

2023

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Recommended Citation

Musleh, Wakil (2023) "ADMINISTRATIVE LAW INITIATIVES AND REFORMS," *Ohio Northern University International Law Journal*: Vol. 1, Article 5.

Available at: <https://digitalcommons.onu.edu/ilj/vol1/iss1/5>

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Administrative Law Initiatives and Reforms

WAKIL MUSLEH*

Abstract

Administrative law is one of the key components of the rule of law in a country. The functionality of public administration mostly depends on good administrative laws and procedures. The ambitious phenomenon of transparency and accountability in public administration can only be achieved through good public administrative social contracting laws. As every component of the rule of law needs reform, administrative laws also need initiatives for reform. The administrative laws need to be amended and updated based on the time requirements and circumstances to make sure they function well.

Thereby, this paper comparatively studies and analyzes the administrative law initiatives and reforms in three countries: Afghanistan, The Republic of Georgia, and Pakistan. The paper reflects on the historical view of administrative laws and policies in Afghanistan and discusses the related legislation passed for this purpose. Furthermore, it discusses the strengths and weaknesses of public administrative reform initiatives and their framework. At the end, the paper will provide recommendations for the government of Afghanistan in compliance with the lessons learned from the innovative approaches taken in Georgia and Pakistan.

The study finds that the Public Administration Reform (PAR) process in Georgia has been smoother than the PAR in Pakistan and Afghanistan because Georgia has had a political will on PAR from the top to the bottom.

Pakistan, due to the several regime changes, has struggled to survive but has implemented PAR initiatives that developed to the level of administrative law reforms.

In Afghanistan, the PAR after the Bonn Conference Agreement has led to failure due to the pervasive administrative corruption and lack of political will and has not been able to justify the international funds raised for it. However, the Independent Administrative Reform and Civil Service Commission (IARCSC) has brought about structural reforms including the new administrative law and procedure, and the establishment of an electronic recruitment system within IARCSC.

1. INTRODUCTION

The Afghan government is severely fragmented, with inadequate policy management capabilities, out-of-date administrative and financial management systems, a fundamental

disconnect between provinces and the center, and ongoing capacity issues as a result of years of conflict.¹

However, assessments show that public administration existed in Afghanistan even before King Zahir Khan's reign. Moreover, public administration law in Afghanistan has historically been recognized as a "tangible representation of a central state, [and] has co-existed uneasily with a fragmented, decentralized society."² Afghanistan is a post-communism and post-Taliban society. This, combined with their entanglement in conflicts, made Afghanistan's rule of law and administrative law both susceptible and vulnerable.

To this end, this paper will seek critical questions like, what did Afghanistan, Georgia, and Pakistan do for PAR? What are the achievements and challenges? What initiatives and reforms did they follow? Have they been successful?

2. PUBLIC ADMINISTRATION LEGISLATION IN AFGHANISTAN

2.1 A brief glimpse of Afghanistan's public administrative historical background

The simplistic allegations that the Afghan state will collapse or that the public sector is highly disorganized, are not accurate nor fact based. An undeniable political downfall resulted in 1978 onwards, preventing the consolidation of the central government, and it undermined its political legitimacy in much of the country.³ "But the administrative structures of the state have proven to be fairly resilient."⁴

The first attempt at the cornerstone of public administration was established by King Amir Abdur Rahman Khan (1880-1901).⁵ He laid the foundation for a modern state by forming a strong army and a more useful administration.⁶ He also improved tax assessments and collection mechanisms, which strengthened business, roads, and basic education, essentially re-structuring civil administration.⁷

The kings after Amir Abdur Rahman each worked on state building through administrative reforms.⁸ But, they were more engaged in political collisions rather than reforms.

¹ *Afghanistan - Support to the Independent Administrative Reform and Civil Service Commission 2008 to 2011*, PUBLIC ADMIN. INT'L (last visited Mar. 24, 2023), https://www.public-admin.co.uk/case_studies/afghanistan-support-to-the-independent-administrative-reform-and-civil-service-commission-2008-2011/.

² SARAH LISTER, MOVING FORWARD? ASSESSING PUBLIC ADMINISTRATION REFORM IN AFGHANISTAN 3 (Afg. Res. and Evaluation Unit, 2006).

³ ANNE EVANS, NICK MANNING, TASIN OSMANI, ANNE TULLY & ANDREW WILDER, A GUIDE TO GOVERNMENT IN AFGHANISTAN 5 (The World Bank, 2004).

⁴ *Id.* at 15.

⁵ *Id.* at 1.

⁶ *Id.*

⁷ *Id.* at 1.

⁸ *Id.* at 2-7.

For instance, Zahir Shah was able to govern on his own in 1963 and despite the factionalism and political infighting a new constitution was introduced in 1964. This constitution turned Afghanistan into a modern democratic state by introducing free elections, a parliament, civic rights, liberation for women and universal suffrage.⁹ However, he paid more attention to establishing diplomatic relations than to internal reforms.¹⁰

In 1978, Afghanistan's society and economy were to be transformed under the new communist regime, headed by Nur Mohammad Taraki and Hafizullah Amin.¹¹ Using inherited administrative systems, the communist administration enacted a wide range of policies, including land reform, the cancellation of peasant's debts, and equal rights for women.¹² Yet, "the government underestimated the alienating effect these reforms would have on a conservative population, which perceived them as socially and economically disruptive and a threat to traditional culture."¹³

In 1986, the former head of secret police, Najibullah, became the President.¹⁴ He presented a new constitution and worked on reuniting the tribes by establishing national reconciliation, but he did not engage in any administrative law reforms during his term.¹⁵

With the Taliban dominating the political landscape from 1986 onwards, Afghanistan moved backward in all aspects.¹⁶ Afghanistan experienced the most difficult time during the first Taliban regime and lost its autonomy, credit, and international support.

Although the Taliban did not entirely remove the old laws, they imposed rule by law.¹⁷ This rule of men dominated Afghanistan. The Taliban planted the seed of arbitrariness culture in the society and public administration was ruled by arbitrariness and impropriety. The head of all institutions were the Taliban, with some of the former bureaucrats working as government officials.¹⁸

After the fall of Taliban in 2001, the transitional government used the 1999 civil service law, however, a new civil service law was drafted and enacted later.¹⁹

2.1.1 Legal framework of civil service in Afghanistan

⁹ *Id.* at 4.

¹⁰ *Mohammad Zahir Shah (1933-73)*, BRITANNICA (last visited Apr. 3, 2023), <https://www.britannica.com/place/Afghanistan/Mohammad-Zahir-Shah-1933-73>.

¹¹ EVANS ET AL., *supra* note 3 at 5.

¹² *Id.* at 5.

¹³ *Id.* at 5-6.

¹⁴ *Id.* at 6.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 6-7.

¹⁹ SAYED HASHMATULLAH HASHIMI & GERHARD LAUTH, CIVIL SERVICE REFORM IN AFGHANISTAN 6 (Victoria Grace ed.) (Afg. Res. and Evaluation Unit, 2016).

Article 50 of the Constitution provides the legal foundation for administrative reform.²⁰ The Independent Administrative Reform Civil Service Commission (IARCSC) was created by presidential order, which also provided the legal basis for Afghan government system changes with a particular focus on civil service management and reforms.²¹ “With the evolution of the administrative system and the implementation of the Civil Service Law after the enforcement of the 2004 Constitution, there has been a further debate on enhancing the quality of civil service rules to strengthen the public administrative system further and bring it on a PAR with the international principles of public administration.”²²

A. Constitution

The current centralized system of administration in Afghanistan mainly stems from the following three Articles of the Constitution:

Article 136:

“The administration of the Islamic Republic of Afghanistan, based on the units of the central government and local offices, shall be regulated according to the law. The central administration shall be divided into several administrative units, each headed by a Minister. The local administrative unit shall be a province. The number, area, divisions and related provincial organizations as well as number of offices shall be regulated on the basis of population, social and economic conditions, as well as geographical location.”²³

Article 137:

“The government, in preserving the principles of centralism, shall transfer necessary powers, in accordance with the law, to local administrations in order to accelerate and improve economic, social as well as cultural matters, and foster peoples’ participation in developing national life.”²⁴

Article 50:

“The state shall adopt necessary measures to create a healthy administration and realize reforms in the administrative system of the country. The administration shall perform its duties with complete neutrality and in compliance with the provisions of the laws. The citizens of Afghanistan shall have the right of access to information from state departments in accordance with the provisions of the law. This right shall have no limit except when harming rights of others as well as public security. The citizens of

²⁰ *Id.* at 19.

²¹ *Id.*

²² *Id.* at 13.

²³ Const. of the Islamic Republic of Afg. (2004), art. 136.

²⁴ *Id.* art. 137.

Afghanistan shall be recruited by the state on the basis of ability, without any discrimination, according to the provisions of the law.”²⁵

B. Civil Service Laws

a. Civil Service Law 2005

By virtue of its ratification through Article 50 of Constitution, the Afghanistan Civil Service Law served as the legal framework for the establishment of the IARCSC. With the enactment of Decree No. 25 and its associated regulations through Decree No. 26 on June 10, 2003 (1382/3/20), the duties and obligations of the Civil Service Commission were expanded and extended to include those of the IARCSC.²⁶

The Civil Service Law consists of eight chapters.²⁷ Chapter one outlines key guidelines for establishing a successful governance structure through planning and reform efforts.²⁸ It set a merit-based system for filling vacant positions, specifies and governs the duties of civil servants members, and regulates personnel management.²⁹ In addition, this chapter sets out the framework for civil service.³⁰ Chapter two comprises the Commission, its leadership, structure, independent attributes of commission members, and deposing of commission members.³¹ Chapter three covers civil service management and its duties and authorities.³² Chapter four includes the structure, duties, appointment process of the Civil Service Appointments Board and the Appointment Board Secretariat.³³ Chapter five discusses the Civil Service Appeals Board and its structure, duties and process of performance.³⁴ Chapter six establishes the duties of the Administrative Reform Secretariat.³⁵ Chapter seven is dedicated to discussing civil servants and their positions, appointments, personnel management, duties and responsibilities, the prohibition of other employment, and rights and privileges.³⁶ Finally, chapter eight encompasses miscellaneous provisions that cover the budget of the commission, the discipline of civil servants and the enactment of the law.³⁷

b. Civil Servants Law 2008

²⁵ *Id.* art. 50.

²⁶ HASHIMI & LAUTH, *supra* note 19, at 15.

²⁷ *Id.*

²⁸ CIVIL SERVICE LAW [AFG. C. CIV.] ch. 1, art. 1.

²⁹ *Id.* at art. 2.

³⁰ *Id.* at art. 3-4.

³¹ *Id.* at ch. 2.

³² *Id.* at ch. 3.

³³ *Id.* at ch. 4.

³⁴ *Id.* at ch. 5.

³⁵ *Id.* at ch. 6.

³⁶ *Id.* at ch. 7.

³⁷ *Id.* at ch. 8.

Within the six chapters and thirty-five articles of the Civil Servants Law of 2008, certain sections relate specifically to the implementation of reforms. Articles 6-11 and Article 16 outlines employment requirements, appointment procedures, and performance appraisal processes, respectively. Article 23 addresses the promotion of civil servants, while Article 28 details the appeals process, Article 32 mandates that consultation with the IARCSC be undertaken in certain circumstances, and Article 34 requires that the IARCSC approve each grade's job requirements.³⁸

2.2 Public Administration Reform in Afghanistan

2.2.1 Initiatives and Programs

A. Establishment of Independent Administrative Reform and Civil Service Commission (IARCSC)

The first step towards an administrative reform was taken by establishing an independent Civil Service Commission. The establishment of such a Commission was agreed upon in the Bonn agreement.³⁹ The Commission is mandated to establish a modern, responsive, democratic, gender sensitive, transparent and accountable public administration, enabled to manage public resources efficiently and effectively for improved service delivery in a fair and equitable manner.⁴⁰ As it appears, despite the mandated authority given to the Commission, this entity has not been able to fulfill its mandated functions.⁴¹

To some extent, the author does not agree that there has been an absolute failure of the Commission, because as a citizen of Afghanistan, the author has experienced a noticeable change in the Afghanistan Public Administration. The current situation of public administration has changed since 2002. Now, laws and procedures are in place, and institutions have established capacity and structures. Mostly, all ministries and their agencies have gone through the Public Administrative Reform process.

In regard to the Commission's structure, it is comprised of two independent boards: the Independent Appointments Board (IAB) and the Independent Appeals Board (IAB).⁴² It also has four general directorates: (1) General Directorate of Administrative Reform Secretariat (GDARS); (2) General Directorate of Civil Service Management (GDCSM); (3) General

³⁸ HASHIMI & LAUTH, *supra* note 19, at 15.

³⁹ Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions ("Bonn Agreement"), art 3, Dec. 5, 2001.

⁴⁰ EVANS ET AL., *supra* note 3, at 25.

⁴¹ Niaz Mohammad Hamdard & Mohammad Jamal Shenwary, *Analysis of Public Administrative Reforms: A Case in Afghanistan* 4 INSIGHT JOURNAL 46 47 (2019).

⁴² EKLIL HAKIMI, NICK MINNING, SATYENDRA PRASAD & KEIR PRINCE, ASYMMETRIC REFORMS: AGENCY-LEVEL REFORMS IN THE AFGHAN CIVIL SERVICE 5 (The World Bank, 2004).

Directorate of Civil Service Institute (GDCSI); and (4) General Directorate Programs Design and Management (GDPDM).⁴³

To date, GDPDM has implemented the following major capacity building programs and projects: (1) Afghan Expatriate Program (AEP); (2) Lateral Entry Program (LEP); (3) Capacity for Afghan Public Services Project (CAP); (4) Placement of Afghan Expatriate Professionals from European Countries (PAEP-EU); (5) Management Capacity Program (MCP); (6) National Institution Building project (NIBP); and (7) Sub-National Level Pilot Project (SNLPP).⁴⁴

The creation of the Commission was considered a huge step towards administrative reform and stabilizing a transitional country like Afghanistan. It helped to improve the capacity of the civil service institutions by training.⁴⁵ Ultimately, the Commission left behind dysfunctional governance at the national and sub-national levels, unable to resist the legacy of thirty-two years of bloody destructive conflict.⁴⁶

B. Public Administration Reform

The Afghanistan National Development Strategy (I-ANDS) outlines the country's vision for the future, with Public Administration Reform playing a key role in achieving this vision as a central component.⁴⁷ The government has stated that their goal is to develop "an effective, accountable, and transparent public administration at all government levels."⁴⁸ Afghanistan began work on the first phase of the PAR in mid-2002, with financial assistance from the World Bank.⁴⁹ It was comprised of several components such as: a legal structure for the civil service; human resource management; institutional development; financial management; policy management and machinery of government; administrative efficiency; and improvement of physical infrastructure.⁵⁰

The aforementioned components of the PAR program addressed the following challenges: the government's loss of cohesion and strength in structure; the accountability lines are vague with poor reinforcement mechanisms; the need to enhance the management skills and performance; the lack of administrative professionals and experts; the lack of procedures for merit-based recruitment; and the need for a financial policy and structure that influences civil servants and administrative systems.⁵¹

⁴³ Independent Administrative Reform and Civil Service Commission, *Organizational Structure*, IARSC.GOV.AF, <https://iarpsc.gov.af/en/organizational-structure/> (last visited Mar. 25, 2023) [<https://web.archive.loc.gov/all/20190916191944/https://iarpsc.gov.af/en/organizational-structure/>].

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ LISTER, *supra* note 2, at 6.

⁴⁸ *Id.*

⁴⁹ *Id.* at 4.

⁵⁰ *Id.*

⁵¹ *Id.*

In Afghanistan, where relation-based cultural rules prevail over formal systems, security issues remain a threatening challenge. Seeing the progress in a large development agenda such as PAR sometimes seems like a luxury that will have to wait for more normal times. The problem in Afghanistan is that PAR does not demonstrate significant progress in Afghanistan.⁵² PAR works slowly in normal societies, much less in unstable and conflict zones. For greater accomplishments, Afghanistan may need international expertise.⁵³

“Successful public administration reform (PAR) in Afghanistan is important for the government’s credibility and legitimacy.”⁵⁴ While difficult, PAR in Afghanistan is rebuilding the administrative system whose roots had decayed.⁵⁵

C. Management Capacity Program

The PAR program implemented several other administrative initiatives through the Commission, including the Management Capacity Program (MCP). The implementation of MCP was administered through the General Directorate of Programs’ Design and Management (GDPDM) at the Commission.⁵⁶ The strategic goal of MCP was to create within the selected line ministries and their provincial board of directors ripples of competence appropriate to establish a sustainable level of performance in key service-delivery related functions.⁵⁷ MCP was introduced in 2007 to go beyond earlier capacity building programs and address critical needs on a macro-level.⁵⁸ The focus of the MCP was to provide expertise to requesting agencies in five critical administrative areas. The five are referred to as the “Common Functions”: “Financial management (budgeting, accounting), human resources management (recruiting), performance monitoring, (benefits management, career management, and separation), policy and regulatory design and administration, and general administration (supply management and procurement).”⁵⁹

MCP was also to respond to requests from Afghanistan government agencies for expert assistance in one or more of the five key common functional areas.⁶⁰

D. National Institutional Building Project (NIBP)

Beginning in January 2010 and ending in December 2013, National Institution Building Project (NIBP) was another project that built capacity at all three levels (i.e. institutional,

⁵² *Id.* at 2.

⁵³ *Id.* at 17.

⁵⁴ *Id.* at 1.

⁵⁵ *Id.* at 2.

⁵⁶ Mustafa Nasery, *The Success and Failure of Civil Service Reforms in Afghanistan* (Jan. 1, 2019) (unpublished Ph.D. dissertation, University of Potsdam, Germany) (on file with author).

⁵⁷ The World Bank, *Implementation Completion and Results Report on a Grant in the Amount of SDR 6.6 Million to the Islamic Republic of Afghanistan for a Management Capacity Program*, 12 (June 12, 2012).

⁵⁸ *Id.* at 4.

⁵⁹ *Id.* at 2-3.

⁶⁰ *Id.* at 2.

organizational, and individual) with a vital aim to improve service delivery through a responsive, organized, and efficient civil service.⁶¹ As the Commission states that during the three years from January 2010 to December 2013, NIBP had supported major national ministries and their provincial organizations such as: Ministry of Agriculture Irrigation and Livestock (MAIL), Ministry of Economy (MoEc), Ministry of Commerce and Industries (MoCI), Ministry of Rural Rehabilitation and Development (MRRD), Ministry of Transport and Civil Aviation (MoTCA), Ministry of Labor and Social Affairs (MLSA), Ministry of Martyrs & Disabled (MMD), Ministry of Communications and Information Technology (MoCIT), Ministry of Public Health (MoPH), and the Commission.⁶²

E. Capacity for the Afghan Public Service (CAP)

Capacity for the Afghan Public service (CAP) is another administrative and skill building initiative that began its performance by assessing the focused ministries and agencies. The duration of CAP was from January 2007 to June 2009, and was financed by the Canadian International Development Assistance, the government of India, and the United Nation Development Program (UNDP).⁶³ The implementing partners were UNDP, Capacity Development Secretariat (CDS), and the Commission.⁶⁴ “CAP has worked in 22 ministries and agencies and four provinces and built the capacity of 661 government counterparts of which 20% were women. It has focused on coaching in the skills needed to implement the Public Administration Reform (PAR).”⁶⁵

Mainly, the CAP had three major lines of service: (1) coaching and advisory services; (2) basic management and administration Services; and (3) developing a supply of Afghan capacity builders.⁶⁶ The CAP project was tasked to provide technical services including coaching and advisory services to strengthen the key functions of the government in areas such as project formulation, implementation, management, service delivery, and to strengthen leadership and policy making skills.⁶⁷

The CAP’s aim was to help the CDS improve a roster of local and regional coaches and advisors to serve the Government.⁶⁸ It contributed to recruiting, orienting, and deploying experts

⁶¹ United Nations Development Programme, *National Institution Building Project Annual Progress Report*, UNDP 6, 8 (2010).

⁶² *Id.* at 6.

⁶³ Evaluation Office of the United Nations Development Programme, *Assessment of Development Results: Islamic Republic of Afghanistan*, UNDP 46 (2009).

⁶⁴ Geraldine Gibbons, *United Nations Development Programme: Capacity for Afghan Public Service Final Evaluation Report*, UNDP 6 (Sept. 17, 2009).

⁶⁵ *Id.* at 5.

⁶⁶ *Id.* at 9.

⁶⁷ *Id.*

⁶⁸ *Id.* at 10.

and coaches from the countries in the region and from within private and public administrations of Afghanistan.⁶⁹

F. Capacity Building for Results (CBR)

One of the other significant administrative reform projects that the Commission implemented in partnership and support of the World Bank in Afghanistan is the CBR program, aimed to be implemented based on the international best practice on administrative reforms.⁷⁰ In fact, CBR was a recent initiative that had started with the purpose of implementing reforms in the ministries and recruitment of qualified employees within the government Tashkeel (organizational structure) to bring improvements in the service delivery, increase in revenue collection and the develop budget execution.⁷¹ This program aimed to enhance the managerial and technical capacity of ministries on the national and sub national levels and would diminish the reliance on foreign experts in the field.⁷² Importantly, CBR aimed to directly link results and efficiency of ministries' activities with resources (more results, more staffing resources, less results, fewer resources).⁷³

The CBR initiative was planned for five years, starting from January 2012. The project's overall cost was \$350 million with \$100 million for the first two and half years approved.⁷⁴ The program was primarily designed for resource mobilization of comprehensive reforms and promotion of the sense of ownership within ministries.⁷⁵

In the first instance, the project management structure consisted of the president and council of ministers, and in the second instance, the steering committee was composed of the finance minister and chairman of the Commission.⁷⁶ The ministries implemented the program, and the World Bank Group supervised the implementation of the project.⁷⁷

In doing so, CBR had four interrelated components: technical assistance facility for the preparation and implementation of capacity building programs; building human capacity; civil service training and project management; and monitoring and evaluation.⁷⁸

⁶⁹ *Id.*

⁷⁰ Zabihullah Rased, *Civil Service Reforms in Afghanistan* (July 2021) (unpublished Master of Arts dissertation, Punjabi University, Patiala) (on file with author) at 20.

⁷¹ *Id.* at 25.

⁷² HASHIMI & LAUTH, *supra* note 19, at 28.

⁷³ Ministry of Finance Islamic Republic of Afghanistan, *Budget Policy and Reform Directorate*, budgetmof.gov.af, <https://www.budgetmof.gov.af/index.php/en/nta/nta-policy/82-budget-policy-and-reform-directorate/261-capacity-building-for-results-cbr> (last visited Mar. 26, 2023).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

Following the CBR project, and taking lessons learned from the first round of PAR, the Governance Clusters National Priority Program 3 (NPP3) was implemented with the goal of increasing efficiency and effectiveness.⁷⁹

The NPP3 was designed based on the analysis of the past ten years of reform implementation experiences. It would assist with capacities in coordination, the delivery of assistance, access to civil documentation and services; as well as provide capacities in policy development through technical and advisory support at both national and regional levels.⁸⁰

G. Administrative Procedure Code

The Institute of Max Planck and the Hamida Barmaki Organization for Rule of Law provided training to employees of the administration and law professionals as well as assisted the Afghanistan government to develop new Laws and Procedures.⁸¹ They assisted the Commission in the development of the Administrative Procedure Code Bill, which was ratified by Parliament, endorsed by the President, and became a Law.

The Administrative Procedure Code has five chapters and seventy-five articles.⁸² It almost covers all the necessary aspects of an administrative procedure code in compliance with international standards. For instance, it considers sound administration principles such as: legality, equality, transparency and accountability, responsibility, proportionality, evidence-based of agency decisions, expediting in response, administration misconduct investigation, hearing right for both parties, observing the fundamental rights of citizens, the complaint right for citizens, the right to appeal the administrative decision, the right to have access to information, the right to appeal, provision of remedies to the person tolerated damages, reparation and its mechanism, etc.⁸³

2.2.2 Achievements of PAR in Afghanistan

To date, the PAR process has had some remarkable achievements. The establishment of the Commission in 2002 was a strategic objective of the government for administrative reform.⁸⁴ The Commission's official website indicates that to date, the Commission has developed the reform policies and legal framework based on good governance principles and service oriented public administration. It also implemented three different stages of reform (PRR, PAR, and Pay

⁷⁹ AARYA NIJAT, GOVERNANCE IN AFGHANISTAN 30 (Afg. Res. and Evaluation Unit, 2014).

⁸⁰ GRACE MAINA, AFGHANISTAN: ONE UN - ONE PROGRAMME, UNESCO 49 (2017).

⁸¹ Max Planck Foundation for International Peace and the Rule of Law, *Ten Years of Global Knowledge Transfer: 2002-2012*, 37-38 (Mar. 31, 2022).

⁸² Afghanistan Law Database, Administrative Procedure Law (last visited Apr. 4, 2023) <https://law.acku.edu.af/administrative-procedure-law/>.

⁸³ *Reform the Public Sector*, TRACKING REFORMS 1 (last visited Mar. 26, 2023), <https://reforms.gov.af/59/reform-the-public-sector>.

⁸⁴ EVANS ET. AL., *supra* note 3 at 25.

and Grading).⁸⁵ In this last stage of reform which started less than six years ago, a comprehensive assessment of ministries and agencies strategy, structure, function, and job analysis were conducted, and for each position in civil service a job description was developed.⁸⁶ Further, “out of 375,000 civil service positions, 365,000 are covered under Pay and Grading reform.”⁸⁷

Additionally, the Commission has introduced a merit-based and competitive recruitment system and performance management and performance appraisal systems into the civil service sector. It also established the Civil Service Institute and its satellites in the provinces for capacity building of civil service personnel.⁸⁸ Further, the Commission conducted capacity building training for senior management and middle managers in basic management, computer literacy and English language training, provided University graduates with internships, trained civil servants in five common functions, and conducted need-based training for civil servants.⁸⁹ Moreover, it provided ministries and agencies with technical assistance in business process simplification.⁹⁰ In one of the PAR projects, the Commission trained more than 5,000 civil servants in managerial principles.⁹¹ Additionally, USAID contributed by providing university graduates with internships in government, many of which led to full time employment.⁹²

The Commission implemented Pay and Grade reform in an additional 75,000 positions within the government, used a new merit-based hiring process to hire more than seventy-five deputy governors and district governors, established five reform implementation units in ministries, and installed a human resources management information system in eight major ministries.⁹³ The Commission included 476 men and 157 females’ officials of the government in Mid-level Management Development (MMD).⁹⁴

2.2.3 Ministry of Education Success Story

The Commission claims that the Ministry of Education (MoE) has achieved many remarkable achievements through a group of experts’ industries that were hired by MCP including: more than three million boys’ and girls’ attendance in schools all over Afghanistan;

⁸⁵ HASHIMI & LAUTH, *supra* note 19, at 23.

⁸⁶ EVANS ET AL., *supra* note 3, at 21.

⁸⁷ SAARC HUMAN RESOURCE DEVELOPMENT CENTRE, COMPARATIVE STUDY OF PUBLIC/CIVIL SERVICE COMMISSIONS OF SAARC MEMBER STATES, 17 (2014).

⁸⁸ EVANS ET AL, *supra* note 3, at 66.

⁸⁹ THE WORLD BANK, IMPLEMENTATION COMPLETION AND RESULTS REPORT 20 (The World Bank, 2009).

⁹⁰ *Id.* at 8.

⁹¹ Munir Ahmad Fetrat & Deepak Sharma, Administrative Reform in Afghanistan, 5 HISTORY RSCH. J. 967 974 (2019).

⁹² USAID, THE USAID/AFGHANISTAN PLAN FOR TRANSITION 2015-2018 18 (2016).

⁹³ *Id.* at 19.

⁹⁴ ISLAMIC REPUBLIC OF AFGHANISTAN MINISTRY OF FINANCE, CBR FREQUENTLY ASKED QUESTIONS 11 (n.d.).

the training and recruiting of thousands male and female teachers at national and sub-national levels; and the implementation of a new Pay and Grading system for employees and operational staff.⁹⁵ Additionally, the enhancement of employees' performance, development of a database for personnel data registration, and the development of an employment procedure for school principals and staff are also achieved through MCP.⁹⁶

After a series of successful achievements, the Commission recruited a director of human resource development for MoE.⁹⁷ Under the direction of the director at the time, they held capacity building workshops, seminars, and vocational training that mainly focused on civil servants and teachers.⁹⁸ Regardless of several constraints, the HR Development Directorate has visibly progressed at MoE.⁹⁹

A. Establishment of an Electronic Recruitment System by the Commission

One of the Commission's most recent accomplishments in terms of public administration reform could be considered the establishment of an electronic recruitment system, which eliminates the influence of outside pressures on Commission appointments while maintaining greater transparency and accountability for applicants.¹⁰⁰ Public administration experts believe that this initiative would be considered as a way forward and structural reform for the Commission. As a matter of fact, the Commission regained its latitude under Sayed Naderi's leadership.

The Commission has repaired its broken image and integrity to a greater extent. The Commission hired national and international consultants to conduct gap analysis assessments, assessing and addressing the gaps through implementation of proposals, and as a result, the Commission received the award of Golden Key of the Access to Information by the Integrity Watch, Afghanistan.¹⁰¹ The author observed numerous encouraging remarks by the bureaucrats who have lately been appointed through this system. They have been happy with this system, how it has had a positive impact on youths, and they are hopeful for a transparent administrative system in the country.

For example, the Secretariat Director of Balkh Governor's Office, Mr. Mohammad Saleh Musleh, was appointed through this system. In an interview, he described the project as a speedy

⁹⁵ EVANS ET AL., *supra* note 3.

⁹⁶ *Id.*

⁹⁷ *Id.* at 120.

⁹⁸ *Id.* at 116.

⁹⁹ *Id.* at 121.

¹⁰⁰ *Reform the Public Sector*, *supra* note 83, at 2.

¹⁰¹ Independent Administrative Reform and Civil Service Commission, *IARCSC was Awarded the "Golden Key of the Access to Information"*, IARCSC.GOV.AF, <https://iarpsc.gov.af/iarpsc-was-awarded-the-golden-key-of-the-access-to-information/> (last visited Mar. 26, 2023)

[<https://web.archive.loc.gov/all/20211119081604/https://iarpsc.gov.af/en/iarpsc-was-awarded-the-golden-key-of-the-access-to-information/>].

and transparent system.¹⁰² He said that despite the fact he lacked any political support within the government, he managed to secure his current role.¹⁰³

The deputy-director for the Martyrs and Disabled Directorate in the province of Samangan, Ahmad Jawad Omary, also shared his impressions and observations of the system. He also expressed his gratitude to the top management of the Commission for creating such an efficient recruitment system, however, he emphasized that the system is still facing difficulties. He personally encounters instances of administrative corruption, nepotism and outside pressures while competing for a directorate position.¹⁰⁴ Because he had enough evidence, he was excused from the interview. In his defense, he questions how the Commission could have selected him for the position and given him the necessary documentation, allowing him to pass the computerized exam.¹⁰⁵ He believed that the computerized system was more likely to hire lower-level employees up to third grade positions (Ameriat) in a transparent and competitive manner, but there are still certain barriers in the system for higher-ranking roles like the first and second grade positions.

For a post like a directorate, for example, the electronic system does not function by itself; a separate step for conducting interviews with candidates is required. The difficulties start at this stage since the appointment will be influenced by political factors. The interviewers may be swayed by persons who endorse their own candidates. Since relations matter in Afghanistan, particularly for a political motive, institutions will prioritize the recommended person. However, on rare occasions, if the Commission does not have its internal candidate or the recommended one, it might initiate the process transparently. but there is another phase for interviewing candidates; multiple political and personal motives and interests could be involved and influenced in this phase of the appointment; and people may influence the interviewers and recommend their network candidates, and since relations matter in Afghanistan for political motives, interviewers may consider the recommendations as a preference.¹⁰⁶ However, in some rare instances, if the commission does not have their internal candidate or the recommended ones, they initiate the process transparently and competitively.¹⁰⁷

2.2.4 Challenges of PAR in Afghanistan

A. De jure vs de facto States

¹⁰² Interview with Mohammad Saleh Musleh, Professor of Jurisprudence and Law, Balkh University, in Mazar-i-Sharif, Afghanistan. (Sept. 7, 2019).

¹⁰³ *Id.*

¹⁰⁴ Facebook Messenger Interview with Ahmad Jawad Omary, Deputy Director, Martyrs and Disabled Directorate, Samangan province, Afghanistan (Aug. 15, 2020).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

“Although in theory Afghanistan is one of the most highly centralized states in the world, in reality, during the past 25 years of conflict, Afghanistan has become, politically, highly decentralized.”¹⁰⁸ The historic background and conflicts in Afghanistan created factional leaders who were fighting to remain powerful and operate in distinct areas; this was a strong mentality in the beginning of transitional government but for the time being, their power has been diminished.¹⁰⁹ Most of these leaders joined the government with a commitment to end conflicts.¹¹⁰ However, there are still so-called local commanders that operate within their own region regardless of the de jure government.

The role of de facto states in Afghanistan has had an impact on government structures and the de facto factors influence the functionality of a de jure state.¹¹¹ Even though the government has control in all its administrative structures in the territory, in some parts of Afghanistan the warlords are more powerful than the government.

The situation is very complicated and made more so by individuals in some of the government's key positions within both a de facto and de jure state, including in Afghanistan's Parliament and the government.¹¹² Experience indicates that some holding these positions are uneducated and corrupt. They usually select their own people to key positions through their governmental network, and this utterly undermines administrative values and the value of Rule of Law.

The Commission indicates that the interference of high officials who are mostly warlords deeply undermine the efforts on PAR.¹¹³ [Mujahidin] groups are getting stronger again because they believe the government is not powerful enough to take any legal steps against them.¹¹⁴ A provincial mayor indicated that “the international community made a big mistake by giving a clear mandate and strong support for regional warlords to rebuild their bases of power. Mujahidin commanders were appointed to some key positions. Within 18 months, the government couldn't change governors, commanders, and chiefs of police.”¹¹⁵

Additionally, subnational government structures in certain provinces have been marginalized with respect to critical political decisions that impact the region, effectively rendering them irrelevant.¹¹⁶ As an illustration, in Faryab Province, the responsibilities of Marshal Dostum - the first Vice President - were largely confined to managing routine civil

¹⁰⁸ HAKIMI ET. AL., *supra* note 42 at 3.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 22.

¹¹¹ *Id.* at 3.

¹¹² *Id.*

¹¹³ *Id.* at 4.

¹¹⁴ EVANS ET AL., *supra* note 3 at 13.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 14.

affairs.¹¹⁷ Major relevant governmental security issues, before being directed to the Capital, were being handled by Marshal Dostum or his representative in the northern Provinces.¹¹⁸ Marshal Dostum, who has been granted the highest military rank, was recently attending military operations in frontlines to fight against the Taliban.¹¹⁹ People admired him for his love for people and his efforts; however, his performance was not legally acceptable, because he held a very important position in the government which required leadership and management. While in his absence, his subordinates and anyone else in government could abuse the Marshal's entrusted power and gain illegal private benefits.

B. Functional Overlap

Functional overlaps amongst institutions make the scope of government more difficult. For example, both the Ministry of Urban Development and Lands and the Kabul Municipality claim responsibility for planning, zoning, and building regulations within the city.¹²⁰

Recently, the Afghanistan Investment Support Agency (AISA)¹²¹ was annulled. The main reason behind this was the contradictions between the administrative discretions. For a long time, there was controversy over the acceptance of AISA's jurisdiction by the Ministry of Commerce and Industries (MoCI) and whether it considered AISA an independent agency. The Ministry was deceptively concerned about the conflict of interest and intersections between institutions; however, the main concern was the fear of minimizing their authority, budget, and business referrals.

C. Administrative Corruption

Corruption is the most dreadful disease that Afghanistan is tackling. It is a disastrous obstacle that has created many administrative malfunctions and arbitrariness. Corruption constitutes a serious threat to Afghanistan's state-building and development agenda. Adverse effects include direct wastage of funds and public sector assets.¹²²

D. Lack of Transparency and Accountability

“Merit basis in appointments is at the heart of an effective civil service management. But the volatility of decades of conflict eroded the limited trust there had been with merit-based recruitment as competing political factions needed loyal and known representatives within

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 110-111.

¹²¹ *Directorates*, MINISTRY OF INDUSTRY AND COMMERCE 1 (last visited Mar. 26, 2023), <https://moci.gov.af/en/directorates>.

¹²² SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION, AFGHANISTAN'S ANTI-CORRUPTION EFFORTS 1 (2001).

government.”¹²³ Since the establishment of the Appointment Board in the Commission and the e-recruitment system, there have been significant improvements in the process of recruitments. However, the lack of transparency in the recruitment process has created many concerns for applicants humbly searching for jobs in the government, as well as concerns of the Appointment Board and shortlisting committee’s lack of expertise. The interference of external elements in the shortlisting process and introducing their own candidates for agencies have still remained a crucial challenge within Afghanistan’s public administration.¹²⁴

E. Challenges Raised by Questionnaires

- Prevailing of relation-based culture;
- Lack of SMART Monitoring and Evaluation system;
- Nepotism and clientelism within the government institutions;
- Internal and external pressures;
- Absence of an Administrative Court in the country;
- Lack of institutional values and code of conduct ethics;
- Strong influence of high-ranking officials in the recruitment process;
- Lack of public awareness of their rights;
- Lack of commitment by civil servants; and
- Lack of hope in the future of Afghanistan.

2.3 Research Questionnaires and Feedbacks

The methodology used in this research paper is the mixed methodology research that has comprised both quantitative and qualitative research methods. The author has conducted surveys with multiple choice questions distributed through email and in person for data collection, as well as conducted literature review for this study.

The aim of preparing the research questionnaire was to get up-to-date information concerning the administrative law reforms in practice, as the data in libraries and online resources might be outdated or written on various occasions, and the recent changes in the field have not been developed or written. Hence, the method of data collection through questionnaires has proved to be useful. The questionnaires were sent to the relevant subject matter experts, administrative law professors, and those who have practically engaged in public administration. The inputs were provided in Farsi/Dari language. The author has translated the answers into English. The questionnaire consists of thirty-one questions: sixteen open and fifteen closed questions. The paper includes the answers by eight individuals who are either law professors, government officials, and/or subject matter experts.

¹²³ WORLD BANK, AFGHANISTAN: BUILDING AN EFFECTIVE STATE, PRIORITIES FOR PUBLIC ADMINISTRATION REFORM at. v (2008).

¹²⁴ *Id.* at 24.

Two individuals replied to the question on whether the Commission has been successful in bringing about administrative reforms. They stated that despite hard times in the country, the Commission has had notable performances.¹²⁵

They have listed some outputs and outcome level results for the Commission's performance and achievements such as: the amendment of the old grading system to a new pay and grading system; raising competition in recruitment mechanism; capacity building of civil servants; development and drafting laws, regulations, and procedures; rejuvenated the public administration of young professionals to some extent; development of gender-based values and strengthening women's participation in civil service; raising job security guarantees for civil servants; raising recruitment facilities and recruiting a huge number of people with bachelor's degrees; hiring high qualified individuals within public administration; bringing about changes to structures and human resources; and reforming the laws.¹²⁶

However, two individuals did not notify any signs of success for the Commission.¹²⁷ One individual said, "although the Commission has taken significant efforts for bringing about administrative reforms, their efforts have not been completely successful. For instance, the PRR process through which the civil servants are employed. High level of corruption and lack of meritocracy in recruitments resulted in failure of the Commission to implement its mandates independently."¹²⁸ Two Individuals, despite not approving the success of the Commission, added that most of the recruitments take place on a patronage basis.¹²⁹ One individual also criticized the Commission, asserting that the Commission not only did not bring about any reforms, but also engendered more problems for the people.¹³⁰ One individual seemed more skeptical about the Commission, and stated that the Commission has not been successful because of two major factors: lack of administrative cadres and the pervasive corruption.¹³¹

To the question of whether the work of the Commission could be justified by the amount of money given to them or not, two individuals concluded that the work of the Commission could justify the funds they received, arguing for a broad reform in structures and human resource management that have been in place. Also, the public administration with recruitment

¹²⁵ E-mail from Abdul Matin Amin, Dir. of Indep. Admin. Reform and Civil Serv. Comm'n, Balkh Province (Apr. 6, 2016) (on file with author); E-mail from Adel Ahman Farestani, Dir. of Indep. Admin. Reform and Civil Serv. Comm'n, Badghis Province (Apr. 6, 2016) (on file with author).

¹²⁶ *Id.*

¹²⁷ E-mail from Mohammad Qadam Shah, Assistant Professor, Sch. of Law and Political Sci., Balkh Univ., Afghanistan (Feb. 9, 2016) (on file with author); E-mail from Sayed Murtaza Alemzada, Adjunct Professor, Gawharshad Univ. (Feb. 9, 2016) (on file with author).

¹²⁸ *Id.*

¹²⁹ E-mail from Sayed Murtaza Alemzada, Adjunct Professor, Gawharshad Univ. (Apr. 12, 2016) (on file with author); E-mail from Mohammad Rafi Faizi, Private Lawyer and Adjunct Professor, Rah -e- Saadat Univ. (Apr. 12, 2016) (on file with author).

¹³⁰ E-mail from Mohammad Rafi Faizi, Private Lawyer and Adjunct Professor, Rah -e- Saadat Univ. (Apr. 13, 2016) (on file with author).

¹³¹ E-mail from Ajmal Jalal, LLM Candidate, Ohio Northern Univ. Pettit College of Law (Apr. 14, 2016).

of youth has been revitalized.¹³² Three individuals did not totally agree that the Commission could justify the money provided to them.¹³³

Five Individuals strongly believed in bringing up to date the concerned Laws and Regulations.¹³⁴ One individual added that while the administrative law in Afghanistan is amended, it should be flexible to the needs of the society.¹³⁵

To the question of the “causes of reluctance in cooperation on performance between administration institutions,” one individual denotes the following causes: vagueness in management strategies; lack of capacity in administration; administrative corruption; lack of commitment by civil servants; lack of effective Management Information System (MIS); lack of effective monitoring during the implementations; weakness in leadership within institutions; and classic and traditional administration systems.¹³⁶ Further, in terms of administrative law reforms, he mentions that we need to have a decentralized administrative system.¹³⁷ In addition, one individual added some other causes like lack of transparency and negligence in performance by bureaucrats.¹³⁸

Three individuals believe that lack of well-designed objectives and work plans have created many constraints.¹³⁹ While one individual argues that there are different institutions involved in coordination, but law has not been clearly mandated.¹⁴⁰

¹³² E-mail from Abdul Matin Amin, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Balkh Province (Apr. 12, 2016) (on file with author); E-mail from Adel Ahman Farestani, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Badghis Province (Apr. 12, 2016) (on file with author).

¹³³ E-mail from Mohammad Qadam Shah, Assistant Professor, Sch. of Law and Political Sci., Balkh Univ., Afghanistan (Apr. 12, 2016) (on file with author); E-mail from Mohammad Rafi Faizi, Private Lawyer and Adjunct Professor, Rah -e- Saadat Univ. (Apr. 12, 2016) (on file with author); E-mail from Sayed Murtaza Alemzada, Adjunct Professor, Gawharshad Univ. (Apr. 12, 2016) (on file with author).

¹³⁴ E-mail from Abdul Matin Amin, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Balkh Province (Apr. 6, 2016) (on file with author); E-mail from Adel Ahman Farestani, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Badghis Province (Apr. 12, 2016) (on file with author); E-mail from Mohammad Rafi Faizi, Private Lawyer and Adjunct Professor, Rah -e- Saadat Univ. (Apr. 13, 2016) (on file with author); E-mail from Sayed Murtaza Alemzada, Adjunct Professor, Gawharshad Univ. (Apr. 14, 2016) (on file with author); E-mail from Ajmal Jalal, LLM Candidate, Ohio Northern Univ. Pettit College of Law (Apr., 2016).

¹³⁵ E-mail from Abdul Matin Amin, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Balkh Province (Apr. 6, 2016) (on file with author).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ E-mail from Abdul Matin Amin, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Balkh Province (Apr. 12, 2016) (on file with author); E-mail from Adel Ahman Farestani, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Badghis Province (Apr. 12, 2016) (on file with author).

¹³⁹ E-mail from Ajmal Jalal, LLM Candidate, Ohio Northern Univ. Pettit College of Law (Apr. 15, 2016); E-mail from Mohammad Rafi Faizi, Private Lawyer and Adjunct Professor, Rah -e- Saadat Univ. (Apr. 15, 2016) (on file with author); E-mail from Abdul Matin Amin, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Balkh Province (Apr. 15, 2016) (on file with author).

¹⁴⁰ E-mail from Mohammad Qadam Shah, Assistant Professor, Sch. of Law and Political Sci., Balkh Univ., Afghanistan (Apr. 9, 2016) (on file with author).

In regard to the role of the justice sector in engendering transparency and accountability and strengthening administrative entities, he said that if the judicial institutions are accountable themselves, they may play a vital role in empowering the administrative institutions.¹⁴¹ Additionally, if an administrative court does not exist, the ordinary courts can work as an alternative. But in all cases, the courts ought to be accountable.¹⁴² Especially since, in the words of one individual, the justice sector is the eyes of the government, and the public are expecting much from them.¹⁴³ Five individuals believe that the justice sector can play a critical role in bringing about transparency and accountability if the judiciary is open and corruption free.¹⁴⁴

When asked about the “judicial review of administrative action implementation in practice,” one individual stated that judicial review has been practically implemented in many public administrations.¹⁴⁵ He adds that there is an appeal and complaints board that reviews the complaints on a daily basis and issues opinions.¹⁴⁶ If the complainant is not satisfied with the board’s opinion, he/she can appeal to the competent court.¹⁴⁷ Hundreds of complaints were reviewed by the appeal/complaints board in the north zone regional office of the Commission lately.¹⁴⁸ Three individuals said, “because we do not have an Administrative Court, implementing Art. 51 of the Afghanistan Constitution is not feasible, for the time being, and mostly people are not aware of judicial review. Even most of the bureaucrats do not have the knowledge to understand this provision. Therefore, this provision has its challenges in Afghanistan.”¹⁴⁹ Two individuals answered “no” to the question, arguing that this Article requires having a separate administrative court just like the one suggested by the 1923 Constitution, but due to the problems in the country, the Afghan government has not been able, or willing, to create such a court.¹⁵⁰

¹⁴¹ *Id.*

¹⁴² E-mail from Abdul Matin Amin, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Balkh Province (Apr. 6, 2016) (on file with author).

¹⁴³ E-mail from Adel Ahman Farestani, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Badghis Province (Apr. 6, 2016) (on file with author).

¹⁴⁴ E-mail from Adel Ahman Farestani, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Badghis Province (Apr. 6, 2016) (on file with author); E-mail from Ajmal Jalal, LLM Candidate, Ohio Northern Univ. Pettit College of Law (Apr. 12, 2016); E-mail from Mohammad Rafi Faizi, Private Lawyer and Adjunct Professor, Rah -e- Saadat Univ. (Apr. 13, 2016) (on file with author); E-mail from Sayed Murtaza Alemzada, Adjunct Professor, Gawharshad Univ. (Apr. 14, 2016) (on file with author).

¹⁴⁵ E-mail from Adel Ahman Farestani, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Badghis Province (Apr. 6, 2016) (on file with author).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ E-mail from Abdul Matin Amin, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Balkh Province (Apr. 12, 2016) (on file with author); E-mail from Adel Ahman Farestani, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Badghis Province (Apr. 12, 2016) (on file with author).

¹⁴⁹ *Id.*

¹⁵⁰ E-mail from Adel Ahman Farestani, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Badghis Province (Apr. 6, 2016) (on file with author); E-mail from Mohammad Rafi Faizi, Private Lawyer and Adjunct Professor, Rah -e- Saadat Univ. (Apr. 13, 2016) (on file with author).

On the issue of the existing court dealing with the administrative related cases, two individuals answered positively, believing that there is a new division to deal with these issues. One added that the judicial review of administrative action is not usual, and it requires professional judges and lawyers to do so.¹⁵¹ But, Art. 51 has not been reflected in administrative law much, because if a civil servant violates the law, the discipline begins by issuing a warning letter to the civil servant by the agency.¹⁵²

Regarding the “failure factors of administrative law and procedures in Afghanistan”, two individuals said that “there are internal and external factors that lead to failure of administrative law in Afghanistan such as: pressures by powerful people in the local and national levels; widespread corruption and nepotism and Clientelism; lack of commitment by bureaucrats; lack of capacity of bureaucrats; hopelessness in future and no predictability; and intervention of elected and appointed MPs and Provincial councils.”¹⁵³ One individual added that a failure factor includes “weakness of leadership and management in institutions.”¹⁵⁴ Two individuals said that “ambiguity in terms of references and the overlapping of roles and responsibilities” are some other factors.¹⁵⁵ One individual only emphasized widespread corruption, adding that, “until corruption [ceases to] exist, not only administrative law, but all other laws will fail.”¹⁵⁶

In terms of the effectiveness of centralized authorities in violations of administrative law, five individuals agree that it has been effective. “Decentralization needs to be maintained at any cost, governors and mayors should be elected and provincial councils should be given the authority of budget making and drafting of relevant laws and administrative procedures to be in accordance with the needs of their regions.”¹⁵⁷ One individual disagrees with respect to decentralization saying that “it cannot be a factor, procedures are important.”¹⁵⁸

In the section of closed questions, individuals were asked “whether administrative laws are in compliance with international standards or not.” Five said “less” and one said “very little.”

¹⁵¹ E-mail from Ajmal Jalal, LLM Candidate, Ohio Northern Univ. Pettit College of Law (Apr. 14, 2016).

¹⁵² E-mail from Ajmal Jalal, LLM Candidate, Ohio Northern Univ. Pettit College of Law (Apr. 14, 2016); E-mail from Sayed Murtaza Alemzada, Adjunct Professor, Gawharshad Univ. (Apr. 12, 2016) (on file with author).

¹⁵³ E-mail from Abdul Matin Amin, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Balkh Province (Apr. 6, 2016) (on file with author); E-mail from Adel Ahman Farestani, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Badghis Province (Apr. 6, 2016) (on file with author).

¹⁵⁴ E-mail from Adel Ahman Farestani, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Badghis Province (Apr. 6, 2016) (on file with author).

¹⁵⁵ E-mail from Mohammad Qadam Shah, Assistant Professor, Sch. of Law and Political Sci., Balkh Univ., Afghanistan (Apr. 6, 2016) (on file with author); E-mail from Sayed Murtaza Alemzada, Adjunct Professor, Gawharshad Univ. (Apr. 12, 2016) (on file with author).

¹⁵⁶ E-mail from Ajmal Jalal, LLM Candidate, Ohio Northern Univ. Pettit College of Law (Apr. 14, 2016).

¹⁵⁷ E-mail from Abdul Matin Amin, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Balkh Province (Apr. 6, 2016) (on file with author); E-mail from Adel Ahman Farestani, Dir. of Indep. Admin. Reform and Civil Serv. Comm’n, Badghis Province (Apr. 12, 2016) (on file with author); E-mail from Mohammad Qadam Shah, Assistant Professor, Sch. of Law and Political Sci., Balkh Univ., Afghanistan (Apr. 9, 2016) (on file with author).

¹⁵⁸ E-mail from Ajmal Jalal, LLM Candidate, Ohio Northern Univ. Pettit College of Law (Apr. 14, 2016).

To the question of the “influence of pressure groups inside the institutions for maladministration,” four voted for “much” and two voted for “very much.”

For the question directed toward the problem of “not paying attention to meritocracy that could lead to maladministration and violations,” three answered with “much” and three answered with “very much.”

When asked about the “role of weaknesses in values and ethics of bureaucrats in administrative law failure”, three answered “very much,” one answered “less” one answered “very less,” and one answered “much.”

In regards to “influence and interference of external pressures within institutions that could result in administration infringement,” four voted for “very much,” one voted for “much,” and one voted for “less.”

3. THE GEORGIA EXPERIENCE IN ADMINISTRATIVE LAW INITIATIVES AND REFORMS

3.1 Public Administration Reform (PAR) in Georgia

Professor Howard N. Fenton was one of the administrative law experts who put extreme effort into administrative law reforms in Georgia. He provided Georgia with significant administrative law reforming proposals that the public administration of Georgia enjoys practicing today. Professor Fenton is whom the Georgian administrative law reforms owe its success. In this regard, he stated: “I assumed that all of the judges, government officials, academics, lawyers and journalists that I was working with were honest and sincere in their desire for reform, but I also recognized that in all likelihood, some number of them were (to a lesser or greater extent) corrupt.”¹⁵⁹

Along with his colleagues, Professor Fenton began working on a USAID-funded Rule of Law Project in Georgia.¹⁶⁰ This project focused on comprehensive administrative law reform, including the freedom of information provisions.¹⁶¹ Professor Fenton’s findings indicated that under the Soviet system, administrative law was not explicitly defined, rather a range of public laws and authorities that control the public.¹⁶² Two points in the Soviet system were the major obstacles on the way to reforms. First, the rules imposed by the government were more unpleasant to the public. Second, those widespread administrative rules imposed the least

¹⁵⁹ Howard N. Fenton, *An Essay on Administrative Law Reform in the Former Soviet Union*, J.E. EUR. L., 82, 49 (2000).

¹⁶⁰ Malcolm L., Russell-Einhorn & Howard N. Fenton, *Using Administrative Law Tools and Concepts to Strengthen USAID, A guide for USAID Democracy and Governance Officers*, USAID (2008), http://pdf.usaid.gov/pdf_docs/Pnadk999.pdf.

¹⁶¹ *Id.* at 10.

¹⁶² Fenton, *supra* note 159, at 53.

procedural restriction on the governmental officials and shielded them from any judicial scrutiny.¹⁶³

The Georgian Administrative Code already consisted of two hundred articles of specific administrative violations.¹⁶⁴ For instance, in one section, it included environmental restrictions, industrial rules and electricity consumption, agricultural rules including the treatment of dogs and cats, transportation and communication, immigration matters, customs affairs, and military service-related issues.¹⁶⁵ In other sections, it included “Administrative Infringements” and their specific fines.¹⁶⁶

Every reform initiative must have a baseline to build upon. Administrative law reform was a priority of PAR in Georgia. However, the USAID evaluation report indicated that Georgia’s public sector suffered from chronic staff turnover, the associated loss of institutional memory, and a disenfranchised public servants’ sector.¹⁶⁷ In addition, it is stated that “reform of the civil service system in Georgia remains uncertain.”¹⁶⁸

In November 2006, the USAID initiated the PAR by providing around \$4.4 million in funding for a duration of three years.¹⁶⁹ The Academy for Educational Development (AED) implemented the PAR project.¹⁷⁰ The Georgian government augmented the staff by a half dozen local subcontractor Community Service Organizations (CSOs).¹⁷¹ The PAR project ended on November 28, 2009.¹⁷²

The USAID evaluation report about this PAR initiative was concerned about political will by the Georgian Government. A 2005 draft Civil Service Code never developed to the point of consideration by the Georgian Parliament, presumably due to the lack of political will from the government.¹⁷³ A new alternate draft Civil Service Code, dated September 22, 2009, was developed under the leadership of Irakli Kotetishvili, the new Director of the Public Service Bureau (PSB).¹⁷⁴ This draft Civil Service Code was discussed in the Georgian Parliament in 2010.¹⁷⁵ A similar debate continued among advocates of various civil service models, with the country’s leadership apparently preferring the “New Public Management” model, a contract-

¹⁶³ *Id.* at 53-54.

¹⁶⁴ *Id.* at 60.

¹⁶⁵ *Id.* at 60-61.

¹⁶⁶ *Id.*

¹⁶⁷ Democracy Int’l, Inc., Georgia Public Administration Reform Program, Final Evaluation Report i, 3 (Steven J. Anlian, Revaz Beridze eds., 2009) <https://democracyinternational.com/media/Democracy%20International-Georgia%20PAR%20Evaluation%20FINAL%202012%2023%202009.pdf>.

¹⁶⁸ *Id.* at i.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 4.

¹⁷⁵ *Id.* at i.

based, private sector-oriented system to enhance flexibility during Georgia’s transitional development period.¹⁷⁶

The USAID evaluation team, through the PAR initiative, evaluated the performance of the Ministry of Justice (MoJ) of Georgia and several MoJ sub-agencies, including four line ministries, the Department of Tourism and Resorts, and the Public Service Bureau (PSB). The evaluation connotes that PAR had deliberately not addressed broad civil service challenges in Georgia due to political constraints and lack of a credible counterpart, however, the program adapted to the realities of the ground and focused on more discrete areas of intervention.”¹⁷⁷

Indeed, the program gave rise to some aspects of administrative reform, and it certainly enhanced the performance of targeted agencies.¹⁷⁸ Based on the USAID conclusion, the PAR program was well executed and supported civil society's engagement in the process.¹⁷⁹ PAR provided technical assistance and training to the targeted agencies by developing a comprehensive three-year Strategic Plan.¹⁸⁰ It also assisted in the development of feasible action plans within MoJ departments and sub-agencies to implement the strategic plan.¹⁸¹ Most notably, the project helped to develop the Civil Registry Agency, and initiated the development of a Monitoring and Evaluation system to evaluate the strategy implementation.¹⁸²

Furthermore, Georgia initiated a new Public Administrative reform initiative with the financial support of the European Union in 2014; this road map was adopted in 2015.¹⁸³ The program consisted of an Action Plan for the 2015 - 2020 activities and encompassed six main components:¹⁸⁴ Policy Development and Coordination; Human Resource Management; Accountability; Public Finance Management; Service Delivery; and Local Self Government.¹⁸⁵

3.1.1 Achievements of PAR in Georgia

Research indicates that Georgia’s significant achievements in terms of PAR, and the significant reforms of Georgia are as follows:

- Comprehensive General Administrative Code of Georgia.¹⁸⁶

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 36.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at ii.

¹⁸⁰ *Id.* at 36.

¹⁸¹ *Id.*

¹⁸² *Id.* at iii.

¹⁸³ Nikoloz Gagua, Public Finance Management Reform: Georgia's Path Europe and Central Asia Regional Governance Conference, 4 (2019) <https://thedocs.worldbank.org/en/doc/813901561126144593-0080022019/original/GeorgiaRoomBPublicFinanceManagementReformPath.pdf>.

¹⁸⁴ *Id.* at 4.

¹⁸⁵ *Id.*

¹⁸⁶ Law of Georgia General Administrative Code [Civil Code] <https://matsne.gov.ge/en/document/view/16270?publication=33>.

- Comprehensive Administrative Procedure Code of Georgia.¹⁸⁷
- New Civil Service Code (drafted in 2009, ratified in 2010).¹⁸⁸
- Developed a Comprehensive Administrative Reform Strategic Plan.¹⁸⁹
- Initiated SMART M&E System.¹⁹⁰
- Enhanced capacity of civil service bureaucrats.¹⁹¹

3.2.1 Challenges of PAR in Georgia

Georgian initiatives for PAR have accomplished many achievements, however, they experienced the following challenges:

- Lack of political will on Public Administration Reform.¹⁹²
- Challenge of post-communism administrative system.¹⁹³
- Discrete areas of intervention (existing overlapping authorities).¹⁹⁴

4. THE PAKISTAN EXPERIENCE IN ADMINISTRATIVE INITIATIVES AND REFORMS

4.1 Public Administration Reform (PAR) in Pakistan

The basis for the establishment of various civil services at the federal and provincial levels has been enshrined in Article 240 of the Constitution of the Islamic Republic of Pakistan.¹⁹⁵ Furthermore, the Civil Servants Act of Pakistan, 1973, provides the legal basis for regulating the appointments of persons to, and the terms and conditions of, an All Pakistan Service.¹⁹⁶ In Pakistan, Administrative Reforms of 1973 abolishes all classes of the civil servants, merging all services and cadres into a single unified graded structure.¹⁹⁷ The following two unified grades were created under the new rules (framed based on the Civil Servants Act, 1973), which continues to date:¹⁹⁸

All Pakistan Unified Grades (APUG)

¹⁸⁷ Law of Georgia Administrative Procedural Code [Civil Code] <https://matsne.gov.ge/en/document/view/16492?publication=77>.

¹⁸⁸ Law of Georgia on Public Service [Civil Code] <https://matsne.gov.ge/en/document/download/28312/100/en/pdf>.

¹⁸⁹ Democracy Int'l, Inc., *supra* note 167, at 3.

¹⁹⁰ *Id.* at 18.

¹⁹¹ *Id.* at 36-37.

¹⁹² *Id.* at i.

¹⁹³ Vladimir Papava, *On the Role of the International Monetary Fund in the Post-Communist Transformation of Georgia* 39 EMERGING MARKETS FINANCES & TRADE 5-6 (2003).

¹⁹⁴ Democracy Int'l, Inc., *supra* note 167, at 36.

¹⁹⁵ Urdu [Constitution] Apr. 10, 1973, art. 240 (Pak.).

¹⁹⁶ The Civil Servants Act, 1973, Sept. 26, 1973, ch. 1 (Pak.)

<https://webcache.googleusercontent.com/search?q=cache:38I78wLtO-QJ:https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99257/118391/F1180420505/PAK99257.pdf+&cd=2&hl=en&ct=clnk&gl=af>

¹⁹⁷ Maryam Tanwir, Shailaja Fennell, *Pakistani Bureaucracy and Political Neutrality: A Mutually Exclusive Phenomenon?*, 49 239 PAK. DEV. J., 239 248 (2010).

¹⁹⁸ *Id.*

The APUG officers are employed at the federal and provincial levels. The APUG consists of the following occupational groups/services:¹⁹⁹

- District Management Group
- Police Service of Pakistan
- Secretariat Group

Federal Unified Grades (FUG)

As a rule, the FUG officers are only posted to Federal Government posts. The FUG is also divided by the following occupational groups: Accounts Group; Commerce and Trade Group; Customs and Excise Group; Foreign Service of Pakistan; Income Tax Group; Information Group; Office Management Group; Postal Group; Railways (Commercial and Transportation) Group; and Economist & Planners Group.²⁰⁰

According to the Federal Board of Revenue (FBR) of Pakistan, as part of governance reforms, the Tax Administration Reform Program (TARP) was implemented from 2005 through 2011.²⁰¹ The reform was approved as conditions of the Structural Adjustment Program (SAP) in the year 1998.²⁰² However, its implementation was delayed twice. First as a result of the political resistance from within the ruling party and then again due to a sudden change in the ruling regime.²⁰³

Nevertheless, some specific people were working in the background during these years of political change. Even though Pakistan was experiencing a military-led government, the public administration institutions were not politically influenced.²⁰⁴ Pakistan realized the importance of the program and supported this initiative. “These reforms targeted two areas: policy reforms and administrative reforms.”²⁰⁵ Under this program, managerial control efforts were performed through increased salaries, capacity was built via more training, working conditions were improved, there was an enhanced use of information technology, and a reorganization of functional lines (main and subordinate agencies).²⁰⁶ The Project Implementation Plan (PIP) for these reforms was prepared by a United Kingdom (UK) based international consulting firm, and PIP implemented the initiative along with internal stakeholders.²⁰⁷

¹⁹⁹ Faisal Iqbal, *An Analysis in Administrative Reforms in Pakistan's Public Sector*, 210 UNIV. OF BEDFORDSHIRE (2014) <https://uobrep.openrepository.com/handle/10547/550403>.

²⁰⁰ Shakeel Ahmed Imtiaz, *A Study on the Civil Service Structure*, 3 (Catherine I. Froehling & Detlef Barth ed., 2013), <http://lgkp.gov.pk/wp-content/uploads/2014/03/6.-A-study-on-the-civil-service-structure-civil-servants-training-and-an-overview-of-National-Commission-of-Government-Reforms-in-Pakistan.pdf>.

²⁰¹ Iqbal, *supra* note 199, at 5.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.* at 6.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

The Structural Adjustment Program (SAP) necessitated the initiation of Public Sector Reform (PSR) in Pakistan during the 1990s. SAP aimed to introduce policy changes in the economic structure of the country to promote stability and development.²⁰⁸

This program aimed to achieve three main benefits which included the elimination of balance of payments and public sector deficits, fostering economic growth, and establishing protective measures to prevent future economic shocks.²⁰⁹

More recently, Pakistan has focused on e-government. “The concept of e-government entails establishing an environment wherein the Government and all its partners and stakeholders can interact digitally.”²¹⁰ The root of this initiative goes back more than a decade when the government approved the National IT Policy and Action Plan in the year 2000.²¹¹ As argued, e-government provided a transparent, effective, and economic environment for citizens and businesses to access public services.²¹²

This approach's main emphasis was first to build the basic infrastructure of an IT base in the public sector by obtaining essential equipment and second, instituting a networked environment within and between the government departments.²¹³ As the study indicates, Pakistan could create a unified system within government institutions through an IT digitalized system, but the fragile political environment in Pakistan negatively impacted institutional building in Pakistan, and PAR remained between the success and failure.²¹⁴

4.1.1 Achievements of PAR in Pakistan

Pakistan has struggled between successes and failures. In the long run, it had some achievements that established the foundation for PAR’s success in the future. Research indicated that Pakistan, despite all the political dilemma, could have accomplished the following achievements:

- Created an Administrative System and enacted Administrative Laws.²¹⁵
- Established All Pakistan Unified Grades (Unified and Integrated Civil Service).²¹⁶
- Established e-Government within service delivering institutions.²¹⁷

4.1.2 Challenges of PAR in Pakistan

²⁰⁸ *Id.* at 25.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 34.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.* at 34-35.

²¹⁴ *Id.*

²¹⁵ *Id.* at 17.

²¹⁶ *Id.* at 210.

²¹⁷ *Id.* at 34.

Despite Pakistan gaining some achievements in public administrative reforms, this country suffered much in PAR due to many regime changes in Pakistan. Experts enumerate the following as the crucial challenges of PAR in Pakistan:

- Widespread corruption.²¹⁸
- An over-centralized organization structure, as well as rigid, often irrelevant, and enforced rules.²¹⁹
- Seriously tainted internal accountability and lack of accountability to the public.
- Colonial heritage and long years of military dictatorship.²²⁰
- The politicization of civil service decision-making.
- Lack of coordination amongst agencies.²²¹

5. LESSONS LEARNED FROM PAR IN GEORGIA AND PAKISTAN

Georgia and Pakistan both followed different PAR approaches. Both economies experienced pains and gains on the way to PAR reforms. The author of this research paper considers the following lessons crucial for the Afghanistan government to consider while implementing PAR initiatives:

- Enacting only comprehensive laws and regulations will not bring about change unless an effective enforcement mechanism is in place.
- Political will is the key in government. No reforms will take place with lack of political will.
- Overlapping administrative institutions create only overlapping functions. The states shall develop an integrated digital administrative system.
- Corruption is destructive for administrative reform in a state. The states need to take practical measures to fight this phenomenon.
- Modernization and digitalization of administrative functions will result in transparency and accountability and cuts redundant steps. To resolve this issue, the states need to establish an integrated e-governance system.²²²
- To capacitate bureaucrats and training management, the research suggests that the states shall establish a SMART M&E system in every agency of the government.²²³

6. RECOMMENDATIONS

6.1 A Clear Legal Framework

²¹⁸ *Id.* at 27.

²¹⁹ *Id.* at 50.

²²⁰ *Id.* at 17.

²²¹ *Id.* at 119.

²²² Democracy Int'l, Inc., *supra* note 167, at 38.

²²³ *Id.*

The government of Afghanistan needs to create a clear legal framework to enable the establishment of organizational principles for the state executive encompassing ministries, central agencies, and their provincial agencies.²²⁴ The principles should envisage the structures and all procedures.²²⁵ The framework needs to maintain flexibility on the reallocation of tasks, while the principles governing the establishment or may merge or restructure the ministries.²²⁶ In the meantime, there needs to be a clear and transparent mechanism for task delegation between ministries and their agencies.²²⁷ Furthermore, the research suggests that key civil service draft laws need to be approved and enforced to change the environment for future reforms within the civil service institutions.²²⁸

6.2 Political Will

Political will and commitment are the key elements towards an effective public administration reform in a state. As one of the reviewers noted: “It is a truism, but one important to restate, that any system in public administration which does not have the support and political commitment of the government elites is unlikely to make much progress . . . the key to the whole process of public administration reform is the political commitment.”²²⁹ Thus, without political will and strong commitment, no reform will take place.

The government should prioritize PAR in the national strategy development policy and support the institutions through a political will to implement PAR agenda.²³⁰ As Transparency International puts it, “political leadership and a commitment to fight corruption at the highest levels is a pre-requisite for initiating and sustaining reforms over time, until results are achieved.”²³¹ As per rule of law experts, political will includes from top to bottom, from President and cabinet to civil society, and to public engagement and their desirability to reform.

6.3 Norms or Values: Institutional Change

We can revise and amend the formal legislatives but the change that has to be brought in the norm and values within institutions will take much longer. With a change management strategy, and effective governance and program management methods, ethical code conduct can be in place, organizational structures can improve, and that would leave a legacy of norms and

²²⁴ HASHIMI & LAUTH, *supra* note 19, at 32.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ LISTER, *supra* note 2, at 12.

²³⁰ RICHARD LUCKING, CIVIL SERVICE TRAINING IN THE CONTEXT OF PUBLIC ADMINISTRATION REFORM 24 (UNDP, 2003).

²³¹ ROBERTO MARTÍNEX B. KUKUTSCHKA, BUILDING POLITICAL WILL TOPIC GUIDE 4 (Transparency Int'l, 2014).

values within institutions for centuries.²³² As one of the analysts observes: “it has been learnt that even what are technically “first-best” solutions are unlikely to work in highly politicized environments, where the informal rules of the game (rent-seeking, extortion, whatever) dominate the formal rules of the game.”²³³ Therefore, certain invaluable norms or values need to be engendered and institutionalized within an institution for institutional change.

6.4 E-Government

The PAR experience in Georgia and Pakistan suggests that in order to overcome institutional gaps, we need to raise accountability and transparency mechanisms and to do that, we need to advocate the right to access to information through an e-governance system. The e-Government system will help to expedite the services, cut off the costs, and facilitate the service delivery. The government of Afghanistan needs to enact digital laws and regulations and adopt an e-government model like Georgia and Pakistan.

6.5 Fight Against Administrative Corruption Within Public Administration

The problem of corruption faced by the Afghan government is dismal, and effective actions to improve the situation are urgently needed. The anti-corruption effort has to be a broad-based, multi-faceted, sustained medium-term effort.²³⁴ By itself, just trying to catch and punish corrupt officials will not work. A holistic approach is needed to incorporate all main anti-corruption strategy elements (prevention through systems and capacity improvements, law enforcement and administrative measures, consciousness raising, and external accountability).

Corruption as a key cross-cutting issue should be mainstreamed, with an anti-corruption lens applied to policies and programs.²³⁵ Changing the culture of corruption will also be very important. It is not realistic to expect sudden breakthroughs in the short run, but meaningful progress, sustained over time, is essential. In order to make such meaningful progress, the government ought to take practical measures to announce a zero-tolerance policy against corruption and impose practical means to engage the public in whistleblowing any fraudulent acts and corrupt activities.

6.6 Effective Implementation of Programs

²³² Graham Teskey, *Capacity Development and State Building*, ABT. ASSOCIATES, 7 (2019) <https://abtassocgovernancesoapbox.files.wordpress.com/2019/01/abt-associates-governance-working-paper-issue-no-5-final-jan-2019.pdf>.

²³³ *Id.* at 9.

²³⁴ IVAR KOLSTAD, VERENA FRITZ & TAM O’NEIL, CORRUPTION, ANTI-CORRUPTION EFFORTS AND AID 37 (Roo Griffiths, ed., 2008).

²³⁵ *Id.*

Lessons from other countries indicate that where PAR did not work, the failure was in the implementation mechanisms. Without a clear implementation mechanism, programs would not take place successfully.²³⁶

There have been many programs initiated on PAR in Afghanistan with few successes. The main factor for its failure has been in the implementation phase. As one analyst observes: “Most reforms in government fail. They do not fail because once implemented they yield unsatisfactory program outcomes. They fail because they never got past the implementation stage at all. They are blocked outright or put into effect only in tokenistic, half-hearted fashion.”²³⁷ To make sure that PAR succeeds on different levels of a civil service; the main focus has to be paid on the end goal of the program and achieving its set objectives. This might be defined as greater efficiency, quicker service delivery, or reduced corruption. “Whatever goals are chosen, reforms need to be linked directly with expected results, making them relevant to the responsibilities of mid-level civil servants. This extends the relevance of reform beyond central agencies and senior leaders.”²³⁸

6.7 Effective Coordination Between Donors and Government

To ensure having a clear picture of the resources and funds provided for the PAR agenda in Afghanistan, effective coordination needs to be maintained between the government and donors. This should be completed within the overall framework provided by the I-ANDs and the Afghanistan Compact. Institutions should be given regulated responsibilities to channel their funds.²³⁹ Numerous analysts and authors have argued for the “need to redefine the development process as the stimulation of local performance.”²⁴⁰ This would require a shift in focus away from questions of policy (e.g., what “should be done”) to questions of implementation (e.g., how to achieve sustainable results).²⁴¹

6.8 Establish SMART M&E System

The government’s PAR strategy and the benchmarks set for reforms have figured out the clear roadmap for PAR in Afghanistan.²⁴² The commission needs to establish a SMART M&E system that regularly monitors and evaluates the milestones in the output level and the line agencies’ activities in compliance with governing laws and regulations.²⁴³ The Commission needs to become the champion of reform for all ministries.

²³⁶ *Id.* at 75.

²³⁷ Charles Polidano, *Why Civil Service Reforms Fail*, Pub. Mgmt. Rev., Apr. 2001, at 1.

²³⁸ LISTER, *supra* note 2, at 12.

²³⁹ *Id.* at 4.

²⁴⁰ *Id.* at 13.

²⁴¹ *Id.*

²⁴² WORLD BANK, *supra* note 110 at x.

²⁴³ *Id.* at xiv.

Since ministries lack the sufficient capacity to evaluate how well they carry out their personnel management, the Commission needs to develop the necessary instruments and their potential uses for public sector agencies and may provide incentives for ministries to monitor their activities or get monitored through the Commission.²⁴⁴ Hence, the structural arrangements to monitor PAR initiatives should be clarified and strengthened within the commission and all other ministries.²⁴⁵

6.9 Strengthen Coordination Between Administrative and Judicial Institutions

Almost all individuals through the questionnaires, proposed the establishment of an Administrative Court for better administrative accountability, particularly the application of judicial review of administrative actions. Nonetheless, the author believes that Administrative Courts may pose huge budgeting, lack of professional human resources, and the creation of overlapping functions, among other issues.

Instead, the author suggests the creation of administrative chambers within the ordinary courts and more coordination between the administrative and judicial institutions through the established chambers. They need to coordinate to discuss interrelating issues and come up with solutions. The judicial review of administrative actions could also be resolved through a national policy backed by the government signed between the judiciary and the executive. Also, establishment of an Administrative Court would help the government effectively implement Article 51 of the Afghanistan Constitution, which is judicial review of administrative actions.²⁴⁶

6.10 Decentralization

Decentralization of some bureaucratic authorities would help in public participation in government, as the provincial councils may find the budget-making authority elected through a transparent election. The administrative agencies will be given more power to avoid a time-consuming, complicated, and centralized procedure in the capital.²⁴⁷

CONCLUSION

As the paper connotes, three countries pursued different approaches to administrative law reforms.

PAR in Georgia started with a strong political will where everyone was willing to cooperate. Georgia had some administrative laws in place, but they needed to be revised and

²⁴⁴ *Id.* at 29.

²⁴⁵ *Id.* at xiv.

²⁴⁶ E-mail from Adel Ahman Farestani, Dir. of Indep. Admin. Reform and Civil Serv. Comm'n, Badghis Province (Apr. 6, 2016) (on file with author); E-mail from Mohammad Qadam Shah, Assistant Professor, Sch. of Law and Political Sci., Balkh Univ., Afghanistan (Apr. 9, 2016) (on file with author).

²⁴⁷ E-mail from Abdul Matin Amin, Dir. of Indep. Admin. Reform and Civil Serv. Comm'n, Balkh Province (Apr. 9, 2016) (on file with author).

updated. The citizens of Georgia were educated and optimistic to embrace administrative reforms in their country. Hence, Georgia wisely used the resources and the donations of the international community on PAR.

Meanwhile, Pakistan was struggling to survive and strived to bring about administrative reforms. They initiated many PAR programs but could not implement them properly because of the several military regimes' changes in Pakistan. However, the country gained some success in terms of their PAR, such as establishing an e-governance and administrative integrated system.

In Afghanistan, at the starting days of the transitional government in 2001, the government seemed committed to PAR, considered PAR as the top priority of Afghanistan's national strategy, and established the Commission as a body to implement PAR. However, the leftover legacy of the post-Taliban, a deeply fragmented administration, a poor policy management system, and the Commission's inability to implement the billion-dollar projects on PAR, resulted in obstacles on the way to a public PAR in Afghanistan.

Afghanistan implemented several high portfolio PAR initiatives, and it resulted in little institutional reform. The Commission has not been successful to the extent they spent money and is still suffering from the structural dilemma.

In the end, the research indicates that a strong political will to PAR, a good functioning administrative legal framework, and a zero-tolerance policy against administrative corruption by the governments will eventually change the red tapes to red carpet of reforms in these three geopolitics.