiveness of state-building.

Furthermore, the main guidelines in international documents on the effectiveness of the assistance provided are concisely discussed. Attention is also paid to the scope of using public procurement as a method of distribution of external resources and its use as a tool of influence by international actors. In **Chapter Five**, an attempt is made to answer the question of whether public procurement, apart from being an instrument used for the disbursement of development resources, constitutes a form of international support to post-conflict states. The means by which procurement is regulated, including the UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994), are discussed. In **Chapter Six**, the stages of developing procurement regulations in Afghanistan are presented from a historical perspective, encompassing the period between 1988 and 2007. The proposed time frame reflects the main stages of development of this system and does not necessarily correspond to political events occurring in Afghanistan.

Three consecutive chapters (seven, eighth and ninth) are related to the law of public procurement currently in force in Afghanistan, but are presented from three distinctly different perspectives. In **Chapter Seven**, analysis of legislation in force at the time of research is undertaken in order to verify its internal consistency and completeness. A comparison is made with the UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994), considered to be the international standard in this area. A detailed evaluation of the differences between the Afghan legislation and the model law facilitates the verification of its compliance with UN standards. In **Chapter Eight**, an in-depth

discussion on the current organisation of public procurement in Afghanistan is undertaken. Thus, institutional aspects, the scope, and methods of procurement are presented, along with a discussion of the appeals procedure. The principal aim is to examine whether the organisation of public procurement takes the local context into consideration. **Chapter Nine**, based on the case of the Afghan Ministry of the Interior, presents the practical dimension of the process of conducting public procurement. Also discussed are the methods of procurement and, consequently, a comparison of practice and law.

6. Time frame of research

This publication covers the period between 2001 and 2011, a decade of international engagement in the state-building of Afghanistan. This approach permits an evaluation of the reforms undertaken. The year 2001 refers to events related to the fall of the Taliban government due to the military intervention of first American and then coalition forces. The year 2011 corresponds to the point at which President Hamid Karzai announced the transfer of responsibility for the security of the first group of provinces from the International Security Assistance Forces (ISAF) to the Afghan National Security Forces (ANSF).⁶⁸

Launching the transition process, known as *Intequal*, meant at the time that the ANSF had obtained sufficient capacity to conduct operations with little ISAF support, and that the level of security which had been achieved permitted the conduct of normal daily activities in the society.⁶⁹ Finally, the local administration had been developed appropriately and was capable of sustaining peace, even with reduced ISAF assistance.⁷⁰

Understanding the reforms undertaken and the conditions for the development of the system of public procurement occurring in the indicated time frame also requires reference to the period preceding the fall of the Taliban government. Unless otherwise indicated, **the publication refers to the legislation in force as of 1 April 2011.**⁷¹

⁶⁸ The first group was announced by President Karzai on 22 March 2011. NATO, *Transition to Afghan lead: INTEQUAL*, 5 October 2011, <http://www.isaf.nato.int/images/media/PDFs/111005intequal.pdf> [accessed: 14 February 2014].

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ It should be noted that Afghanistan undertook procurement reform in 2014 (see also Chapter 8), impacting the legal and institutional framework of public procurement. Pursuant to the provision of subclause 4 of Article 75 of the Constitution of the Islamic Republic of Afghanistan, the Procurement Law was revised, and new amendments were ratified by the President of the Islamic Republic of Afghanistan in legislative decree no. 75 dated 7 October 2015. A new institutional structure was introduced. The law has not yet been made available online. Details can be found at <http://www.ppu.gov.af/Beta/English/AboutUs.aspx> [accessed 20 November 2015].

7. Methodology

In this publication, diverse methodologies are applied. To analyse legal texts and primary documents (both international and national), a legal-dogmatic method is used. In order to discuss the provisions of Afghan legislation and its development, a legal-historical method is applied. The circumstances surrounding these transitions are presented based on historical resources, reports of participants, legislation, and other documents, including some of an unofficial character. Quantitatively, using a statistical method, the extent of international assistance and of MoI public procurement in the period 2001–11 is presented. A comparative method is used to analyse the provisions of Afghan legislation in conjunction with the UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994). The sociological method is used when observing the application of legal provisions as a social fact. The research undertaken between 2008 and 2011 in Afghanistan with the use of questionnaires and interviews, based on a representative group,⁷² constitutes a foundation for analysis of the practical aspects of public procurement conducted by the MoI.

Field research in such an environment remains a challenge for personal security. Eleven of 34 provinces (Badakhshan, Bamyan, Balkh, Faryab, Ghazni, Ghowr, Herat, Kandahar, Kunduz, Uruzgan, and Kabul) were subject to research regarding public procurement during the author's employment in EUPOL Afghanistan.⁷³ They were chosen based on the presence of mission offices as well as adherence to transport, accommodation, and security conditions required by EU standards. The research was conducted with the support of a local translator.

The visits to these eleven provinces took place between October 2009 and January 2010. The remaining time in Afghanistan was used to conduct interviews and collect and analyse data. The sequence of visits in the provinces depended on the security situation, access to flights, and the ability of the hosts to provide hospitality. When planning each visit, the head of public procurement in the headquarters of the MoI, as well as the local department in the province, had to be informed.⁷⁴

⁷² The names of persons participating in the research are not disclosed in this publication, but are in the author's personal database.

⁷³ In seven of eleven provinces, research was undertaken personally by the author. In three (Ghowr, Badakhshan, and Uruzgan), collection of data was completed with the support of international EUPOL personnel due to the inaccessibility of the provinces. In Kandahar, the Canadian armed forces and embassy provided necessary support and data, based on questionnaires and other sets of questions. In Ghazni province, where there was no EUPOL office, the author was assisted by the Polish Military Contingent and employees of the embassy of the Republic of Poland.

⁷⁴ Usually, a visit lasted three days. Following arrival, the first day was focussed on preliminary interviews, which lasted no longer than until 4 pm local time. On the second day, interviews took place in both the morning and afternoon, and continued into the third day if needed. Prior to reaching the province, positions to be interviewed relevant to public procurement were identified.

From August 2009 to March 2011, the author conducted regular meetings with the chief of procurement and the chief of logistics in the MoI, as well as with the MoI Inspector General responsible for fighting corruption. In the meantime, in order to enrich practical knowledge, the author participated in the opening sessions of the tender process which took place in the building of the MoI.

Lack of knowledge in the provinces regarding the process of procurement and the unavailability of required data made it necessary to conduct a two-stage research programme using three questionnaires. At the first stage, while preparing the field visits, 26 questions were chosen. The objective was to obtain basic information with reference to the procedures applied and the scope of responsibilities, as well as the involvement, of various entities, including the decision-making process. The first questionnaire in English and in Dari was sent to ten provinces (it was unnecessary to send it to Kabul). This was done between the end of June and the beginning of July 2010, profiting from the support of EUPOL personnel and others. The questionnaire in English was completed by the interviewers on behalf of the interviewees⁷⁵ based on conversations with representatives of the local administration or by Afghan officers. Although this method did not permit the collection of detailed data,⁷⁶ it enabled the gathering of some general information which helped the author to understand procurement in Afghanistan. The questionnaire was formulated so as to be understood both by interviewers and interviewees.

In the second stage, using the outcome of the first study and conclusions derived from interviews with international actors and MoI personnel in Kabul, a second questionnaire was drafted in both English and Dari. This questionnaire was more detailed and included 140 questions on the subjects of the functioning of MoI offices in the provinces, human resources, the scope of the involvement of various entities, knowledge of procurement legislation, levels of procedure regarding the selection of offers, and various other financial and legal aspects of the process. The questions were used to obtain information during field visits and during interviews which took place in the second half of 2010.

A third questionnaire (within the second stage of research) included questions related to the competence of personnel involved in MoI procurement. Due to the specificity of the Afghan context, which is characterised by penetration

Usually in each province these comprised the head of administration, logistics officers, and procurement and finance officers. In order to discuss the process with the Governor's office, it was necessary to cooperate with Provincial Reconstruction Teams (PRT). Unfortunately, in three of eleven provinces, governors' associates refused to discuss the subject, despite prior confirmation. Consequently, information on the engagement of the governors' office in the MoI procurement process comes from MoI personnel and international actors in the field, as well as from analysis of relevant legal acts and reports.

⁷⁵ In the first data collection, a EUPOL employee or a PRT Rule of Law specialist acted as the interviewer.

⁷⁶ MoI offices responded to the first questionnaire in only five provinces.

of public procurement function by that of logistics, analysis undertaken in the second half of 2010 included personnel employed in the MoI Procurement and Logistics Departments with regard to both headquarters and the provinces. Permission was not granted to conduct research among MoI finance personnel in the HQ (though it was possible to obtain relevant data in the field). In total, 200 persons working in the MoI were included in the study: 119 in Kabul, 81 in 25 of 34 provinces.⁷⁷ The questionnaire in Dari included questions on education, experience, and basic information about training undertaken.

Based on the answers received, a database was established of MoI personnel engaged in public procurement. This became the property of the MoI and EUPOL (while a complete report was provided to the mission).

Information obtained during the research was verified by persons dealing with public procurement among international actors, while the interviewers were in the provinces, or immediately after their return to Kabul. Additionally, to verify research results, six presentations were conducted: in EUPOL, in the US Camp Eggers military base at a Senior Police Breakfast Meeting, at the Shafafiyat Working Group at NATO HQ, in the MoI Procurement Department, in the US embassy in Kabul, and during a meeting of the International Anti-Corruption Working Group composed of donors' representatives. Moreover, the author participated in numerous meetings with the representatives of NTM-A,⁷⁸ ISAF,⁷⁹ and IPCB.⁸⁰ During these consultations none of the findings were questioned.

8. Challenges for the researcher

The seven main challenges for conducting research on and in Afghanistan are presented in the following pages.

8.1. Information

Access to information on Afghanistan remains a challenge for any researcher. It is difficult to obtain reliable data on the overall international assistance provided to this state, especially as regards resources expended by each international actor. There is no centralised information system, and the national information resources are often fragmented. No complete system for the recording of all international support to Afghanistan exists and none has

⁷⁷ Use of a questionnaire using the official MoI channel enabled the acquisition of information on training in 25, rather than 11, of 34 provinces. No information was received from Daykundi, Helmand, Kandahar, Nangarhar, Nimruz, Paktia, Uruzgan, or Zabul.

⁷⁸ *NATO Training Mission Afghanistan*.

⁷⁹ *International Security Assistance Force*.

⁸⁰ *International Police Coordination Board*.

been established by donors. Moreover, the available data does not refer to all sectors. It is therefore necessary to obtain information from various established sources based on diverse methodologies.

Due to the prolonged intrastate conflict, no archives have been preserved which would provide complete information about public procurement conducted in previous decades or precise indications of legislation in force at the time. For example, not until 2009 did the MoI begin the construction of archives to store its internal documentation. This means that legislation systemised in this publication is of a unique nature.

It is difficult to obtain reliable practical information concerning the quantity and value of procurement as well as procedure used in Afghanistan. Interviewees shared their knowledge on the principles used in practice with reluctance, probably due to potential professional consequences, including dismissal. In Afghanistan, the professional hierarchy plays an important role. Access to data may be granted in principle only after permission is obtained from supervisors. As previously mentioned, meetings in the field were announced in advance, resulting in the easy identification of the sources of information. In order to minimise the fears of interviewees while obtaining data, the author has not disclosed details on the sources of information. In this publication, the process is discussed without reference to specific provinces or names and without indications of the type of source used. All details are in the author's archives.

In the course of the research, three Internet websites with basic Afghan legislation were analysed.⁸¹ The contents of the first two are managed by international actors and include collections of legislation that are not always up to date. The third website, established by the Afghans, does not provide access to binding legislation. Additionally, the Afghan Ministry of Justice has launched a website dedicated to legislation; however, it was not functioning during the research period.⁸²

In Afghanistan there is no centralised information system or online database with binding legislation, either in the official languages or in English. Therefore, any search for relevant legislation should include establishing personal contacts with public institutions. Nonetheless, there is no certainty that information on the legality of a particular act will be correct. It is worth contacting *Taqnin*, the legislative department of the Ministry of Justice. In all of these cases one is required to know the precise title and date of promulgation of the act. This, as shown by the author's experience, constitutes a challenge, since no database offering this information existed during the research period.

After completing this stage of the search, the next step is to establish whether the aforesaid legislation is in force. This is also a challenge, since there is no

⁸¹ Namely: <http://afghantranslation.chechiconsulting.com>; <http://www.aisa.org.af/laws/Econ%20LIF%20E.html> and <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxweafg.htm>.

⁸² <http://www.moj-research.gov.afg>.

*Dalsza część książki dostępna w wersji
pełnej.*

