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# Armed governance: the case of the CIA-supported Afghan militias

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## ABSTRACT

This article examines the genealogy and behavior of the CIA militias in Afghanistan against the backdrop of persistent armed governance whereby a plurality of actors competes over control and rule. The nonaccountable use of force by militias and their volatile alliances increase the extent of armed governance, exacerbating issues of human rights abuses and undermining the possibility of future claims for justice. We discuss the effects of recurrent political violence on the peace talks and the implications for a sustainable peace, the need to include a solution for the role of militias in a peace agreement, and the necessity of ending impunity.

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Armed governance as a modality of rule, violent competition, and control has characterized the modern history of Afghanistan. A plurality of actors participates in determining such a modality of governance, including militias supported by foreign states. Since 2001, Afghan paramilitary forces that work with the United States Central Intelligence Agency (CIA), assisting the US war on terrorism in Afghanistan and the border region with Pakistan, have become an important but nontransparent element in the country's structure of armed governance. This article examines the nature and behavior of the CIA militias in Afghanistan in light of broader questions of nonaccountable use of force by quasi-official militias supported by foreign powers, and the strategic, legal, policy, and moral issues this entails. With US military withdrawals from Afghanistan on the near horizon, this article also considers the further question of how these militias can be integrated into a final peace agreement and related principal-agent concerns. Whose interests do the militias represent? Can control relationships, currently tied to the CIA, be reconfigured and institutionalized through a peace agreement? Is dissolution of the militias possible and practicable, or will they attain a measure of

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autonomy? Whichever development eventuates, it seems that the militias – whether with a continued CIA sponsorship or not – are by now so well established that they will remain an important agent of violence in the configuration of armed governance in Afghanistan.

Afghanistan did not always attract the same attention in the global media and academic circles as it has since 2001 in the aftermath of September 11, yet there has been a certain consistency in the economic and political interests of external actors in Afghanistan at least from the nineteenth century onward, from the Anglo-Afghan wars in the late nineteenth century to the Soviet invasion and eventually the US-led operation Enduring Freedom in recent history. By early 2020, the agreement between the US and the Taliban involving US military withdrawals and Taliban commitments not to support international terrorism seemed to open up a more peaceful future for the country. However, among the many important issues that remain to be settled is the role of Afghan militias in the possible continuation of what we will call ‘armed governance’ in the country.

Militias and irregular forces are not a new phenomenon in Afghanistan; they have contributed significantly to the military history of the country and affected the process of state formation. When Afghans expelled the British in the late nineteenth century, the use of rural militias in rebellions (over which the Afghan dynastic elite had little control) proved crucial. This has historically created an ambivalent dynamic; Afghan rulers typically encouraged armed resistance to expel foreign invaders when useful but were reluctant to confirm the power of local militias after the war ended, even though local agents of violence could be useful to mediate and extend state interests.<sup>1</sup> In the contemporary version of this dynamic, the influence of major international actors such as the US, Saudi Arabia, and Pakistan combined with militia power to fuel the development of a consolidated form of armed governance, that is, a modality of rule, violent competition, and control characterized by the dominant position of multiple state and nonstate military actors.<sup>2</sup>

The succession of conflicts and the transformation of the social fabric over the past four decades of violence and instability have reconfigured the political landscape of Afghanistan, changed political structures and forms of leadership, and significantly empowered local military commanders. The so-called years of *jihad* (1980s–1990s) saw an increase in the power of religious leaders such as the *mullahs* and *mawlawi*, due in part to the growing influence they had on customary assemblies, such as *jirgas* or *shuras*, at a time when the authority of local leaders, such as *khan*, *malik*, and *mir*, was significantly declining. As commanders, warlords,<sup>3</sup> provincial politicians, and religious figures gained power, armed groups and militias supported by foreign states developed in tandem. Militias came to define political and security transitions in the country with growing intensity since at least the

early 1980s.<sup>4</sup> After 2001, the militias were further developed and semi-institutionalized with massive support from the US.

The CIA-supported militias are a less well-known but particularly troublesome version of this development. The present units originated in the 2001 invasion of the country, when US military forces and the CIA organized Afghan militias to fight Islamist militants. Almost two decades later, the CIA is still running local militias in operations against the Taliban and other Islamist militants. Throughout the country, the militias reportedly have committed serious human rights abuses, including numerous extrajudicial killings of civilians. CIA sponsorship ensures that their operations are clouded in secrecy. There is virtually no public oversight of their activities or accountability for grave human rights violations.

### **A brief genealogy of the CIA's Afghan army**

Although the interest shown by Western intelligence in the work of militias and paramilitary forces in the region goes back to the creation of Pakistan in 1947, the concrete engagement of the US with Muslim guerrillas began in early 1979 with the kidnapping and murder of the American ambassador in Kabul, Adolph Dubs.<sup>5</sup> Partly guided by a 'messianic impulse'<sup>6</sup> and partly by specific political and economic interests, the CIA played a key role during the Soviet–Afghan war in the 1980s in American efforts to assist Afghan rebels who invoked the duty of holy warriors (*mujahedin*) to fight the Soviet forces and the Afghan communist government. An integral part of CIA operations was the great increase in the production of opium and heroin. Trucks and mules supplied by the agency to transport arms into the country were used on the way out to supply opium to heroin laboratories along the Afghan–Pakistan border.<sup>7</sup>

The rapid collapse of the government forces following Soviet military withdrawal in 1989 brought the *mujahedin* to power in 1992. Soon, however, the *mujahedin* began to fight among themselves, leading to the rise of the faction calling itself *taliban* (students), which found logistic and political support in Pakistan.<sup>8</sup> At this point, the CIA, which had scaled back its presence in Afghanistan when the *mujahedin* took power, re-engaged in the country. Claiming that the Taliban in the 1990s was supporting international terrorism by allowing the militant Islamist movement al-Qaeda ('the Cell') to operate from Afghanistan, the agency clandestinely supported rival Afghan *mujahedin* factions that were fighting the Taliban. Thus, when al-Qaeda attacked the US mainland in 2001, the CIA already had a long history and a well-established infrastructure in Afghanistan. This enabled the agency to rapidly spring into action after September 11. Operatives equipped with cell phones and large bundles of dollar bills entered the country on a mission to mobilize Afghan militias.

In accounts by US military historians, the use of Afghan militias in 2001 to rapidly defeat the Taliban regime and scatter Osama bin Laden's al-Qaeda fighters was a major success story.<sup>9</sup> Although bin Laden himself evaded capture for many years, US Special Forces and the CIA operatives paid local Afghans to form militias to work with the US-led coalition. They found ready recruits among ex-militia leaders and other strongmen who had opposed the Taliban, switched sides, or returned from exile in Pakistan and Iran. Many had latent networks of supporters that were easily mobilized. The militias also enabled the US to run search-and-destroy operations in the eastern and southeastern parts of the country in 2002–2003 with only a few American boots on the ground.

While useful to US and coalition forces, the well-paid and well-equipped militias formed a complex, decentralized structure of military power that posed serious problems for the liberal 'nation-building' agenda of the international operation. By 2003, the militias were slated for demobilization; its members were to be disarmed and either returned to civilian life or reintegrated in a new, regular Afghan national army. However, the large United Nations (UN) program launched for this purpose had only limited success. One reason was the unwieldy structure of the international operation in Afghanistan, which made it difficult to get consensus on most policies. In this case, the US military did not fully support the demobilization program, claiming the militias were necessary in the continuing war against the Taliban.

Another major hurdle was the opposition of many militia leaders themselves, who, in a worst-case scenario, could turn their forces against the international operation. This nightmare scenario haunted Western diplomats and UN officials who had a mandate to promote peace and stability in the war-torn country and made them reluctant to pressure the militia leaders. Finally, as in any disarmament program of this kind, the opportunities for cheating by falsifying numbers and hiding the best weapons were numerous.<sup>10</sup> The program's modest results clearly demonstrated that, once built up, militias are hard to build down.

After 2006, when the Taliban had manifestly revived and the insurgency intensified, the US government formally reversed its policy toward militias: local militias should no longer be disbanded but instead supported as a key component in a new counterinsurgency strategy.<sup>11</sup> US Special Forces initially organized new militias at the local level, presenting them in public as village defense units. Some central government figures, including President Hamid Karzai, were at first reluctant to endorse this practice as policy, fearing an erosion of centralized control and the sovereignty of the Afghan government. Yet the government's heavy military and economic dependence on the US gave it limited room for opposing the latter's initiatives, particularly those advanced by the US military command in Afghanistan. Many Afghans also

stood to gain economically and politically from the build-up of new military units. Officials in the Ministry of Interior supported the move to place the units under its control. Appearing under various names, the program was eventually called the Afghan Local Police, which had units in many parts of the country.<sup>12</sup>

Some militias were not placed under the Ministry of Interior, however, but were run separately by US Special Forces and CIA operatives. While the Special Forces command (later the Joint Special Operations Command) and the CIA apparently developed a rivalry over controlling the Afghan militias, the competition was muted by the Pentagon's practice of lending active-duty members of the Special Forces to the CIA through its so-called Omega Program.<sup>13</sup> The CIA itself had few paramilitary officers. In 2017, its Special Activities Division with a global field of mission was reported to have only a few hundred.<sup>14</sup> Rostering Special Forces from the military as its own enabled the CIA to vastly expand its covert missions. By 2010, as Bob Woodward claimed in a much-cited passage from his book on the Obama administration, the CIA had an army of 3,000 Afghans called Counterterrorist Pursuit Teams, institutionalized with the acronym CTPT.<sup>15</sup> As discussed more fully below, they were paid and trained by the CIA and the Special Forces and protected by the ring of secrecy surrounding their sponsoring agent. As such, they were distinct from the militias established under the formal Afghan Local Police program. Yet the formal public program to employ militias as a fighting force also served to facilitate and legitimize the proliferation of militias that formed the CIA's Afghan 'army.'

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

In 2015, the CIA helped its Afghan counterpart, the National Directorate of Security (NDS), to establish new Afghan paramilitary units to fight militants, allegedly aligned with the Islamic State, who reportedly were active in the northeastern part of the country. The new NDS units added significantly to the total number of irregular forces supported by the CIA.<sup>16</sup> Two years later, in 2017, then-CIA Director Mike Pompeo publicly announced a policy change to use the militias more intensely. The CIA would expand its operations in Afghanistan, targeting Taliban as well as al-Qaeda. Small teams of CIA-rostered officers would spread out alongside Afghan units in a campaign that Pompeo promised would be 'aggressive,' 'unforgiving,' and 'relentless.'<sup>17</sup>

## The CIA's army: who are its members and how do they operate?

Little is publicly known about the CIA's Afghan 'army.' Nevertheless, investigative journalists, concerned analysts, and human rights activists have pieced together the covert program's basic outlines. The 'army' has two types of components. One is a set of older units whose relations with the CIA go back to the offensive operations carried out during and immediately after the 2001 invasion. They work closely with the agency. The most well-known and powerful of these is the Khost Protection Force (KPF), which operates out of the CIA's Camp Chapman in the northeastern province of Khost.<sup>18</sup> Significantly, the KPF is an illegal armed group in the sense that its existence has no basis in Afghan law and no formal place in the state security apparatus or its budget, as the UN has emphasized.<sup>19</sup>

A second type of unit is the formally designated Special Forces of the Afghan intelligence agency, the NDS. There are four main units, numbered from 01 through 04, each with its own regional area of operation: NDS-01 operates in the Central Region, NDS-02 in the Eastern Region, NDS-03 in the Southern Region, and NDS-04 in the Northern Region.<sup>20</sup> This is the only transparent and publicly known part of their organization. The NDS Special Forces exist in a regulation twilight zone. The NDS is heavily funded by the CIA, and its Special Forces have a close working relationship with CIA operatives: according to most reports, they are trained and paid directly by the CIA. As a result, information about their size, operations, funding, and command structure is not publicly disclosed.<sup>21</sup> In the temperate language of the United Nations Assistance Mission in Afghanistan (UNAMA), the operations of NDS Special Forces, like those of the KPF, 'appear to be coordinated with international military actors, that is, outside the normal governmental chain of command.'<sup>22</sup> In UNAMA reports, the term 'military actors' commonly refers to the CIA, as distinct from the term 'US military forces' (our italics). Afghan institutional control over the NDS Special Forces also appears to be tenuous. The UN mission concluded in 2018 that 'these forces appear to operate outside of the regular NDS chain of command, resulting in a lack of clear oversight and accountability.'<sup>23</sup>

There is no public disclosure of the size of the CIA-supported units, but they probably have more than doubled since the estimate of 3,000 given by Woodward in 2010. A journalist maintained in 2017 that NDS-02 alone had 1,200 men.<sup>24</sup> Among the older units, the KPF was said to have 4,000 members in 2015.<sup>25</sup> Three years later, in 2018, estimates of the KPF size were 'anywhere from 3,000 to over 10,000.'<sup>26</sup> Other than that, all we know is that the CIA-sponsored forces are uniformed and well equipped, sometimes work with men who speak American English during raids, use American phrases, and have been able to call in air strikes, most of which are executed by the American military.<sup>27</sup> The paramilitary forces are also very well paid, which

may be a principal reason why highly skilled and capable Afghans would want to join the units.<sup>28</sup>

The secrecy of the CIA program greatly compounds the difficulties of ascertaining facts about civilian casualties and related violence involving progovernment forces. These problems notwithstanding, the UN, human rights organizations, and investigative analysts have documented a pattern of abuse and possible war crimes of the kind that are emblematic of paramilitary forces operating with impunity, unconstrained by political or judicial accountability. Whether the military effects of these units are large or small, the political effects are certainly even greater, since they have long-term impacts on local governance.<sup>29</sup>

The paramilitary units are mainly used in night operations against residential areas harboring suspected militants in so-called search operations. The operations typically lead to high civilian casualties. UNAMA, which has reported on civilian casualties in Afghanistan annually since 2009, now singles out the operations of paramilitaries associated with the CIA as a matter of grave concern. The UN mission report in 2019 cited 'continuing reports of the KPF carrying out human rights abuses, intentionally killing civilians, illegally detaining individuals, and intentionally damaging and burning civilian property during search operations and night raids.'<sup>30</sup> The UN used similar language to describe the CIA-supported Special Forces of the Afghan intelligence agency, the NDS, in both its 2017 and 2018 reports.<sup>31</sup>

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

The sharp increase in civilian deaths from search operations reflects Mike Pompeo's promise in 2017 that the CIA would launch an 'aggressive,' 'unforgiving,' and 'relentless' campaign. The increase was also in line with the general escalation of violence in 2018, as all parties appeared to intensify their efforts to gain advantages on the ground that could translate into



political bargaining power during peace negotiations that seemed to be on the horizon.

### **Nonaccountable use of force**

The two main techniques for targeted killing are kill-or-capture raids and air strikes from drones. These modalities of political violence continue the reproduction of armed governance whereby the individuals targeted are alleged terrorists, active insurgents and others considered part of their networks. In Afghanistan, US military intelligence units with assistance from coalition forces deployed under NATO command regularly compiled long kill-or-capture lists, known in NATO under the mystifying name of Joint Prioritized Effects List.<sup>34</sup> As in other theaters of the US global 'war on terror,' the CIA has also been actively engaged in kill-or-capture missions in Afghanistan, sometimes in cooperation with the regular military forces and the Special Forces under the Joint Special Operations Command (JSOC). While more is known about the frequency and criteria for individual targeted operations by the US regular armed forces, the lists used by the CIA are secret. The agency will neither confirm nor deny their existence.<sup>35</sup>

In terms of international law, targeted killings are deeply problematic, especially when carried out by an intelligence agency. As Philip Alston, UN Special Rapporteur on extrajudicial, summary or arbitrary executions (2004--2010) notes, the practice (1) represents a significant regression in the evolution of both international law and US domestic law; (2) provides legitimacy to the position held by some officials, commentators, and scholars who believe that the US should officially adopt a policy of extraterritorial targeted killings that would go well beyond what is currently allowed by international law; and (3) supports the notion that intelligence agencies can legitimately expand their activities from traditional intelligence-gathering to killing and still enjoy the same *de facto* immunity from the constraints of international law.<sup>36</sup>

Overall, as the UN mission reports repeatedly note, the CIA-sponsored program and activities of its Afghan army are shielded from public oversight and accountability. Afghan authorities appear to be uninformed or unwilling to divulge anything about the program's structure, funding, or operations. It is telling that UN officials investigating reports of abuse and intentional killings of civilians by NDS Special Forces were unable to obtain any information from Afghan officials, including in the NDS itself.<sup>37</sup>

In legal terms, the CIA has long enjoyed a privileged position in Afghanistan by being outside the jurisdiction of Afghan laws and decrees that regulate the operations of international military forces. For instance, prior to 2014, Afghan restrictions on certain coalition practices that disproportionately harmed Afghan civilians, notably night raids, did not apply to the CIA and its operatives because these do not constitute 'military *forces*.' The 2014

Bilateral Security Agreement that governs military relations between the US and Afghanistan maintains this distinction. The agreement explicitly prohibits US *forces* from entering Afghan homes except when necessary for immediate self-defense, forbids them to arrest or detain Afghans, and bars them from operating detention facilities in Afghanistan. Again, the restrictions do not apply to the CIA because, in formal terms, the agency does not have military *forces*. Extending the provision to the CIA would signal that it was carrying out such activities in Afghanistan and thus conflict with its principal function of undertaking covert missions.

The Afghan government, being heavily dependent on US support, has accepted the US position. At the time of the Bilateral Security Agreement discussions, President Karzai faced critics at home who favored an expansive CIA role in the country, including the Afghan intelligence community and local beneficiaries of CIA largesse. There were also broader considerations that graphically illustrated some of the scholarly literature on the outsourcing of violence to militias in civil war.<sup>38</sup> From a short-term tactical perspective, it was argued that exempting the CIA from the constraints that applied to the regular forces was an advantage; its 'army' could wage a truly 'aggressive,' 'unforgiving,' and 'relentless' campaign against the Taliban and other militants. For both the Afghan and US governments, these considerations came to outweigh the recognized costs: grave human rights violations, potential breaches of international law, and the alienation of the Afghan people, whose support was necessary to stabilize the government.

In the US, only the House and Senate Intelligence Committees have an oversight function relative to the CIA. Their ability to obtain information from the agency is limited, as the Senate Select Committee on Intelligence experienced when investigating alleged CIA use of torture in 2001–2006 worldwide. Congressional willingness to release findings to the public is also constrained, as evidenced in the heavily redacted summary that the Select Committee released in 2014.

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

Despite numerous reports that CIA-sponsored paramilitaries have committed serious human rights abuses and possible war crimes, very few cases have been investigated and even fewer prosecuted. The exceptional cases

reflect a system of politicized justice based on proximity to centers of political power rather than the rule of law. Two reported cases illustrate the system. In 2009, a Kandahar-based strike force that was linked to the CIA killed a local police chief for having had the temerity to arrest one of its members. The de facto execution of a highly placed official prompted the Afghan government to arrest and convict 38 members of the strike force of murder. A second reported case took place in 2015, when a KPF unit killed a young boy who was related to a local leader and former *mujahedin* commander. The family was able to use its political connections to secure an investigation, and a court convicted two KPF soldiers to ten years in prison.

Compensation for civilian deaths caused by the KPF can also be obtained if villagers complain to local authorities who have lines of communication to the force or if they collectively protest, for example, by blocking roads.<sup>39</sup> More commonly, it seems, villagers lodge protests with the local authorities who are most accessible to them at the district or provincial level. Sometimes investigations are promised, but usually nothing further happens. In 2018, a member of the Afghan Independent Human Rights Commission said that, in 13 years of working in the eastern region, she could recall no case of being able to access paramilitary forces operating in the region to question them about reports of abuse.<sup>40</sup>

## US-supported militias and Afghan armed governance

Setting up foreign-supported militias always creates a dynamic of escalation in the implementation of security and control, thus generating spirals of violence. This in turn produces a type of political capital that defines both the dimensions and structure of violence. Such political capital constitutes the lifeblood of armed governance. One consequence of protracted situations of armed governance, as in Afghanistan, is the blurring of the categories of war, soldiers, combatants, and military, on the one hand, and of those of peace, criminals, security, and police, on the other. As Ian Shaw and Majed Akhter maintain, the figure of the terrorist is quite emblematic in this regard, since it increasingly straddles these two classifications: the terrorist is not simply an 'enemy combatant' and not merely a 'criminal'<sup>41</sup> but, rather, the manifestation of a violent, competing political project.

In discussing what they define as the 'dronification of state violence,' Shaw and Akhter argue that a major feature defining today's covert drone war is that it targets individuals allegedly linked to globalized, transnational networks instead of nation-states and their military forces. Through this mechanism of individualization, the discrete battlefield is converted into a boundless battle space, thus challenging the foundations of international law. The target of state-supported violence is shifting in scale from conquering territory to destroying individual human bodies. The CIA has played a central role in the

genesis of this new cartography of violence. Shaw and Akhter define the dronification of state violence as: '(a) the relocation of sovereign power from the uniformed military to the CIA and Special Forces; (b) the technopolitical transformations performed by the Predator drone; (c) the bureaucratization of the kill chain; and (d) the individualization of the target.'<sup>42</sup>

Both dronification and the use of local militias are key aspects of armed governance in Afghanistan and have been implemented as strategic patterns of CIA operations. As such, they take place within a larger landscape of armed governance where both the CIA and the regular US forces rely on armed drones in the air and a wide range of US-funded 'regular' militias on the ground – including the massive Afghan Local Police (funded with almost 500 million dollars in 2010–2015) and the Critical Infrastructure Police. These forces were militias in all but name, established as part of the US counterinsurgency strategy promoted from 2009 onward. Over the years, some of these militias allegedly protected local populations, others preyed upon them, and some have done both.<sup>43</sup> A critical point, however, is that the more institutionalized militias like the Afghan Local Police are more open to public scrutiny of their practices than the CIA-sponsored militias.

Regardless of their sponsorship, the outcomes of externally supported militias programs are volatile, reflecting common dynamics of principal-agent relationships. When the goals of militias and their supporters are incongruent, for instance, external support can be appropriated in ways that contradict the intended (or at least declared) outcomes and strategic interests of the foreign supporter. These goals are shaped in the context of an armed governance in which short-term victories on the battlefield generally overshadow longer-term political objectives. Moreover, militias often use external resources to serve their own local agendas. In Kunduz, for example, Pashtuns have been particularly affected by the predatory behavior of US-backed Tajik, Uzbek, and Turkmen militias. Thus, the US support for the militias led to incentives among Pashtuns that fueled rather than countered the insurgency.<sup>44</sup>

## **CIA militias and peace talks**

In the context of peace talks, CIA-supported militias represent a wild card. The direct talks between the US government and the Taliban that started in Qatar in July 2018 led to an agreement signed on February 29 (fittingly a leap year date), 2020, which provided for the withdrawal of all military forces of the US and its allies over a fourteen-month period, and a commitment by the Taliban not to permit international 'terrorist' groups to operate from Afghanistan. The agreement covered withdrawal of foreign private security forces but, unsurprisingly, said nothing about the CIA's role.

The agreement stipulated that intra-Afghan negotiations would follow to discuss a cease-fire and 'the future political roadmap of Afghanistan.'<sup>45</sup> A comprehensive peace agreement negotiated by the Afghan parties was expected to include the legal framework for political, social, economic, and other human rights, possible constitutional revisions, provisions for accessing political power, possible power-sharing formulas, and the structure of the post-war armed forces, including the CIA-sponsored militias.

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

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

While the case for disbanding the militias is strong, it is not easily realized. For a start, an apparent precondition would be a basic legal framework for dealing with the Afghan military forces on all sides of the conflict. Hard trade-offs and compromises between deeply antagonistic adversaries will likely be necessary. Implementation poses a separate set of issues. Efforts to disarm and integrate militias after 2001 were short-lived, as noted, reflecting the pressures of renewed war and vested interests in a fragmented military power, as well as the demanding and long-term task of building a regular national army. This time around, two decades of CIA support for local militias and paramilitaries has left a deeply problematic legacy.

Even if the US withdraws its regular forces from Afghanistan, Washington may well be interested in keeping 'intelligence assets' for counterterrorist purposes.<sup>46</sup> Such a presence would require some local infrastructure of support. To this end, the CIA could easily maintain some of its local units, and – given Afghanistan's forbidding geography and complex social environment –

probably mount operations on a fairly significant scale. Zalmay Khalilzad, the chief US negotiator with the Taliban has mentioned the militias as one of several items to be included in a general peace agreement.<sup>47</sup> Pompeo, previously the CIA director and currently US Secretary of State, had not said anything about them by late 2019. After the Taliban-US agreement was signed in 2020, analysts in Washington suggested that the Taliban would make it a priority to take over the NDS and end its relationship with the CIA.<sup>48</sup> This would mean the militias could also be taken over by the Taliban (e.g., to fight rival militant factions), or the militias might break away to find new sponsors or operate autonomously.

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

The CIA paramilitaries constitute a formidable set of actors in their own right. Given their highly paid and privileged status, they are unlikely to welcome a drastic reduction in pay that would accompany integration into the regular armed forces or demobilization. If cut loose by the CIA, they may be reborn as private armies or 'security guards' in the service of powerful individuals or operate autonomously to prey on civilians and commercial sources.<sup>49</sup> Either possibility is in line with patterns of armed governance and collective violence in modern Afghan history.

Peace talks must always face the possibility of recurrent political violence. The CIA's particular capacity to carry out state violence in the form of political destabilization, drone strikes, and targeted killings may erode the potential of the peace process in Afghanistan from within. The signs of agreement between the US and Taliban to withdraw US and NATO forces in return for a guarantee that Afghan territory would not be used for launching attacks outside the country would not translate into concrete steps toward a comprehensive peace agreement without a dialogue between Afghan parties and a permanent cease-fire. It is particularly in relation to these two last elements that the CIA-supported militias could play a negative role by jeopardizing the future of a lasting peace.

## **Policy implications**

In contexts of armed governance, such as today's Afghanistan, state and nonstate actors alike can avoid accountability for human rights violations. Evasion of political accountability can take a variety of forms, including interference with the monitoring activities of nongovernmental organizations (NGOs) and the media, the use of alternative types of repression such as disappearance or encounter killings, or the delegation of repression to other

states, as with the policy of rendition, or to other actors like militias.<sup>50</sup> If policy is positioned in an explicitly normative frame of reference, efforts to end impunity for serious cases of such violations and possible war crimes take priority. Vigorous investigation and prosecution of possible war crimes committed by militias will likely also strengthen rather than weaken the prospects for a peace settlement acceptable to the US and the Afghan governments. As military experts on counterinsurgency have long recognized, tactical victories gained by the unrestrained and unaccountable use of force against civilians undermine the overall strategic objective of winning the support of the population.

Ending impunity means addressing the accountability issue in both its legal and moral dimensions. Legal accountability requires US and Afghan authorities to urgently investigate and prosecute alleged human rights abuse and war crimes that are reported and in part carefully documented by the UN and the Afghan and international human rights communities. The Afghan government can investigate and take further legal action under Afghan laws against members of the illegal armed groups, notably the CIA-sponsored KPF. Afghan military authorities or special commissions can investigate and take further action against the paramilitaries with formal institutional links to the Afghan government, namely the NDS Special Forces. Absent a political agreement for a durable cease-fire or peace, structural reforms of the CIA's Afghan 'army,' including disbanding the illegal armed groups or integrating elements in the regular forces, are not likely to find much support in US or Afghan government circles. A consistent judicial offensive against impunity would be a shade easier.

Steps to end impunity conform to broadly accepted norms and could invoke precedents. As discussed above, even CIA-supported illegal armed groups were not always protected from the legal consequences of their actions. Egregious attacks on a high-profile civilian (a Kandahar police chief) and a victim whose family was politically well connected (the family of the Khost boy) brought prosecutions and convictions. In addition, at least one widely reported case of serious abuse committed by US Special Forces (or CIA operatives) and their Afghan partners against civilians has been investigated by ad hoc Afghan commissions and a mixed US-Afghan commission.<sup>51</sup> Nevertheless, a more vigorous campaign against impunity would require a great deal of active US engagement – certainly much more than US civilian and military authorities have demonstrated to date.<sup>52</sup>

More fundamentally, efforts to end the impunity of the CIA's army require a focus on the CIA itself. As the primary reference in a principal-agent relationship with the militias and the paramilitaries, the CIA ultimately bears responsibility for their actions – at least in a moral-political sense if not in strictly legal terms.<sup>53</sup> That responsibility, in short, is to ensure that its Afghan army acts in line with Afghan law and relevant international humanitarian

and human rights law. Responsibility also rests with the US government and the wider American public, which allow the CIA to operate armed groups that have no legal standing in the country where they operate, to support the paramilitary forces of its local intelligence partner, and to run operations shielded from transparency and public accountability.

## Notes

1. Barfield, *Afghanistan: A Political History*. Rulers of weak states commonly pursue 'mediated stateness' through alliances with localized military forces. A classic formulation of the concept in its contemporary form is Ken Menkhaus, "Governance without Government."
2. For a conceptual and empirical exploration of "multilayered governance" involving armed groups, see Kasfir, Nelson, G. Frerks, N. Terpstra, "Introduction: Armed Groups and Multilayered Governance."
3. The contemporary phenomenon of warlords (*jang salar* in Dari) in Afghanistan is inextricably linked to insurrections that took place in the late 1980 s. The term "warlord" generally refers to a figure who is recognized by a militia, not by a state power. In reality, there are many more nuances to the role of warlords, which suggests that the term exhibits a certain malleability. For instance, so-called warlords in Afghanistan have taken part in the post-2001 processes of "democratization," others sit in the Parliament or have government positions, and yet others have close ties with provincial governors. Therefore, warlords should not be considered to be at war with the state; rather, they are figures who play a key role in the armed governance that dominates contemporary Afghanistan. See for example Giustozzi, *Empires of Mud* and Mukhopadhyay, *Warlords, Strongman Governors and State Building in Afghanistan*.
4. Felbab-Brown, "Hurray for Militias?"
5. Prados, "The CIA's Secret War."
6. Cogan, "Partners in Time."
7. Gasper, "Afghanistan, CIA, bin Laden."
8. De Lauri, "The Taliban and the Humanitarian Soldier."
9. Wright et al., Different Kind of War.
10. Sedra, "Security Sector Reform."
11. For a comparative perspective, see for example Mitchell and Carey, "Pro-Government Militias and Conflict," Tar, "Counter-Insurgents or Ethnic Vanguard? Civil Militias and State Violence in Darfur Region, Western Sudan," and Peic, "Divide and Co-Opt: Private Agendas, Tribal Groups, and Militia Formation in Counterinsurgency Wars."
12. Lefèvre, "Local Defence in Afghanistan"; Goodhand and Hakimi, "Counterinsurgency, Militias, and Statebuilding."
13. Clark, "CIA-Proxy Militias."
14. Mazzetti et al., "Seal Team 6."
15. Woodward, *Obama's Wars*, p. 8. The information was independently confirmed by National Public Radio in the US (see <https://www.npr.org/sections/thetwo-way/2010/09/22/130041571/3-000-man-cia-army-conducts-operations-in-pakistan>). At the time, their main operations appeared to be against targets across the border in Pakistan.
16. Raghavan, "CIA Runs Shadow War."



17. Gibbons-Neff et al., "C.I.A. Expands Taliban Hunt."
18. Its equivalent in the south is the Kandahar Strike Force, which appears to have been less active in recent years. Another "first-generation" unit in the CIA's Army, called "Afghan Security Guards," is based in Paktika in the northeast and seems to have folded into the Afghan Local Police. See Clark, "CIA-Proxy Militias."
19. UNAMA, Annual Report 2018, 37.
20. UNAMA, *Annual Report 2018*, 41, n. 158.
21. See Clark, "CIA-Proxy Militias," and Graham-Harrison, "Karzai Seeks to Curb CIA."
22. UNAMA, Annual Report 2018, 42.
23. UNAMA, Annual Report 2017, 53.
24. See note 13 above.
25. See note 16 above.
26. Mashal, "CIA's Afghan Forces."
27. Purkiss, Fielding-Smith, and Feroz, "CIA-Backed Afghan Unit."
28. The CIA reportedly pays KPF members a monthly salary equivalent to that received by an Afghan general.
29. See note 4 above.
30. UNAMA, Annual Report 2018, 36.
31. UNAMA, Annual Report 2017, 53–54; UNAMA, Annual Report 2018, 41–44.
32. UNAMA, Annual Report 2018.
33. *Ibid.* 2018.
34. The compilation and use of the "kill-or-capture" lists were investigated by an independent commission appointed by the Norwegian government to assess Norway's role in the international operation. See NOU, *A Good Ally*, sec 5.4 pp. 79–82.
35. Alston, "CIA and Targeted Killings."
36. *Ibid.*
37. The NDS has a Human Rights Chief, who met repeatedly with UNAMA in 2017, but was unable to provide any information about NDS Special Forces-related incidents for investigation and accountability purposes. See UNAMA, *Annual Report 2017*, 53.
38. For a wide range of perspectives, see Ahram, *Proxy Warriors*, Sanford, "Learning to Kill by Proxy," and Jentzsch, Kalyvas, and Schubiger, "Militias in Civil Wars."
39. See note 16 above.
40. Masal, "CIA's Afghan Forces."
41. Shaw and Akhter, "Dronification of State Violence."
42. *Ibid.*, 214.
43. Dirkx, "Unintended Consequences."
44. *Ibid.*
45. <https://www.state.gov/wp-content/uploads/2020/02/Agreement-For-Bringing-Peace-to-Afghanistan-02.29.20.pdf>.
46. See comments by General Ambassador Karl W. Eikenberry, quoted in Landler, Cooper, and Schmitt, "Taliban Talks Raise Question."
47. Gannon, "U.S. Envoy Hails Talks."
48. Barnes, Gibbons-Neff, and Schmitt, "Afghanistan War Enters New Stage as U.S. Military Prepares to Exit."
49. Some NDS Special Forces are already reported to "provide security" for particular politicians. See Bakhtiyar, "Experts Criticize NDS."
50. Mitchell, Carey, and Butler, "Impact of Pro-Government Militias."

51. Up to seventeen male villagers in Wardak province were detained at a US camp in Wardak from October 2012 to February 2013 and subsequently disappeared. Only two bodies were ever found.
52. Suhrke, "From Principle to Practice."
53. Neta Crawford has persuasively made this argument in relation to civilian casualties from air strikes. If the institutional structure of an armed unit and its methods of warfare carry a high risk of 'collateral damage' during air strikes against enemy soldiers operating in populated areas, the unit that conducts the strikes bears a moral responsibility for any civilian casualties that result, even though the deaths and injuries were unintentional and cannot be prosecuted under existing laws allowing for 'military necessity' and related norms. See Crawford, *Accountability for Killing*.

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